116 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc. Docket No. ER05-1065-001

ORDER ON REHEARING

(Issued September 22, 2006)

1. On May 24, 2006, several intervenors[1] requested rehearing of the Commission's April 24, 2006 Order in this proceeding.[2] That order addressed Entergy Services Inc.'s (Entergy) proposal to establish an Independent Coordinator of Transmission (ICT) for the Entergy system, a Weekly Procurement Process and a draft contract between Entergy and the ICT (ICT Agreement). The Commission generally denies rehearing.

---

[1] Arkansas Public Service Commission (Arkansas PSC); Arkansas Cities & Cooperatives (ACC); American Public Power Association (APPA); Southeast Electricity Consumers Association (SeECA); Occidental Chemical Corporation (Occidental); Arkansas Electric Cooperative Corporation (AECC), Arkansas Cities and Cooperatives, Lafayette Utilities System (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 (collectively TDU Intervenors); East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas (collectively East Texas Cooperatives); Cottonwood Energy Company LP and Plum Point Energy Associates, LLC, jointly (Cottonwood and Plum Point).

[2] *Entergy Services lnc.*, 115 FERC ¶ 61,095 (2006), *errata notice* May 4, 2006 (*April 24, 2006 ICT Order*).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

I. Background

2. On April 1, 2004, in Docket No. ER04-699-000,[3] Entergy filed revisions to its open access transmission tariff (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 (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). Entergy proposed that the ICT have authority to 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.

3. The Commission issued two orders on Entergy's Enhanced ICT Proposal.[4] In the *Guidance Order*, the Commission stated that it was prepared to accept Entergy's proposal on a two-year experimental basis, subject to certain enhancements and monitoring and reporting conditions, if Entergy submitted an acceptable filing under section 205 of the Federal Power Act (FPA).[5] 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 the ICT's responsibilities 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.

---

[3] After the Commission issued the *Guidance Order*, 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).

[4] *Entergy Services, Inc.*, 110 FERC ¶ 61,295 (*Guidance Order*), *order on clarification, Entergy Services, Inc.*, 111 FERC ¶ 61,222 (2005) (*Clarification Order*), *order on reh'g, Entergy Services, Inc.*, 116 FERC ¶ 61, 269 (2006).

[5] 16 U.S.C. § 824d (2000).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

4. Further, the Commission set out certain other enhancements and modifications that were needed to support Entergy's pricing proposal. The Commission required that the ICT develop the original Base Plan (which is a critical part of Entergy's pricing proposal), including any inputs and numerical values that go into the Base Plan.

5. The Commission found that Entergy had not adequately explained its proposal to have the ICT review previously incurred costs of interconnecting generators. 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 covering revisions. 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.

6. On May 12, 2005, the Commission issued an order clarifying certain aspects of the *Guidance Order*.[6] The *Clarification Order* stated that: Entergy was to work with the ICT and Entergy's stakeholders to develop the procedures by which the ICT will calculate AFC; even though Entergy does not employ locational marginal pricing it bears the burden of defining long term firm transmission rights which protect the customer from any future "congestion" costs associated with re-dispatching generation; if SPP is selected as the ICT, SPP's independence from Entergy should be further examined at the time Entergy files its section 205 filing and when Entergy files the contract with the ICT; and the start date of the experimental period begins when the ICT is functional.

7. On May 27, 2005, Entergy made its section 205 filing in Docket No. ER05-1065-000 in accordance with the *Guidance* Order, indicating that Southwest Power Pool (SPP) would be the ICT. The *April 24, 2006 ICT Order* conditionally approved Entergy's ICT, pricing and Weekly Procurement Process proposals, with certain modifications. The Commission stated that with certain revisions discussed in that order, Entergy's proposals 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

[6] *Entergy Services, Inc.*, 111 FERC ¶ 61,222 (2005).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Commission therefore accepted the tariff sheets, subject to compliance as described in the *April 24, 2006 ICT Order*. On May 24, 2006, Entergy made a filing in compliance with the *April 24, 2006 ICT Order* in Docket No. ER05-1065-002.

II. Procedural Matters

8. Entergy filed an answer to the requests for rehearing. SeECA, Lafayette and Cottonwood filed answers to Entergy's answer. Entergy filed an answer to Cottonwood's answer. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), prohibits answers to requests for rehearing. Accordingly, we will reject the answers.

III. Discussion

A. General Matters

1. Requests for Rehearing

9. APPA states that it is concerned that the ICT proposal, even with the modifications ordered, will not provide the ICT with enough authority to deter undue discrimination or address Entergy's transmission market power issues and could exacerbate problems with inadequate transmission infrastructure on the Entergy system. APPA states that it has more hope in the reforms to the OATT proposed by the *OATT Reform NOPR*.[7] APPA states that because the ordering paragraphs of the *April 24, 2006 ICT Order* do not include any specific direction to Entergy to revise its OATT in the future to reflect the final rule on OATT reform, Entergy could assume that the ICT is on a separate track. Therefore, APPA asks the Commission to clarify that Entergy must comply in full with any final rule issued on OATT reform.

10. Cottonwood and Plum Point state that because the Commission recently confirmed in the *OATT Reform NOPR* that the existing OATT does not ensure nondiscriminatory transmission access, Order No. 888[8] can no longer be relied upon to provide the

---

[7] *Preventing Undue Discrimination and Preference in Transmission Service*, FERC Stats. & Regs., Proposed Regulations ¶ 32,603 (2006) (*OATT Reform NOPR*).

[8] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888*, FERC Stats. & Regs. ¶ 31,036 at 31,663 (1996), *order on reh'g, Order No. 888-A*, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g, Order No. 888-B*, 81 FERC ¶ 61,248 (1997), *order on reh'g, Order No. 888-C*,

(continued)

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

minimum standards against which the ICT can be judged to be consistent or superior. Therefore, they assert that the Commission cannot base its approval on the simple finding that the ICT improves on the Order No. 888 OATT. Rather, the Commission must independently determine that the ICT will provide just and reasonable and nondiscriminatory and non-preferential results.

11. The Arkansas Cities state that the Commission did not address how grandfathered agreements will be treated under Entergy's ICT proposal. They ask whether the ICT or Entergy will administer grandfathered contracts, whether there should be a methodology or offers for converting grandfathered agreements into the new regime, and whether grandfathered customers will be allowed to keep any favorable terms and conditions previously bargained for under the grandfathered agreements.

12. The Arkansas Cities note that section 3.1(b) of Attachment S states that the ICT will not oversee transmission service provided under pre-Order No. 888 grandfathered transmission agreements outside of the tariff. However, they state that other matters should be more clearly spelled out. First, they ask the Commission to require Entergy to update its filing to state that when grandfathered contracts expire, roll-over rights will be honored, the customer will have the option to continue service with the ICT or Entergy, and that grandfathered customers will not be treated as new customers. They assert that since grandfathered agreement customers have had continuous service in the past, the filing should include provisions that exempt grandfathered customers from the lengthy process required of new customers.

13. The Arkansas Cities further ask whether grandfathered agreement customers will continue to enjoy their current roll-over rights in relation to their current rates for service or will be forced to pay rates under the tariff. They also ask for clarification as to what role the ICT will play in dealing with grandfathered customers. They state that, as the language reads, the ICT will not play a role in serving grandfathered customers, but that this language is unclear. They ask for clarification in any future update of Entergy's ICT filing that precisely spells out the role that the ICT will play in relation to grandfathered agreements, such as during the transition period when a customer's grandfathered contract expires and will need to be renewed. Further, they ask that Entergy provide that a grandfathered customer's resources are already designated as Network Integration Transmission Service (NITS) resources and would continue this designation after the contract expires.

---

82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

14. TDU Intervenors move for clarification, on an expedited basis, of a procedural matter that they assert has been rendered unclear by the *April 24, 2006 ICT Order*. They state although the *Guidance Order* remains pending on rehearing, the Commission in the *April 24, 2006 ICT Order* cites the *Guidance Order* in numerous instances as a basis for rejecting objections to Entergy's filing. Therefore, the TDU Intervenors ask the Commission to clarify whether the *April 24, 2006 ICT Order* denies rehearing of the requests for rehearing of the *Guidance Order* so that they may know what remedies they are entitled to pursue at this point with respect to the *Guidance Order*.

2. Commission Conclusion

15. The Commission grants APPA's request and clarifies that Entergy must comply with any final rule issued in the OATT reform proceeding. The *April 24, 2006 ICT Order* issued before the *OATT Reform NOPR*, so the ordering paragraphs did not mention Entergy's obligation in regard to OATT reform. The *OATT Reform NOPR* proposes to apply the final rule to all public utility transmission providers.[9] Entergy is a public utility transmission provider and, therefore, if the proposal in the NOPR is adopted, it will be required to comply with the final rule. As we did in Order No. 888, the Commission proposes to allow transmission providers to propose non-rate terms and conditions that differ from those set forth in the final rule if those provisions are "consistent with or superior to" the *pro forma* OATT.[10] The Commission notes that Entergy's ICT proposal is contained in attachments to Entergy's Order No. 888 OATT and that most of the OATT terms and conditions were not modified by Entergy's ICT proposal. Entergy must comply with the *OATT Reform Final Rule*, particularly with regard to any OATT term or condition that is modified by the *OATT Reform Final Rule* and not modified by the ICT proposal. For any provision modified by both the *April 24, 2006 ICT Order* and the *OATT Reform Final Rule*, the Commission will use its judgment as to whether the ICT term or condition is consistent with or superior to the *pro forma* OATT as revised.

16. We disagree with Cottonwood and Plum Point that the Commission should not have judged the ICT proposal in part based on whether it was consistent with or superior to the Order No. 888 *pro forma* OATT. The *OATT Reform NOPR* had not issued when we issued the *April 24, 2006 ICT Order*. Further, the *OATT Reform NOPR* is only a proposal to change the Commission's OATT and is not final. The Order No. 888 *pro forma* OATT is the currently effective *pro forma* OATT against which we must evaluate

---

[9] *Id.* at P 98.

[10] *Id.* at P 99.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

proposals to modify Entergy's tariff.[11] As stated above, when the Commission issues a final rule on OATT reform, Entergy must comply with that final rule. However, the Commission agrees with Cottonwood and Plum Point that we must independently determine that the ICT will provide just and reasonable and nondiscriminatory and non-preferential results. The Commission made this determination.[12] Therefore, we deny rehearing.

17. We will deny rehearing on matters relating to grandfathered agreements. Section 3.1(b) of Attachment S states that the ICT will not oversee transmission service provided under pre-Order No. 888 grandfathered transmission agreements outside of the tariff. Thus, the ICT will have no role in administering grandfathered agreements unless the customer chooses not to renew its contract and decides to take service under the OATT.

18. In regard to roll-over rights when grandfathered contracts expire, the ICT proposal did not alter any rights under grandfathered agreements. Grandfathered agreement customers will continue to enjoy whatever rights they would have had if Entergy had not proposed the ICT. The grandfathered agreements themselves dictate what rights the customers have. The Commission does not believe that further clarification is needed. Therefore, we see no reason to require Entergy to update its filing.

19. The Commission grants clarification that the *April 24, 2006 ICT Order* did not deny the pending requests for rehearing of the *Guidance Order*. The Commission is issuing an order on rehearing of the *Guidance Order* concurrently with the instant order.[13]

---

[11] *See, e.g., Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 115 FERC ¶ 61,210 at P 90 (2006). In the market-based rate NOPR, the Commission also proposed to continue to judge transmission market power based on the current OATT, as modified by the OATT Reform NOPR.

[12] *April 24, 2006 ICT Order* at P 14 ("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.").

[13] *Entergy Services, Inc.* 116 FERC ¶ 61,269 (2006).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

B. ICT Independence and Authority

1. ICT Responsibilities and Duties

20. The Commission found that Entergy's ICT proposal is consistent with or superior to the *pro forma* tariff and an improvement to 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.

21. The Commission stated that, even though the ICT does not have filing rights under section 205 of the FPA and therefore cannot itself propose to change criteria, standards and policies, we will be able to ensure that the criteria, standards and policies remain just and reasonable. Any criteria used by Entergy to grant or deny transmission service, including calculating AFC, must be filed under section 205 of the FPA and accepted by the Commission. Therefore, we stated that any interested party, including the ICT, may protest these filings or file a complaint under section 206 of the FPA.

22. Section 9 of the Transmission Protocol requires the ICT to lead a stakeholder process designed to, among other things, provide an opportunity for market participants who have experienced repeated denials of transmission requests to air their concerns and form a consensus-based resolution. We stated that the ICT must seek stakeholder input while developing the process to be used to grant or deny service. Further, we stated that parties not only have input at the stakeholder level, but can also raise their concerns in any Commission proceeding to consider the specific processes and criteria the ICT must follow.

23. The Commission denied requests to require that the ICT be able to unilaterally implement its recommendations concerning the AFC process. We stated that if Entergy does not follow any recommendations proposed by the ICT, the ICT or any other party can protest when the revised AFC process is filed.

a. Requests for Rehearing

24. Several parties assert that the Commission erred in finding that the ICT experiment is consistent with or superior to the Order No. 888 tariff. Occidental asserts that the Commission's reason must be coherent and adequate and that there be a rational

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

connection between the facts found and the choice made.[14] It says that the *April 24, 2006 ICT Order* fails to articulate any valid reason that the ICT will produce more good than harm for Entergy's transmission customers.

25. The Generator Coalition states that it generally supports Entergy's proposal to establish an ICT but argues that the Commission should have modified the ICT proposal to provide the ICT more authority. They state that, while the ICT is not a Regional Transmission Organization (RTO), the Commission based its approval of Entergy's pricing proposal on the independence of the ICT. Occidental and the TDU Intervenors challenge the Commission's conclusion that Entergy's proposal is an improvement on the present situation. They point out that the ICT will be implementing criteria developed by Entergy. Occidental and the TDU Intervenors argue that the Commission is wrong in assuming that certain requirements[15] are a reasonable substitute for having the ICT develop the criteria, standards, and policies affecting the grant or denial of transmission service.

26. The Generator Coalition states that the ICT will be operationally and functionally dependent on Entergy and that Entergy will have de facto control over access to its system and upgrades to its system. Occidental disagrees with the Commission's conclusion that the ICT's lack of authority is not problematic because any criteria must be filed with the Commission. It says that the Commission found that Entergy's AFC methodology may not be just and reasonable when it ordered an investigation under section 206 in Docket Nos. EL05-22 and EL05-105. Further, the TDU Intervenors state that the *April 24, 2006 ICT Order* is unclear as to which criteria, standards, and policies are subject to the section 205 filing requirement. As a result, the Intervenors argue, there is no assurance that the protections in the *April 24, 2006 ICT Order* will be effective. TDU Intervenors argue that transmission customers place no faith in their right to seek relief under section 206 because complaints languish long after they are filed and some complaints are ignored by the Commission.

---

[14] Occidental at 7, citing *Maryland People's Counsel v. FERC*, 761 F.2d 768, 779 (D.C. Cir. 1985) (*People's Counsel*).

[15] TDU Intervenors mention three requirements: first, that the ICT conduct a stakeholder process in which market participants may air concerns about AFC calculations; second, that any criteria used by Entergy to grant or deny transmission service must be filed under section 205 with customers having the right to protest; and third, that any customer may file a section 206 complaint if it believes that the criteria, standards, and policies used by the ICT are unjust, unreasonable, or unduly discriminatory. TDU Intervenors Request for Rehearing at 27.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

27. The Generator Coalition argues that the Commission should clarify the stakeholders' role in reviewing the inputs and methodologies used in the Base Plan and in reviewing any additional sensitivity case evaluations of whether a transmission project would improve power transfers within and out of the Entergy footprint. It states that the Commission agreed with its argument that Entergy had too great a role in developing the Base Plan due to Entergy's control over criteria and assumptions used to create the Base Plan. It states that the Commission may have confused the Base Plan with Entergy's local reliability criteria. It points to a statement in the *April 24, 2006 ICT Order* that

> 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.[[16]]

28. The Generator Coalition states that the inputs, methodologies, and assumptions relied upon in developing the Base Plan are different from Entergy's local reliability criteria. On rehearing, the Commission should clarify that it did not intend to limit stakeholder participation to the development of local reliability criteria, but that it also intends for stakeholders to have a defined and active role in the development of the Base Plan.

29. TDU Intervenors argue that the rulings made by the Commission in the *April 24, 2006 ICT Order* on the scope of the ICT's powers were influenced at least in part by factors irrelevant to the determination of justness and reasonableness. They assert that the Commission's rulings on the ICT's powers were designed in part to be acceptable to retail regulators in the Entergy region and that the desire to avoid a conflict with the states is not a legitimate factor in the Commission's decisionmaking. TDU Intervenors argue that the Commission has allowed the ICT to be insulated from the direct exercise of Commission jurisdiction by limiting the ICT's powers in certain key areas. TDU Intervenors assert that the protections that the *April 24, 2006 ICT Order* offers under sections 205 and 206 could be offered to market participants without establishing the ICT.

30. The Generator Coalition argues that stakeholders must have a defined, formal role in the ICT. It states that it appears that the Commission believes that stakeholders have a

---

[16] *April 24, 2006 ICT Order* at P 146.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

voice in the various ICT processes; however, this is not true because Entergy's tariff sheets provide no formal role for stakeholders.[17] The Generator Coalition argues that on rehearing, the Commission should require Entergy to provide for a formal, substantive stakeholder process.

31. TDU Intervenors support the Users Group concept laid out by the Commission, but state that because the Users Group would have no more authority than the ICT itself to modify any criteria, standards, or practices, it does not make the ICT independent.[18] Occidental asserts that, because the Users Group does not have the authority to fix any problems, such as Entergy's recent data loss and concerns with Entergy's AFC program, it is not a reasonable substitute for the section 206 investigation in the AFC proceeding.

b. <u>Commission Conclusion</u>

32. In approving the ICT proposal, the Commission found that it was just and reasonable and not unduly discriminatory or preferential and that it was consistent with or superior to the *pro forma* OATT. The Commission found that, with certain required modifications, Entergy's ICT proposal met this standard. The FPA does not define "just and reasonable," and the Commission is not limited to one method of determining what is

---

[17] The Generator Coalition mentions the recent AFC Audit completed by SPP, noting that the Commission in the *April 24, 2006 ICT Order* stated that SPP had requested stakeholder input on the scope of the audit. The Generator Coalition argues that the stakeholders did not have meaningful input. It states that Entergy was able to substantively modify the stakeholders' recommended scope of work for the audit. The Generator Coalition argues that while SPP validated the Coalition's criticisms of the AFC program, SPP did not suggest meaningful corrective measures. It states that the AFC audit process is "the sum of Generator Coalition's worst fears—*i.e.* little substantive participation, the inability to correct fundamental flaws, and Entergy being able to effectively control the process." Generator Coalition Request for Rehearing at 5.

[18] In the *April 24, 2006 ICT Order*, the Commission proposed 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 were required to meet quarterly with the Users Group so both Entergy and the ICT would be made aware of any problems with these systems and have the opportunity to discuss proposed solutions with the Users. We required the ICT to provide the Commission and Entergy's retail regulators with the results of these meetings. *April 24, 2006 ICT Order* at P 109.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

just and reasonable.[19] The ICT proposal does not need to be perfect, or the most desirable way of doing things, it need only be just and reasonable.[20] As modified by the Commission, the ICT is just and reasonable. Therefore, we deny rehearing.

33. Several parties request rehearing of the Commission's approval of Entergy's proposal that the ICT use Entergy's criteria, standards and policies to grant and deny transmission service. Those criteria, standards and policies must also be approved by the Commission. The fact that the ICT starts with Entergy-created criteria does not mean that it will not independently implement those criteria or modify them, as necessary.

34. The TDU Intervenors state that the *April 24, 2006 ICT Order* is unclear as to which criteria, standards, and policies are subject to the section 205 filing requirement. Entergy's AFC criteria are set forth in the tariff provisions applicable to AFC and Available Transfer Capability, the North American Electric Reliability Corporation (NERC) Reliability Standards and SERC Reliability Corporation (SERC) supplements to those standards, Entergy's AFC manual and Entergy's local criteria. Entergy's tariff, including the AFC criteria, has been approved by the Commission. As discussed below, the Commission has proposed modifications to AFC in its *OATT Reform NOPR*, with which Entergy will have to comply. Any changes required thereunder will have to be filed with the Commission. Entergy cannot deviate from the NERC and SERC Reliability Standards. Further, NERC has filed its proposed Reliability Standards for Commission approval in Docket No. RM06-16-000. If SERC files to become a Regional Entity under section 215 of the FPA, its supplements and modifications to the NERC standards must also be filed for approval by the Commission.[21] Although Entergy's local

---

[19] *See Public Service Comm'n of Indiana, Opinion No. 349*, 51 FERC ¶ 61,367 at 62,222, *order on reh'g*, 52 FERC ¶ 61,260, *order granting clarification*, 53 FERC ¶ 61,131 (1990); *Pacific Gas and Electric Co.*, 110 FERC ¶ 63,026 (2005).

[20] *California Independent System Operator Corp*., 106 FERC ¶ 63,026 at P 57 (2004). *See also New England Power Co.*, 52 FERC ¶ 61,090, at 61,336 (1990), *reh'g denied*, 54 FERC ¶ 61,055, *aff'd*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992); *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (1984) (utility need establish that its proposed rate design is reasonable, not that it is superior to alternatives); *accord OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (Commission may approve methodology proposed in settlement agreement if it is "just and reasonable"; it need not be the only reasonable methodology, or even the most accurate).

[21] *See North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (2006).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

criteria are not filed with the Commission, we provided that if the ICT chooses to include them in the Base Plan, these criteria should be subject to the scrutiny of stakeholders whose interests may be affected. We required 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.

35. Although the ICT does not have section 205 filing rights, SPP audited the AFC process and can propose modifications to that process. The ICT and stakeholders can attempt to reach agreement on any changes or enhancements discussed in the SPP AFC audit. If Entergy agrees with a change recommended in the report and discussed with stakeholders, it will submit the revisions to its OATT for approval under section 205 of the FPA (or will revise its business practices accordingly).[22] 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 taking comments, what further steps need to be taken. In this way, if the ICT believes that a change to the process through which transmission service is granted and denied is necessary, Entergy will either make the proposed change or bring it to the Commission and the Commission can decide if the change is necessary. Therefore, although the ICT does not have section 205 filing rights, any change that it believes should be made will ultimately be brought to the Commission, either through Entergy's filing under section 205 to change its tariff or by the ICT bringing the issue to the Commission for a final determination.

36. Further, the Commission empowered the ICT to request any data it believes it needs to grant or deny transmission and to verify the data. Finally, it is the ICT, not Entergy, that will be making the final determination as to which transmission service requests are granted and which are denied. Having an independent entity oversee and evaluate Entergy's AFC process and verify Entergy's data, and requiring Entergy to report any disagreements it has with the ICT over proposed modifications to the AFC process, will provide transparency to Entergy's transmission program.

37. Although several intervenors note that the AFC process was the subject of an investigation under section 206, the Commission believes that the ICT proposal may resolve matters at issue in that proceeding through its ability to oversee the AFC process

---

[22] We note that Entergy has undertaken a stakeholder consultation process for the AFC. Entergy filed revisions to its AFC tariff sheets in November 2005, which were accepted by the Commission. *Entergy Services, Inc.*, 114 FERC ¶ 61,002 (2006), *order on compliance, Entergy Services, Inc.*, Docket No. ER06-162-001 (Apr. 27, 2006) (unpublished letter order).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

and propose modifications to it. Further, the Commission is considering generically modifying many aspects of the *pro forma* OATT in the OATT Reform proceeding, including how transmission providers calculate AFC and how transmission service requests are processed. As stated above, Entergy will have to comply with any modifications required in the final rule on OATT reform. Therefore, we deny rehearing of our decision to approve the ICT's use of Entergy's criteria, standards and policies to grant and deny transmission service. However, we remind Entergy and the ICT that if modifications to any criteria, standards and policies to grant and deny transmission service are required by the OATT reform final rule, Entergy must use the ICT process to take into account stakeholder input into these modifications.

38. We disagree with the TDU Intervenors that the rulings made by the Commission in the *April 24, 2006 ICT Order* on the scope of the ICT's authority were influenced by factors irrelevant to justness and reasonableness. As stated above, the Commission found that the proposal was just and reasonable and not unduly discriminatory or preferential and that it was consistent with or superior to the *pro forma* OATT. Several of Entergy's retail regulators were parties to the proceeding and the Commission took their comments, as well as the comments of other parties, into account when making its determination regarding the ICT. Consideration of those comments was entirely appropriate and helped the Commission in reaching its determination that Entergy's ICT proposal, as modified, is just and reasonable and consistent with or superior to the *pro forma* OATT.

39. We disagree with the Generator Coalition that Entergy's tariff sheets provide no formal role for stakeholders. 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.[[23]]

40. That section requires the ICT to form a stakeholder process. If it does not do so, Entergy will be in violation of its tariff and the Commission can take action at that time.

---

[23] *April 24, 2006 ICT Order* at P 63 (emphasis added).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

The Generator Coalition states that the Commission may have confused the Base Plan with Entergy's local reliability criteria. We disagree. Section 8 of Entergy's Transmission Planning Protocol requires the ICT to "develop the Base Plan consistent with the Planning Criteria," which include Entergy's local reliability criteria.[24] However, we did not limit stakeholder participation to the development of local reliability criteria. In fact, in the *April 24, 2006 ICT Order*, the Commission stated that "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."[25]

2. ICT Agreement

a. Specificity of the ICT Agreement

41. The Commission approved the draft ICT Agreement with modifications. The Commission rejected arguments that the draft ICT Agreement was too vague because in the *Guidance Order*, the Commission allowed Entergy to file the executed ICT agreement within 60 days after a Commission order approving the section 205 filing.[26] The Commission further stated that it would examine the executed ICT Agreement when Entergy files it.

i. Requests for Rehearing

42. Occidental asserts that the Commission erred in determining the ICT's independence based on the draft ICT Agreement filed by Entergy. It argues that because the draft ICT Agreement was not the final contract between SPP and Entergy, it could not be the basis for determining whether the ICT would perform its functions truly independently of Entergy. Occidental notes that in the *Clarification Order*, the Commission stated that it would review the ICT's independence in the section 205 filing at issue in the *April 24, 2006 ICT Order* and when Entergy files the contract with the ICT. However, it claims that the *April 24, 2006 ICT Order* is contrary to this decision because it determined SPP was independent before Entergy filed the executed ICT Agreement.

---

[24] Transmission Planning Protocol § 2.2.

[25] *April 24, 2006 ICT Order* at P 146.

[26] *Clarification Order* at 23 (emphasis added). Entergy filed the Executed ICT Agreement on May 24, 2006 in Docket No. ER05-1065-002.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

ii. Commission Conclusion

43. We deny rehearing. Occidental is mistaken that the Commission's analysis of the draft ICT Agreement was the basis for our decision as to SPP's independence. Although the Commission approved the draft ICT Agreement, with modifications, we also acknowledged that we committed in the *Clarification Order* to analyze the ICT Agreement at every level – both in Entergy's section 205 filing at issue in the *April 24, 2006 ICT Order* and when Entergy files the contract with the ICT.[27] In the *April 24, 2006 ICT Order*, the Commission reiterated that we will examine the *executed* ICT Agreement when Entergy files it and allow any party having concerns about the executed ICT Agreement to file comments.[28] Further, Entergy has now filed its executed ICT Agreement in Docket No. ER05-1065-002, and the Commission has received comments on the contract. The Commission will fulfill its commitment to fully analyze the executed ICT Agreement in that proceeding.

b. Budget

44. The Commission found that section 3.2 of the draft ICT Agreement might allow Entergy to exercise significant control over the ICT's budget because it did not sufficiently safeguard against the ICT's compensation being affected by its treatment of Entergy. We further found 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 did not go far enough. The Commission required Entergy to negotiate with SPP what the cost arrangement will be for ICT services (*e.g.*, a fixed amount or a formula) and file that arrangement in its executed ICT Agreement. We also required 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 stated that a full stakeholder review of the ICT's budget was not necessary and could create additional costs and delays.

---

[27] *April 24, 2006 ICT Order* at P 92; *Guidance Order* at P 74; *Clarification Order* at P 18.

[28] *April 24, 2006 ICT Order* at P 93.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

i. Requests for Rehearing

45. TDU Intervenors argue that the *April 24, 2006 ICT Order* errs by not providing for stakeholder review of the ICT budget. They state that there is no support for the Commission's finding that allowing stakeholder review of the ICT budget could create additional costs and delays.

ii. Commission Conclusion

46. We deny rehearing. The Commission continues to believe that it is not necessary to provide for a full stakeholder review of the ICT's budget because this could create additional costs and delays. Further, Entergy and SPP have filed the proposed ICT budget in Docket No. ER05-1065-002, and the Commission has received comments on the budget. Any concerns about the ICT's initial budget should have been aired in that proceeding. For future budgets, if an interested party has concerns, it may contact the Commission or Entergy's retail regulator and ask that the regulator invoke its privilege to require that Entergy and the ICT meet with the Commission and retail regulators and air these concerns.

c. Data

47. The Commission stated, in the *April 24, 2006 ICT Order*, that the draft ICT Agreement would limit the ICT's access to Entergy's data. We found that, 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 its functions. Therefore, we required 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. We stated that since the ICT will be independent of market participants, it will have no incentive to abuse this access to information. However, we found that if Entergy believes that the ICT is making inappropriate use of this access to information, Entergy can bring the dispute to the Commission.

48. The Commission further expressed concern about the failure of Entergy's data retention system and proposed 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. We required the ICT to provide the Commission and Entergy's retail regulators with the results of these meetings in its next scheduled report.

49. We also required the ICT and the Users Group to conduct annual reviews of error rates associated with Entergy data in accordance with certain metrics discussed in that order, including any relevant information. We stated that any complaints made with the

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

ICT concerning Entergy's data systems (including any resolution of such complaints) must be posted on OASIS within 24 hours and provided steps for Entergy and the ICT to take if Entergy discovers that it has lost data, or reported inaccurate data, or otherwise believes that it has mismanaged data.

50. Finally, the Commission found that giving the ICT authority to audit Entergy's books and records and it would be unnecessary to have the ICT's books and records reviewed by an independent auditor. Further, such action would be expensive, and an inappropriate delegation of the Commission's authority to audit Entergy's books and records.

i. Requests for Rehearing

51. SeECA states the Commission erred by not requiring independent audits of the ICT on the basis that such a proposal is unnecessary and expensive. SeECA argues that the ICT Agreement inappropriately gives Entergy the authority to audit the ICT's books and records. SeECA asserts that this provision of the ICT Agreement jeopardizes the ICT's independence by allowing Entergy to exert undue influence over the ICT and infringes upon the Commission's jurisdiction over the ICT Agreement. It says that section 14.2 of the ICT Agreement contravenes the Commission's holding in the *Guidance Order* that the Commission will have jurisdiction over the ICT Agreement regardless of whether the ICT is a public utility under the FPA.

ii. Commission Conclusion

52. The Commission denies rehearing of our decision not to require an independent audit of the ICT. The Commission has mandated various reporting requirements through which we will be able to oversee the ICT's performance of its duties. Further, Entergy should be able to audit the ICT's books and records because ICT compensation will be based on the ICT's actual cost of service. Allowing Entergy to review the ICT's books will ensure that the ICT's budget is based on SPP's cost of performing ICT functions and that there is no cross-subsidization of the SPP RTO or reliability-related costs. This will not jeopardize ICT independence. If the ICT does not agree with Entergy on any budget matter, it must bring the dispute to the Commission within 15 days. Ultimately, it is the Commission's responsibility to ensure the continued independence of the ICT and we will exercise our oversight over the ICT budget process and any necessary dispute resolution to fulfill that responsibility.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

d. Miscellaneous

53. In the *April 24, 2006 ICT Order*, the Commission found that it was not clear from the draft ICT Agreement that Entergy would not have influence over the ICT's decisions regarding key personnel. Therefore, we required Entergy to make clear that it will not have unilateral veto authority over the ICT's decisions on this matter.

54. The Commission further found that Entergy failed to justify the express exclusion of Boston Pacific from performing services under the ICT Agreement. The Commission was unwilling to approve this aspect of section 12.4 of the draft ICT Agreement and required Entergy to more fully support its exclusion of Boston Pacific.

55. Finally, the Commission stated that since Entergy indicated that it would select SPP as the ICT, there was 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.[29]

i. Requests for Rehearing

56. The TDU Intervenors assert that the Commission sidestepped the question of whether it has direct regulatory jurisdiction over the ICT as a public utility in order to avoid opposition from state commissions. TDU Intervenors state that if the Commission lacks jurisdiction over the ICT, the performance of many important transmission-related functions will have been removed from the Commission's authority; for example, the Commission's new accounting and financial reporting requirements adopted in Order No. 668.[30]

57. Further, the TDU Intervenors state that they are concerned that the Commission will pay less attention to problems in the Entergy region once the ICT is in place. TDU Intervenors state that if the Commission becomes less vigilant, any failures of the ICT will wreak havoc for transmission customers until the Commission's attention can be recaptured.

---

[29] *Guidance Order* at P 37.

[30] *Accounting and Financial Reporting for Public Utilities Including RTOs, Order No. 668*, 113 FERC ¶ 61,276 (2005).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

ii. Commission Conclusion

58. The Commission does not agree that we sidestepped our regulatory authority over SPP as the ICT. The Commission has direct regulatory authority over SPP as a public utility because SPP is a Commission-approved RTO. Further, the Commission has jurisdiction to regulate how Entergy's transmission-related functions are carried out, even if Entergy contracts with another entity to perform these functions. Finally, the ICT is created by Entergy's OATT, over which we have jurisdiction. Therefore, our ability to control the ICT experiment is in no way limited as asserted by the TDU Intervenors.

59. Further, we intend to continue to pay close attention to the Entergy region once the ICT is in place. In fact, through the various reporting requirements and metrics through which we will evaluate the ICT, the Commission will be vigilantly watching the Entergy region to ensure that the experiment is functioning as intended and provides benefits. We believe that these regular reports and our meetings with the retail regulators will inform us of any potential flaws or failures in Entergy's system.

C. Transmission Planning

60. Entergy's transmission pricing proposal establishes two categories of pricing for upgrades to its transmission system, Base Plan and Supplemental Upgrades. The ICT will create the Base Case Model[31] 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 NERC multi-regional and SERC regional models.[32] Entergy will provide the ICT with data inputs necessary for preparation of the Base Case Model. The ICT will review and validate the data inputs to ensure their consistency with Planning Criteria.[33] Entergy would develop a

---

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

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

[33] *Id.* § 5.2. "Planning Criteria" are 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 Id.* § 2.4.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

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.

61. In the *April 24, 2006 ICT Order*, we found that the ICT would independently develop the Base Plan and 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 found that the Planning Criteria in the proposed Planning Protocol were appropriate, with the modification that Entergy's business practices and local reliability criteria (inputs, assumptions, and methodologies), if the ICT chooses to include them in the Base Plan, should be subject to the scrutiny of stakeholders whose interests may be affected.

62. We also stated that Entergy may not modify the guidelines and protocols that the ICT must use in developing the Base Plan without Commission approval. Further, we noted that any market participant may file a complaint if the Base Plan does not follow the requirements in Entergy's tariff.

63. We denied arguments concerning differences between the Construction Plan and the Base Plan, stating that the Planning Protocol provided the ICT and affected regulators the opportunity to weigh in on divergences between the Construction Plan and the Base Plan and allowed Entergy to revise its Construction Plan based on regulatory feedback. We found that this would ensure that any upgrades needed for reliability purposes would be accounted for in the Construction Plan, *i.e.*, those reliability upgrades in the Base Plan that are not in the Construction Plan.

1. <u>Requests for Rehearing</u>

64. TDU Intervenors state that this fails to ensure meaningful regional transmission planning. They state that Entergy's filing and the Commission's order specified that the ICT will "visit with" other transmission providers after their plans have been developed and identify projects that may produce benefits for more than one system. TDU Intervenors argue that this approach falls short of an integrated, broad-based regional planning process.

65. TDU Intervenors argue that the highly interconnected nature of the grid requires that the planning activities of all significant transmission owners be integrated so that an

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

overall plan can be formulated. They say that the ICT could facilitate the first steps toward needed reform. However, they argue that the *April 24, 2006 ICT Order* does not establish clear coordinated regional planning because there is no incentive for Entergy or other non-SPP entities to participate in the sort of regional planning that might resolve the transmission constraints that are impeding competition.

66. Further, they assert that the *April 24, 2006 ICT Order* errs by providing for only limited input from customers. They state that Entergy's annual planning summit is not an interactive dialogue through which customer views and needs are accommodated in Entergy's system expansion plans. The TDU Intervenors assert that meaningful dialogue is impossible when comments are invited on a plan that is complete by the time of the summit. They state that Entergy develops its transmission expansion plan with no involvement prior to the annual summit by merchant generators and others.

67. The Arkansas Cities and the TDU Intervenors assert that the *April 24, 2006 ICT Order* did not discuss the lack of a seams agreement between SPP and Entergy, despite the fact that the issue was raised the in supplemental comments. The Arkansas Cities claim that in the SPP RTO proceeding,[34] the Commission required SPP to have a seams agreement with the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and to provide a timeline to file seams agreements with other utilities to which its members connect. The Arkansas Cities and the TDU Intervenors state that the seams issue was only addressed in the *ICT Guidance Order*, in which the Commission encouraged Entergy and SPP to apply to remove rate pancaking.[35] They assert that by only encouraging Entergy and SPP, the Commission does not deal in a meaningful way with the seams issues between Entergy and neighboring systems.

68. Both the Arkansas Cities and TDU Intervenors further argue that unless Commission requires Entergy to enter into a seams agreement, Entergy has no incentive to eliminate rate pancaking because doing so would increase the number of entities able to sell energy in direct competition with Entergy. TDU Intervenors argue that unless rate pancaking between Entergy and adjacent regions is eliminated, potential competitors located in neighboring systems will continue to be handicapped in seeking to serve loads

---

[34] *See* Docket No. RT04-1-000.

[35] *Guidance Order* at P 72.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

within the Entergy footprint. TDU Intervenors assert that the only effective solution is for the Commission to order Entergy to develop an agreement that addresses all seams issues between Entergy and SPP.[36]

69. TDU Intervenors also argue that the Commission should have required Entergy to address the de-pancaking issue in light of the Commission's extension of the ICT term to four years. They state that Entergy had argued that it was not practical to address the pancaking issue in a two-year ICT term.

70. TDU Intervenors next argue that the *April 24, 2006 ICT Order* errs by not providing the ICT with authority to require transmission construction. TDU Intervenors argue that ICT authority to require construction is essential because Entergy has little incentive to correct inadequacies in its transmission system. TDU Intervenors state that perpetuating congestion limits access by Entergy's competitors and reinforces Entergy's market dominance. They state that the Commission highlighted this problem in the OATT Reform NOPR. TDU Intervenors argue that the advisory measures adopted in the *April 24, 2006 ICT Order* will not result in actual construction.

2. Commission Conclusion

71. The Commission acknowledges intervenors' concerns regarding the lack of regional planning or a seams agreement between Entergy and SPP. The Commission in the *Guidance Order* encouraged Entergy and SPP to apply to remove rate pancaking for transmission between the Entergy system and SPP as part of Entergy's section 205 filing, stating that this would enable independent generators in the Entergy system to make off-system sales without paying two separate access charges.[37] In Order No. 888, the

---

[36] TDU Intervenors describe the experiences of their members serving Hope, Arkansas and Prescott, Arkansas. The Intervenors state that rate pancaking has led to "balkanization" of electricity markets in Arkansas, limiting the competitive options for wholesale power supply in Hope and forcing Prescott to pay higher rates for power being brought in from SPP by Arkansas Electric Cooperative Corporation.

The Intervenors also state that a 2004 Request for Proposals (RFP) for new wholesale power suppliers in Arkansas was a disappointment, as no major investor-owned utility within Arkansas placed a bid. TDU Intervenors attribute this limited response to seams problems in Arkansas and the lack of seams agreements. TDU Intervenors Request for Rehearing at 63-66.

[37] *Guidance Order* at P 72.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Commission encouraged, but did not require coordination between transmission providers in a region. Therefore, the Commission believed it was more appropriate in the *Guidance Order* to encourage rather than require joint planning and the removal of rate pancaking.

72. Several parties point to the Commission's decision to require that SPP remove seams between it and the Midwest ISO as precedent establishing that the Commission should require Entergy to remove seams between it and SPP. However, that case involved the approval of a fully functioning RTO on a non-experimental basis, whereas this case does not involve an RTO and is only approving the filing for four years.

73. Finally, the Commission is addressing the issue of regional planning on a generic level in the OATT reform proceeding and has proposed "to amend the *pro forma* OATT to require coordinated, open, and transparent transmission planning on both a local and regional level. We propose to require each public utility transmission provider to submit, as part of its compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with [certain] coordinated and regional planning principles."[38] The Commission believes the issue of regional planning is best decided on a generic basis in the OATT Reform proceeding and will deny rehearing. However, we continue to encourage Entergy and SPP to remove seams between their transmission systems during the interim.

74. We deny rehearing of our determination not to give the ICT authority to require the construction of facilities. In the *April 24, 2006 ICT Order*, we found that 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.

75. While the ICT is making important determinations as to what transmission service is granted and is providing an oversight role on the Entergy transmission system, Entergy remains the transmission provider and is still responsible for constructing any necessary transmission facilities. The ICT will perform an independent reliability assessment of Entergy's transmission system and determine whether Entergy's Construction Plan complies with the Planning Criteria. The ICT will then provide Entergy with its conclusions, including any issues that Entergy needs to address. Entergy will provide a finalized Construction Plan to the ICT for posting on Entergy's OASIS. Further, the ICT

---

[38] *OATT Reform NOPR* at P 214.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

will independently create the Base Plan. 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. It is through this process that this Commission and Entergy's retail regulators will become aware of any facilities that the ICT believes should be built and will be able to take appropriate action to ensure that the construction of facilities needed for reliability is not neglected. The procedures that we mandated in the *April 24, 2006 ICT Order* represent a significant improvement over the status quo and are consistent with or superior to the *pro forma* OATT.

D. Transmission Pricing

1. New Investment

a. Assignment of Upgrade Costs

76. Entergy's pricing 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 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.

77. 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.

78. In the *April 24, 2006 ICT Order*, we found that Entergy has complied with Commission directives in the *Guidance* and *Clarification Orders* and approved Entergy's pricing proposal on a four-year basis, subject to certain conditions. The Commission

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

addressed arguments that Entergy's proposal to have interconnection customers pay the cost of Supplemental Upgrades is inconsistent with Order No. 2003,[39] the Commission's long-standing pricing policy, and the *pro forma* OATT in the *Guidance Order*.

79. The Commission required that, where the generator has been charged for Supplemental Upgrades, it must be allowed to keep the 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 reserved the right to revisit the cost allocation for such upgrades if the ICT Agreement is not renewed. We required Entergy to fully explain on compliance how it will ensure the preservation of those rights if the ICT ceases to function.

80. We disagreed that Entergy's pricing proposal discourages infrastructure investment or undermines the safety and reliability of Entergy's system, for the reasons discussed above. We found that, while the proposal may result in a shift in cost responsibility, the incentives that it creates will promote efficient investments. We also stated that 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.

i. **Requests for Rehearing**

81. Cottonwood and Plum Point state that Order No. 2003 allowed participant funding for network upgrades only for an RTO or ISO with locational pricing, or when an independent administrator has been approved by the Commission and the affected states for a period of transition to the start of RTO or ISO operations, not to exceed a year, and provided that the customers receive, in exchange for having funded such upgrades, well-defined and valuable congestion protection and transmission rights in lieu of transmission credits. Cottonwood and Plum Point assert that Entergy's ICT proposal does not fall within this narrow exception to the rule against "and" pricing.

82. Several parties argue that the ICT proposal does not meet the standards of Order No. 2003. The TDU Intervenors state that a non-independent transmission provider belonging to an RTO or ISO is not permitted flexibility in interconnection pricing while

---

[39] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *reh'g pending*; *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004) (Clarifying Notice).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

retaining operational control over portions of the transmission system. They state that Entergy is not transferring operational control of its transmission system to the ICT and the ICT is not sufficiently independent from Entergy to meet the requirements of Order No. 2003.

83. Cottonwood and Plum Point assert that the Commission's justification for allowing "and" pricing in certain circumstances relies not only on the fact that the transmission provider is independent and therefore would have no incentive to use the cost allocation process to disadvantage its competitors, but also on the fact that this independent transmission provider will use a more creative and flexible approach to competitive energy markets, *e.g.*, as when the RTO provides customers with well-defined and transferable congestion rights in return for having funded network upgrades. They submit that pricing that otherwise would be found to be unjust and unreasonable "and" pricing cannot become just and reasonable simply because it is administered by an independent RTO. In any event, they contend that Entergy's ICT does not even come close to providing the independence, market benefits, or equivalently valuable congestion and transmission rights the Commission relied upon in making a limited exception to the rule against "and" pricing for RTOs.

84. Cottonwood and Plum Point contrast the ICT with an RTO, saying that Entergy, not the ICT, will operate Entergy's transmission grid; access will continue to be provided over a single transmission system as it is today; customers will not receive the benefit of an expanded market by elimination of pancaked rates; there will not be any security constrained economic dispatch available to Entergy's wholesale competitors; and, there will be no single centrally dispatched control area or competitive market. Moreover, they assert that Entergy's version of well-defined, tradable congestion rights does not meet the Order No. 2003 standard.

85. Cottonwood and Plum Point contend that the ICT proposal is an experimental adoption of a new exception to the rule against "and" pricing, which the Commission can only do through formal rulemaking. Cottonwood and Plum Point assert that the *April 24, 2006 ICT Order* attempts to justify the Entergy ICT proposal, including its retroactive application, by relaxing the criteria for independence and substantial value that are required under the participant funding exception in Order No. 2003, by ignoring the fact that this exception was given prospective effect only, and by labeling its approval as temporary and experimental. They claim that the *April 24, 2006 ICT Order* represents either a change in the Commission's interpretation of the prohibition against "and" pricing or a change in its interpretation of the participant funding exception, or both, and assert that under the Administrative Procedures Act (APA),[40] when an agency has

[40] 5 U.S.C. 553 (2006).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

adopted a rule, even a rule that incorporates and elaborates upon a long-established adjudicatory policy under the governing statute, changes in the rule or interpretations of the rule must be effectuated only through formal rulemaking pursuant to APA section 553.[41]

86. Cottonwood and Plum Point argue that the Commission's approval of the experimental ICT proposal is clearly distinct from and additive to the narrower and inapplicable exception in Order No. 2003 to the Commission's prohibition against "and" pricing. They allege that, under the court's decision in *Paralyzed Veterans*, the Commission is entitled to less deference when it modifies its interpretation of its rule against "and" pricing in Order Nos. 888 and 2003 and of its rule allowing an exception for participant funding than when it modifies its interpretations of sections 205 and 206 under the FPA.[42]

87. Cottonwood and Plum Point contend that, even assuming the Commission had authority to approve the ICT proposal outside of the rulemaking process, the *April 24, 2006 ICT Order* adopts an experimental policy without the reasoned decisionmaking required of departures from its rules and policies. They state that the Commission has approached prior experiments carefully to ensure that more good than harm will come from the experiment, that no entity that will be damaged as a result of the experiment, and that the experiment was reversible.[43] Cottonwood and Plum Point assert that the

---

[41] Cottonwood and Plum Point at 20-21, citing *Shalala v. Guernesy Memorial Hosp*., 514 U.S. 87, 100 (1995) (APA rulemaking is required where an interpretation "adopt[s] a new position inconsistent with ... existing regulations."); *Paralyzed Veterans of Amer. v. DC Arena*, 117 F.3d 579, 586 (D.C. Cir. 1997), *cert. denied sub nom., Pollin v. Paralyzed Veterans of Amer.*, 523 U.S. 1003 (1998) (*Paralyzed Veterans*) ("Under the APA, agencies are obligated to engage in notice and comment rulemaking before formulating regulations, which applies as well to '*repeals*' or '*amendments.*'").

[42] *Id.* at 21, citing *Paralyzed Veterans*, which held that "once an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and comment rulemaking." Cottonwood and Plum Point also state that the appeals court further established that the test of whether a particular agency interpretation of its rules requires a new rulemaking proceeding is whether the agency's interpretation "is sufficiently distinct or additive to the regulation to require notice and comment."

[43] *Id.* at 23, citing *Pacific Gas and Electric Co.*, 38 FERC ¶ 61,242, at 61,803 (1987) (*PG&E Order*). *See also People's Counsel v. FERC*, 761 F.2d at 779 (D.C. Cir. 1985).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Commission should have relied on an independent consultant to verify that the experiment was well-designed and analytically sound and to evaluate the results of the experiment to make a reasoned initial determination of the harms and benefits of the ICT. Cottonwood and Plum Point assert that this is what the Commission did in the Southwest Bulk Power Market and Western System Power Pool experiments.

88. Therefore, Cottonwood and Plum Point assert that the Commission acted arbitrarily and capriciously because it failed to engage in the required balancing of harms and benefits to wholesale competition and to market participants. They assert that the *April 24, 2006 ICT Order* lacks analysis of the effect of the new exception to the "and" pricing rule and fails to reflect any objective process for assessing the ICT's merits. Rather, in approving this experiment and potentially rescinding hundreds of millions of dollars of existing transmission credits and effectively denying future credits, they claim that the Commission relied almost entirely upon representations by Entergy that do not supply a reasoned basis for believing that such representations actually will come to pass.

89. Several parties argue that the Commission was wrong in finding that Entergy's participant funding is not "and" pricing. The Commission's long-standing policy against "and" pricing permits a transmission provider to charge the higher of its embedded cost rate or an incremental cost rate ("or" pricing) and prohibits the assessment of both an embedded cost rate and an incremental cost rate ("and" pricing). Cottonwood and Plum Point state that the Entergy ICT proposal, which eliminates transmission credits in exchange for a package of transmission rights, allows Entergy to charge both rolled in and incremental rates for transmission service. They assert that this violates the prohibition of "and" pricing that has been established under the Commission's long-standing adjudicatory policy interpreting the FPA and in Order Nos. 888 and 2003.

90. TDU Intervenors argue that participant funding is "and" pricing because Entergy cannot be deemed to be independent on account of its contract with the ICT and because the participant funding arrangement fails to provide any service of value not already provided as firm transmission under the OATT. The Generator Coalition argues that Entergy's proposal shifts the costs of upgrading the system from Entergy to interconnection customers.

91. TDU Intervenors argue that the *April 24, 2006 ICT Order* fails to address arguments that the criteria for distinguishing between Base Plan Upgrades and Supplemental Upgrades are discriminatory. They argue that Entergy's predetermination of the criteria for determining which upgrades are Supplemental Upgrades disregards long-standing Commission policy that treats the transmission system as a cohesive integrated network.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

92. The Generator Coalition and the TDU Intervenors argue that the *April 24, 2006 ICT Order* erred by finding that the direct assignment to interconnection customers of transmission upgrade costs promotes investment in transmission facilities. They state that there is evidence that Entergy's participant funding pricing proposal would not promote investment in new transmission facilities or contribute to correcting historic underinvestment in the system.[44] TDU Intervenors assert that SPP has found that direct assignment of upgrade costs discourages investment in new facilities. There is no reason to believe that a pricing policy that assigns upgrade costs directly to service-requesting parties will be more successful in encouraging investment on the Entergy system than it proved to be on the SPP system.

93. TDU Intervenors argue that the *April 24, 2006 ICT Order* errs in approving Entergy's pricing proposal because that proposal relies on a false distinction between reliability upgrades and economic upgrades. The dichotomy between reliability and economic upgrades is eroding as upgrades constructed for reliability purposes also provide economic benefits and vice versa. They state that in a fully integrated transmission network, every integrated addition to the system enhances both the system's load-carrying capability and its stability during times of system stress as well as the system's ability to deliver energy from one resource to displace the output of a more costly resource.

94. TDU Intervenors argue that even if a network upgrade could be meaningfully and neatly categorized as either a Base Plan or Supplemental Upgrade at the time of construction, the upgrade's function could change over time. They state that Entergy's filing makes no provision for periodic reevaluation of an upgrade's function and, if appropriate, a reallocation of costs due to a change in function.

95. TDU Intervenors state that the Commission ignored the argument that the cost assignment under Entergy's pricing proposal would result in Entergy bearing little exposure to the cost of upgrades and that cost allocations under the ICT pricing proposal would disproportionately benefit Entergy's retail load. They state that an Entergy witness, testifying in a proceeding before the Louisiana Commission, demonstrated that Entergy's transmission customers will bear a much greater exposure to upgrade-funding responsibility than will Entergy itself.[45]

---

[44] *See, e.g.*, Generator Coalition at 18-19, citing Paul Joskow and Jean Tirole, Merchant Transmission Investment (Feb. 2003).

[45] According to TDU Intervenors, Entergy's witness's analysis assumed that Entergy's retail load is 85 percent of the total load in the Entergy footprint and other

(continued)

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

96. TDU Intervenors state that the Commission erred by failing to address their argument that the most important cost allocation decisions will be made by Entergy at the outset, not by the ICT. They state that the process approved by the Commission requires the ICT to be bound by Entergy's standards distinguishing Base Upgrades from Supplemental Upgrades. If the ICT determines that a proposed upgrade will eliminate the need for a Base Plan Upgrade, the ICT is allowed to treat as a Base Plan Upgrade only that portion of the upgrade equal to the cost of the avoided Base Plan Upgrade; the remainder of the proposed upgrade must be deemed by the ICT as a Supplemental Upgrade.

97. TDU Intervenors state that it is unreasonable for Entergy's Pricing Protocol to exclude from the Base Plan any investments necessary to maintain long-term firm transmission service commitments under Long Term Point-to-Point Service. They argue that it would be unjust and unreasonable for the ICT to be required to treat any transmission system upgrades needed to support transactions that either exit Entergy's control area or go through Entergy's system as Supplemental Upgrades, rather than as Base Plan Upgrades. TDU Intervenors state that any customer that needs to transport power through Entergy's system will be directly assigned the costs of the required upgrades.

98. TDU Intervenors argue that the Commission erred in approving the direct assignment to the customer of costs of upgrades that provide a higher level of reliability than is required under the Transmission Planning Protocol.[46] This provision is inconsistent with section 8.1 of the Planning Protocol, which allows the ICT to rely on its own reliability assessment in developing the Base Plan. TDU Intervenors state that they understand this provision to require that if the ICT believes a particular investment is required for reliability purposes, the ICT would still be required to classify it as a Supplemental Upgrade if it is not linked to specific reliability standards in the Transmission Planning Protocol.

---

network customers' collective load is 15 percent of the total. The witness made assumptions about the level of grid upgrade costs required to integrate new Network Resources designated by Entergy for retail load and by other network customers for their own load. The TDU Intervenors state that the Entergy witness assumed about $100 million in local area transmission upgrades to serve retail load and $145 million in future upgrades to serve other network load. According to TDU Intervenors, the Entergy analysis shows that 15 percent of the load, the other network customers, shoulders 60 percent of the total upgrade costs. TDU Intervenors Request for Rehearing at 53-54.

[46] Attachment T, § 1.3.7, Original Sheet No. 682.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

99. TDU Intervenors state that the pricing proposal approved in the *April 24, 2006 ICT Order* is disconnected from the actual planning process and that the Commission has not stated that the pricing proposal will have a positive effect on planning. They state that the Base Plan is to be the basis for the ICT's allocation of costs between Base Plan Upgrades and Supplemental Upgrades but that Entergy develops the Construction Plan, which actually contains upgrade projects. The fact that the pricing arrangement is divorced from the Construction Plan means that whatever incentive is derived from the participant funding will have nothing to do with what upgrades are actually constructed.

100. TDU Intervenors argue that the *April 24, 2006 ICT Order* errs in refusing to recognize the effect of a customer's "delisting" of a network resource. They state that in their protest of Entergy's filing, they noted that designation of one new network resource is usually accompanied by the delisting of another resource used prior to a switch in supplier. TDU Intervenors state that when a change in wholesale suppliers occurs, the wholesale customer may no longer be using its previous resource, freeing up transmission capacity equal to that used for the prior resource. Any increased available capacity resulting from delisting of the prior resource should be credited against any directly assigned costs associated with use of the new resource.

101. TDU Intervenors state that the Commission summarily dismissed the concept of allowing a customer credit for delisting previous resources and agreed with Entergy's contention that delisting of a previous resource may not produce system benefits in all instances. They note that the Commission used conditional language, stating in P 197 of the *April 24, 2006 ICT Order* that delisting could create or exacerbate congestion problems. TDU Intervenors argue that the use of such terms as "may" or "could" indicates that the Commission recognizes that there may be instances in which the operating characteristics of the grid would not be changed or could be changed for the better by delisting. TDU Intervenors assert that this possibility makes consideration of a delisting credit appropriate and that the Commission should at a minimum require evaluation on a case-by-case basis.

ii. <u>Commission Conclusion</u>

102. The Commission disagrees that our approval of Entergy's pricing proposal represents a radical departure from our pricing policies.

103. In Order No. 2003, the Commission stated that under certain circumstances, it would approve participant funding:

> the Commission believes that, under the right circumstances, a well-designed and independently administered participant funding policy for

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

> Network Upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the crediting approach.[[47]]

104. Throughout Order No. 2003, the Commission emphasized the importance of whether the entity making the cost allocation determinations is independent. We stated that "the determination of who benefits from … Network Upgrades is often made by a non-independent transmission provider, who is an interested party. In such cases, the Commission has found that it is just and reasonable for the Interconnection Customer to pay for Interconnection Facilities but not for Network Upgrades."[48] Here, the cost-allocation determination is made by an independent third party, the ICT.

105. Although the Commission in Order No. 2003 specifically discussed allowing participant funding for an RTO or ISO or when an independent administrator has been approved by the Commission and the affected states, the Commission did not limit participant funding to these entities. We stated that "[f]or a Transmission Provider that is an independent entity, *such as* an RTO or ISO, we allow flexibility as to the specifics of the interconnection pricing policy."[49] We did not limit flexibility to RTOs and ISOs, but based our determination on independence. The ICT is more than an independent administrator of the Entergy tariff. It is making the cost allocation decisions for transmission upgrades.

106. The Commission has allowed independent transmission providers to require interconnection customers to pay for network upgrades 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. 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

---

[47] *Order No. 2003* at P 695.

[48] *Id.* at P 21.

[49] *Id.* at P 28.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

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 this does not constitute "and" pricing.[50]

107. Although in these previous instances the Commission has ruled in terms of the transmission provider itself being independent, the emphasis was on the fact that the determinations were made independently. SPP has no incentive to use the cost determination and allocation process to unfairly advantage Entergy, nor does it have "an interest in frustrating rival generators."[51] There is no incentive for SPP to exploit subjectivity to Entergy's advantage.[52] Moreover, here the customer will obtain valuable rights in return, as discussed in the *April 24, 2006 ICT Order*.

108. We recognize that the ICT is not an RTO and does not carry all of the benefits of an RTO, such as security constrained economic dispatch. However, that is not the issue in this proceeding. The issue is whether the entity making cost allocation decisions is sufficiently independent and whether Entergy offers customers paying for upgrades valuable rights in return. Entergy meets this standard. The Commission thus disagrees with Cottonwood and Plum Point that it has adopted a new exception to the rule against "and" pricing. We did not relax the criteria for independence and substantial value that are required under Order No. 2003.

109. The Commission disagrees with Cottonwood and Plum Point that we have not carefully approached the ICT experiment. We have, at every stage, carefully examined Entergy's proposal, and have required that the ICT have greater authority. The Commission laid out specific reporting requirements and metrics so that we and Entergy's retail regulators will be able to regularly monitor whether the ICT is producing the significant benefits that we anticipate. Further, although Cottonwood and Plum Point

---

[50] *See Order No. 2003-A* at P 587 citing *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).

[51] *Order No. 2003* at P 696.

[52] *Id.*

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

assert that the Commission should have relied on an independent consultant to evaluate the results of the experiment, the Commission's emphasis in prior experiments was on having rigorous analysis through which the Commission could evaluate the experiment.[53]

110. The Commission disagrees with the assertion that we did not assess the benefits of the experiment. We believe that having an independent entity evaluate and administer the AFC program, verify transmission data, and closely monitor transmission access and data retention will improve transparency of transmission information, enhance transmission access, and relieve transmission congestion. Further, the Commission will be receiving regular reports on the Entergy system and how it is functioning with the ICT and Weekly Procurement Process. We further analyzed the transmission rights that will be granted to customers funding supplemental upgrades and found them to be sufficiently valuable. As we have stated when approving earlier experiments, the experiment may not be a perfect one, but we find that it is likely to provide benefits.

111. Several parties assert that the Commission has no basis for believing that Entergy's pricing proposal will lead to transmission being built to rectify "the historic underinvestment" in Entergy's transmission network.[54] Order No. 2003 found that participant funding of upgrades may provide the pricing framework needed to overcome the reluctance of incumbent transmission owners to build transmission, with the result that badly needed transmission infrastructure could be put in place quickly.[55] We continue to believe that allowing Entergy to require customers to pay for Supplemental Upgrades under the auspices of the ICT will result in Entergy building transmission and reducing the significant internal transmission constraints on the Entergy system.

112. We further disagree with the TDU Intervenors that the ICT cannot be deemed to be independent because of its contract with the Entergy. As stated in the *April 24, 2006 ICT Order*, discussed above the Commission has examined the ICT Agreement on several occasions and has found that it provides an adequate level of independence pursuant to which the Commission can grant Entergy's request for a more flexible funding approach.

---

[53] *See Public Service Company of New Mexico*, 25 FERC ¶ 61,669 at 62,030 (1983); Pacific Gas and Electric Co., 38 FERC ¶ 61,242 at 61,782 (1987).

[54] *See* TDU Intervenors at 57.

[55] *Order No. 2003* at P 703.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

113. In Order No. 2003, the Commission recognized that we have a long-standing policy treating the transmission system as a cohesive integrated network. Nonetheless, for the reasons stated above, the Commission allowed for pricing flexibility, including requiring interconnection customers to pay for upgrades, under certain circumstances. Order No. 2003 allowed an exception to Commission policy and, as discussed above, Entergy meets the criteria to be allowed to use this exception.

114. We disagree with the TDU Intervenors that Entergy will bear little exposure to upgrade funding costs. First, Entergy will be rolling in the costs of all Base Plan Upgrades and paying its share of those upgrade costs. Further, Entergy will be exposed to the cost of congestion when it is required to redispatch its system to provide service to customers who fund Supplemental Upgrades. It will also bear the cost of compensating customers funding Supplemental Upgrades when that capacity is sold.

115. We disagree with the TDU Intervenors that cost allocation decisions will be made by Entergy at the outset and not by the ICT. While the ICT must use the criteria proposed by Entergy in determining what is a Base Plan or Supplemental Upgrade, it is the ICT that makes the ultimate determination. Further, we accepted the criteria used to determine cost allocation after considering extensive comments.

116. TDU Intervenors state that it is unreasonable for Entergy's pricing scheme to exclude from the Base Plan any investments necessary to maintain long-term firm transmission service commitments under Long Term Point-to-Point Service. The TDU Intervenors seem to have misread Entergy's proposal. Section 1.2.1 of Attachment T to Entergy's OATT states that "[i]nvestments necessary to maintain long-term firm transmission service commitments under Long Term Firm Point-to-Point Service" are *included* in the Base Plan.

117. We also disagree with TDU Intervenors that the Commission erred in allowing participant funding of upgrades that provide a higher level of reliability than is required under the Transmission Planning Protocol.[56] As noted by the TDU Intervenors, section 8.1 of the Planning Protocol allows the ICT to rely on its own reliability assessment in developing the Base Plan. Therefore, if the ICT believes that a particular investment is required for reliability purposes and comports with the Planning Criteria, it would be considered a Base Plan Upgrade under the Transmission Planning Protocol for pricing purposes.

---

[56] Attachment T, § 1.3.7, Original Sheet No. 682.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

118. As stated above, it is appropriate for Entergy to retain control over the Construction Plan and what is actually built on the Entergy system. We disagree with the TDU Intervenors that the pricing proposal will have a negative effect on planning. First, the Commission approved the ICT proposal as a package, which as a whole is just and reasonable. The ICT will independently determine whether Entergy's Construction Plan complies with the Planning Criteria, which is a positive step in Entergy's planning function. Further, if the ICT's assessment of cost allocation (the Base Plan) and Entergy's assessment of what needs to be built (the Construction Plan) are inconsistent, the ICT and Entergy must inform Entergy's retail regulators and the Commission which will be able to ensure that the construction of facilities needed for reliability is not neglected. Further, we disagree with the TDU Intervenors that stakeholders are left out of this process. The ICT will lead an annual Transmission Planning Summit with stakeholders and regulators to review the ICT's independent reliability assessment and Entergy's Construction Plan. Stakeholders can submit comments and suggestions to the ICT that will be publicly available. The ICT and Entergy will review the stakeholder input, and Entergy will provide recommendations regarding the input and a revised Construction Plan, if necessary, that the ICT would post on OASIS. The ICT will further provide these comments to the Commission and retail regulators if necessary.

119. We deny the TDU Intervenors' request for rehearing of our determination concerning a customer's "delisting" of a network resource. In the *April 24, 2006 ICT Order*, we stated 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.

b. <u>Firm Transmission Rights</u>

120. We accepted Entergy's proposal to provide firm transmission rights to customers paying for Supplemental Upgrades to protect these customers from congestion costs and curtailments. To maximize regulatory certainty for the parties, we required 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.[57] 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 Energy Resource Interconnection Service

[57] *April 24, 2006 ICT Order* at P 167.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

(ERIS) requested; and, if the customer is a Network Customer, to designate a generator as a Network Resource on the Entergy system without further study upon passing a deliverability test for Network Resource Interconnection Service (NRIS) generators.

121. In response to the arguments about the lack of stakeholder input, we found that Entergy had made a good faith effort to incorporate the views of stakeholders in formulating its proposal, given the timeline that we imposed. Furthermore, because we authorized Entergy to implement the proposal for only a four-year period, we concluded that the interests of stakeholders had been adequately protected. We noted that these parties' concerns have been heard through their comments in this proceeding.

i. Requests for Rehearing

122. TDU Intervenors state that the *Guidance Order* required that the firm rights conferred on funding parties have substantial value, but that the rights conferred under Entergy's proposal have at best uncertain value. TDU Intervenors state that the *April 24, 2006 ICT Order* notes that the value of the rights conferred by Entergy's proposal can be influenced by minor changes in the operation of the grid that may be difficult to detect. They state that this risk is not resolved by the ICT arrangement because the ICT has no authority over generation dispatch. TDU Intervenors argue that it is not clear from the *April 24, 2006 ICT Order* that the firm rights have value as a hedge against congestion.

123. TDU Intervenors argue that the value of the firm rights as a source of compensation for the use of upgraded facilities by other customers is doubtful. They argue that the cost to the additional customer will be as much an obstacle to competition as the imposition of the original funding burden and that the additional transactions will not occur.

124. TDU Intervenors assert that firm transmission is divided into "access" and "firmness," which allows Entergy to charge transmission customers not only for their load ratio share of the revenue required to pay for the transmission system, but also for the full cost of additions to the transmission provider's transmission system needed to meet the customer's needs. They assert that the firm rights conferred by Entergy's proposal do not provide meaningful value and that there is no basis for the Commission to have found that customers would pay "separate charges for separate services."

125. TDU Intervenors argue that Entergy did not meet two key requirements of the *Clarification Order*: that the firm rights must be developed through a stakeholder process and that the firm rights must be tradable. Entergy's rights are not tradable, and the proposal is inconsistent with a directive in both the *Guidance* and *Clarification Orders*. They also state that Entergy was required to conduct a stakeholder process but that the Commission accepts Entergy's claim that it did not have enough time after the

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Clarification Order to hold the stakeholder conference. The TDU Intervenors state that the Commission has erred in accepting Entergy's statement that it did not realize until the *Clarification Order* that it was directed, rather than encouraged, to meet with stakeholders.

ii. Commission Conclusion

126. The Commission denies TDU Intervenors' request for rehearing. Their arguments do not convince us to change our conclusion that Entergy's proposal provides transmission customers with firm transmission rights that provide real and substantial value, an appropriate level of cost certainty, adequate protection from congestion and curtailments, and benefits that closely approximate those provided by fully tradable transmission rights.

127. TDU Intervenors are correct that the value of firm transmission rights is uncertain. However, that uncertainty is not created by Entergy's proposal, and indeed is largely unrelated to market structure and the independence of the transmission provider. Rather, it is due to the fact that the value of the firm rights is measured by the future congestion or redispatch costs that a funding party avoids by holding the firm rights, and any estimate of such costs is necessarily uncertain. Moreover, the problems that are created by future cost uncertainty are not new. For example, a customer considering point-to-point service today under the OATT must decide whether to take firm service at a known rate or to take non-firm service and accept the uncertainty that such service entails.

128. TDU Intervenors state that the value of the rights conveyed by Entergy's proposal can be influenced by minor changes in the operation of the grid, and the ICT would be unable to detect or prevent such actions. Whether such actions would be undetectable despite vigilant oversight by the ICT, and whether they would have a significant effect on the value of transmission rights, is highly speculative. However, if evidence should arise to the contrary, we are prepared to authorize appropriate adjustments.

129. TDU Intervenors are correct in noting that projecting the congestion costs on a particular path in order to determine the value of firm transmission rights can be difficult. However, this does not mean that the value of the rights is not real and substantial. The value that the customer places on the transmission rights will reflect not only on the customer's estimate of the future costs of congestion or redispatch that can be avoided by holding the rights, but also the customer's tolerance for risk. A customer with a low tolerance for risk may place a high value on transmission rights even when the avoided costs of congestion or redispatch are expected to be low. A customer that concludes that the expected value of the rights is not real and substantial simply will choose not to fund the expansion.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

130. TDU Intervenors' statement that "if an upgrade is properly sized, it should eliminate congestion on the upgraded path" is, in general, incorrect. In many situations, eliminating some congestion on a path can be done with relatively low-cost upgrades, while eliminating all congestion on that path will be much more costly. In such cases, it may not be efficient to eliminate all congestion. Under Entergy's proposal, the customer that funds Supplemental Upgrades that eliminate some, but not all, congestion will avoid incurring costs associated with the congestion that remains after the upgrades have been constructed.

131. TDU Intervenors state that the value of the firm rights as a source of compensation for the use of upgraded facilities by other customers is doubtful. We fail to see the logic in this argument. If the original customer determined that funding Supplemental Upgrades was a wise decision, then other customers are likely to reach a similar conclusion regarding the purchase of capacity created by those upgrades.

132. TDU Intervenors state that Entergy's proposal does not meet the Commission's requirement that the firm transmission rights be tradable. It is true that the rights to capacity created by Supplemental Upgrades cannot be traded in the manner of financial transmission rights in a locational marginal pricing market. However, the compensation available to the funding customer when the capacity created by the upgrades allows firm service to be provided to another customer provides the funding customer with financial value that largely captures what the customer could otherwise obtain through trade. We find that this is sufficient to permit the proposal to be implemented for a four-year period. In addition, this compensation, in combination with the other attributes of the firm rights, leads us to conclude that the customer that funds Supplemental Upgrades is indeed obtaining a separate service that is well-defined enough to warrant separate charges for the upgrades.

133. With regard to TDU Intervenors' claim that Entergy did not hold the stakeholder conference required by the Clarification Order, we simply reiterate our prior conclusion, as stated in the *April 24, 2006 ICT Order*, that stakeholders' interests and their rights to due process have been protected. Given Commission-imposed time constraints, Entergy made a good faith effort to incorporate stakeholders' views and concerns. Also, the Commission has considered all of the stakeholders' concerns expressed in this proceeding. Consequently, we conclude that it is reasonable for Entergy to implement its proposal for a four-year period.

c. <u>Congestion Hedge</u>

134. In the *April 24, 2006 ICT Order*, the Commission stated that Entergy had revised its Attachment T and Attachment V to ensure that customers funding Supplemental

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Upgrades will not be assessed congestion charges. Entergy had also revised Attachment T to provide a mechanism for financial compensation to a customer when Entergy sells, on a long-term basis, the capacity created by Supplemental Upgrades paid for by the customer.

135. The Commission found that having Entergy hold 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 was an idea that may have merit. However, we did not require it now because the time needed for the necessary software and hardware for such an auction would prevent a timely start-up of the four-year initial term. Nevertheless, we directed 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.

136. In the *April 24, 2006 ICT Order*, we accepted Entergy's offer to file a detailed explanation of the necessary technical changes needed to provide compensation when funded capacity is sold on a short-term basis, and the time and cost of establishing such a compensation system. We stated that we expected 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.

137. In response to complaints 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, the Commission found that since the capacity is sold on a long-term basis, stating that it is up to the customer funding the upgrade to determine whether it will require future use of the capacity created by the upgrade.

138. In regard to loop flows, the Commission agreed with Entergy 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. The *April 24, 2006 ICT Order* stated that the Commission expected the ICT to coordinate with other utilities in the region to address loop flow and other conditions affecting regional planning and operations.

139. Finally, in the *April 24, 2006 ICT Order*, the Commission stated 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. However, we disagreed with the Generator Coalition that this principle depends on the length of the new point-to-point service request. We stated that the language of Attachment T that implements this principle is not entirely clear. In

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

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 therefore directed Entergy to verify section references and to clarify the provision.

i. Requests for Rehearing

140. Cottonwood and Plum Point support the Commission's decision to require Entergy to address short-term transmission rights, but assert that the Commission should have required Entergy to provide compensation for short-term uses of upgrades. They argue that most OATT transactions are for shorter-term uses and that well-designed congestion management programs are used primarily to facilitate short-term transfers of transmission rights. They argue that by failing to provide for short-term compensation, Entergy and other OATT customers obtain extensive free use of upgrades funded by existing interconnection customers. The Commission must require short-term uses to be included at the ICT implementation date, or, at a minimum, delay the reclassification of upgrades under existing interconnection agreements until a short-term compensation mechanism is implemented.

141. In the alternative, they state that the Commission must clarify that all network uses are long-term uses so that network customers will not have an incentive to link together a series of short-term network resource designations to avoid paying compensation to the funding interconnection customer.[58]

142. TDU Intervenors argue that the expansion of the compensation right to include short-term uses is of highly uncertain value. They state that a user of short-term service will not buy an upgrade from a funding party in the same manner as would long-term users. TDU Intervenors state that Entergy's proposal for short-term use is not yet before the Commission and that with the Weekly Procurement Process, a greater share of transmission service will be weekly rather than monthly or longer. TDU Intervenors argue that there is thus no basis for finding that substantial value will be conferred by the rights proposed in the Entergy funding plan.

143. The Arkansas Cities state that the *April 24, 2006 ICT Order* did not address the issue of a redispatch charge being assessed against a customer that co-owns generation

---

[58] Cottonwood and Plum Point at 42, citing, *e.g., Madison Gas & Electric Co. v. Wisconsin Power and Light Co.*, 80 FERC ¶ 61,331, at 62,103 & n.4 (1997), *reh'g denied*, 82 FERC ¶ 61,099 (1998); *see also Midwest Independent System Operator, Inc.*, 111 FERC ¶ 61,249, at P 31 (2005).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

resources with Entergy that is not being assessed on regular transmission customers. They claim that Entergy does not currently charge the entire NITS customer base for redispatching resources to alleviate alleged or actual transmission constraints, but instead assesses these charges only to customers that co-own units with Entergy. The Arkansas Cities assert that filing an individual complaint under section 206 "has not proven to be an effective method of combating this form of discrimination and the Commission should address it here."

ii. Commission Conclusion

144. The Commission denies the requests for rehearing. The Generator Coalition asserts that the Commission misunderstands the congestion hedge and financial payment proposals. Many of the Generator Coalition's complaints about the congestion hedge and financial payment are based upon its views that the proposal does not provide enough benefits or that Entergy will have too much control over the process. We find that Entergy's waiver of congestion charges for all customers using the capacity of the Supplemental Upgrades that they funded and its waiver of redispatch charges for all customers funding Supplemental Upgrades when they are using the flowgate capacity they funded and that flowgate is congested are important steps. These actions will provide more benefits automatically to customers.

145. Cottonwood and Plum Point argue that the Commission should delay implementation of the ICT until Entergy provides for compensation for short-term use of Supplemental Upgrades. We disagree. In the *April 24, 2006 ICT Order*, the Commission did not have enough information to require Entergy to provide for compensation for short-term use of Supplemental Upgrades and required Entergy to file more information. Entergy did so in its compliance filing in Docket No. ER05-1065-002. The Commission will analyze Entergy's proposal in that proceeding and will then determine the appropriate ICT implementation date.

146. TDU Intervenors argue that the inclusion of short-term compensation is of uncertain value. They assert that a user of short-term service will not buy an upgrade from a funding party in the same manner as would long-term users. TDU Intervenors' assertions are mainly speculative. It is not entirely certain at this point how Entergy's method of short-term compensation will work, as it has not been filed with the Commission. The Commission will review Entergy's proposal when it is submitted and intervenors will have the opportunity to comment at that time.

147. Arkansas Cities allege that Entergy has been assessing redispatch charges against the Cities and others who co-own generation resources with Entergy. They claim that Entergy does not currently charge the entire NITS customer base for redispatching resources to alleviate transmission constraints. Arkansas Cities, however, do not present

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

evidence to substantiate their claim. We do not agree with Arkansas Cities that filing a section 206 complaint is ineffective; we take complaints seriously and have set them for hearing when the complainant presents a sufficient basis to do so. We also remind Entergy that it should be redispatching resources in a comparable, nondiscriminatory manner.

2. Previously Incurred Interconnection Costs

148. The Commission accepted, with modification, Entergy's proposal to have the ICT review all previously incurred interconnection costs back to January 1, 1997 involving interconnection agreements without *Mobile-Sierra* language (that is, agreements that can be revised using the ordinary just and reasonable standard). We clarified 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, if allowed by the individual interconnection agreement. However, we also clarified that the ICT may not analyze previously incurred interconnection costs associated with interconnection agreements that are currently pending before the Commission. The Commission also stated that it will not prejudge the outcome of any ICT review of previously incurred interconnection costs.

149. Regarding any subsequent requests for reclassification the Commission stated that the ICT cannot reliably make determinations on previously incurred interconnection costs based on earlier system conditions and criteria. We found that if a party to a non-*Mobile-Sierra* interconnection agreement seeks to have a review undertaken of its previously incurred interconnection costs, we would require the ICT to undertake that review and to base its analysis on then-current system conditions and the most recent Base Plan. We also clarified that for any interconnection agreement that is reviewed by the ICT, the cost responsibility decision will ultimately be made by the Commission after a filing with the Commission to reclassify the facilities.

150. The Commission did not make a finding on whether the cost treatment for reclassified facilities outlive the initial term of the ICT. We stated that determinations in the *April 24, 2006 ICT Order* in no way limit parties' contractual rights to unilaterally pursue reopening the interconnection agreements in the future.

a. Requests for Rehearing

151. Several parties assert that the Commission erred in accepting Entergy's proposal that the ICT reevaluate previously incurred interconnection costs. SeECA and Occidental maintain that this was an unexplained departure from many recent Commission decisions

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

that respect the sanctity of contracts in the face of Commission-ordered policy changes.[59] For example, SeECA states that in Order No. 888, the Commission stated that it does "not believe it is appropriate to order generic abrogation of existing requirements and transmission contracts."[60]

152. According to SeECA, the Commission did not explain the legal basis for allowing reopener of all post-1997 non-*Mobile-Sierra* interconnection agreements on the Entergy system. SeECA argues that section 206 requires a finding that the existing contract is not just and reasonable and that a proposed alternative is just and reasonable. In the absence of such findings, SeECA asserts, the Commission is not statutorily authorized to order the reopening of those contracts.

153. SeECA and Occidental allege that the Commission erred in its application of the *Duke Hinds* line of cases.[61] SeECA asserts the *Duke Hinds* cases require rejection of Entergy's proposal to reallocate previously incurred interconnection costs. The issues in *Duke Hinds* were whether certain facilities were properly characterized as interconnection facilities and whether the Commission's transmission pricing policy had been properly applied to those facilities. The Commission found that the facilities in question should have been classified as network facilities and directed Entergy to conform pricing of the facilities with existing Commission transmission pricing policy by amending the relevant interconnection agreements.

154. In the instant proceeding, SeECA and Occidental state that Entergy is proposing a new methodology for pricing transmission facilities that was not in effect when the interconnection agreements were executed. They assert that Entergy's proposal does not involve amending interconnection agreements to ensure adherence to existing Commission policy, but instead involves retroactively changing the cost allocation methodology underlying previously executed interconnection agreements to implement Entergy's new pricing proposal.

---

[59] Occidental Request for Rehearing at 18, citing *Pub. Utils. Comm'n of Cal. v. Sellers of Long Term Contracts to the Cal. Dep't of Water Res.*, 99 FERC ¶ 61,087 at 61,383 (2002) (*CPUC*).

[60] *Order No. 888* at 31,036.

[61] *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*.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

155. Cottonwood and Plum Point allege that Entergy's proposal to reclassify previously incurred interconnection costs is not consistent with or superior to the *pro forma* OATT because it is not an incremental enhancement to the *pro forma* OATT, *i.e.*, an improvement to an interconnection customer's existing arrangement. Rather, they claim that Entergy proposes to disturb the balance provided by the existing OATT and require customers to forego repayment of amounts funded in the past. Moreover, the Commission recently confirmed in the OATT Reform NOPR that the existing OATT does not ensure nondiscriminatory transmission access. These parties assert that Order No. 888 can no longer be relied upon to provide the minimum standards against which the ICT can be judged to be consistent or superior. Therefore, they assert that the Commission cannot base its approval on the simple finding that the ICT improves on the Order No. 888 OATT. Rather, the Commission must independently determine that the ICT will provide just, reasonable, nondiscriminatory and non-preferential results.

156. Cottonwood and Plum Point state that the Commission erred in concluding that there is any reasonable reclassification method that can be used to force-fit upgrades constructed in the past into a new prospective model for pricing interconnections. They assert that the Commission's conclusion is untenable with respect to existing interconnection customers because the requirement to construct these upgrades was imposed on those customers by a non-independent transmission owner, and the introduction of a purportedly independent entity to perform certain functions prospectively does not endow existing interconnection customers with any independence benefits. They argue that the rescission of future transmission credits retroactively alters customers' expectations and, therefore, punishes rather than rewards investments that had previously been made. Further, they assert that there is no way to overlay the benefits of a 2007 ICT onto decisions that were made by Entergy in prior years.

157. The Generator Coalition and SeECA argue that the Commission has gone against principles developed by the D.C. Circuit.[62] According to SeECA, even if retroactive application of Entergy's transmission pricing proposal comported with Commission

---

[62] *Retail, Wholesale and Department Store Union v. NLRB*, 466 F.2d 380 (D.C. Cir. 1972). The Generator Coalition states that the court stated that an agency should take into consideration when determining whether to retroactively apply a new rule, several principles apply here: whether the new rule is an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law; the extent to which the party against whom the new rule is applied relied on the former rule; and the degree of the burden that a retroactive order imposes on a party.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

policy, Entergy's proposal to reopen interconnection agreements to inject a new transmission pricing policy must still be rejected under the "equitable principles" discussed by the D.C. Circuit.[63]

158. Both SeECA and the Generator Coalition state that Entergy's new pricing rules are an abrupt departure from the previous policy of providing transmission credits for constructing Network Upgrades. The Generator Coalition argues that interconnection customers had no way of planning for, or reacting to, the proposed policy when deciding whether to construct upgrades.

159. Similar to the arguments raised in connection with the costs of new investment, Cottonwood and Plum Point assert that retroactive rescission of transmission credits is an exception to the rule against "and" pricing and is invalid in the absence of express statutory or regulatory authorization of such retroactive application of the experimental policy and in the absence of requisite balancing of the harms and benefits of retroactivity. They state that Order No. 2003 does not authorize retroactive rescission of transmission credits earned with respect to existing interconnection customers' prior funding of network upgrades. They state that the Supreme Court has held that retroactive rulemaking requires an express grant to the agency of authority to issue retroactive rules.[64]

160. Cottonwood and Plum Point argue that the Commission abused its discretion and acted arbitrarily and capriciously in allowing retroactive extinguishment of existing interconnection customers' transmission credit entitlements without providing such customers with transmission rights of demonstrably equivalent value. Requiring Entergy to make a section 205 filing after ICT reclassification of any previously funded network upgrades to seek Commission approval for rescinding transmission credits does not excuse the Commission's apparent rejection of generic retroactivity arguments made by intervenors.

161. Cottonwood and Plum Point claim that the Commission failed to consider the equities of rescinding transmission credits and that the equities do not support rescission. They assert that Entergy has ignored system needs for ten years, in particular upgrades required to accommodate new entry, has insisted that generators fund upgrades, has forced those generators to pay lump sum payments in advance of any construction and

---

[63] *Id*. (citing *SEC v. Chenery Corp.*, 332 U.S. 194 (1947).)

[64] Cottonwood and Plum Point at 56, citing *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208-09 (1988) (*Bowen*).

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

now seeks permission not to pay back that money. The Commission failed to describe the considerations it intends to apply to individual section 205 applications that Entergy might make after ICT reclassification of specific network upgrades. At a minimum, if the Commission intends to consider the equities of retroactive rescission of individual customers' transmission credits, it should do so in a separate section 205 proceeding, after the Commission first upholds generic reclassification decisions made by the ICT, and only after the Commission provides guidance on the scope of its consideration of the equities of retroactivity.

162. Cottonwood and Plum Point claim that Entergy's proposal fails to provide equivalent benefits to existing interconnection customers to compensate for rescinded transmission credits. They assert that the Commission failed to consider the fact that the congestion hedges and rights to financial payments for third-party use of the upgrades, however valuable to new customers, would provide little if any value to existing interconnection customers. Therefore, they assert that there is no basis to conclude that these transmission rights will give benefits to existing customers that compensate for lost transmission credits.

163. Cottonwood and Plum Point assert that the congestion rights expressly apply to the relevant transmission customer, not to the party that actually funded the Supplemental Upgrades. Generators often do not directly obtain transmission service (*e.g.*, where output is delivered using the network customer's transmission service), thus the Entergy ICT proposal does not provide those existing interconnection customers who have ERIS service with any congestion rights.

164. Cottonwood and Plum Point further contend that the financial compensation for third-party use excludes the designation of a Network Resource on a short-term basis using a prior Supplemental Upgrade. Moreover, Attachment T provides that a unit rate for financial compensation is designed for a Supplemental Upgrade based on the funded cost of the Supplemental Upgrade divided by the MWs of capacity created by the Supplemental Upgrade (where the created capacity is determined by the ICT). Cottonwood and Plum Point assert that the user of the newly created capacity will pay the unit rate based on the amount of newly created capacity it uses and that this provides no benefits for interconnection upgrades because most network upgrades constructed in response to an interconnection request neither will create nor carry any more capacity than existed prior to the generator's interconnection. Thus, they contend that the financial rights offered by Entergy are meaningless to existing interconnection customers.

165. Cottonwood and Plum Point maintain that Entergy's proposal provides transmission rights to existing customers that have no relationship to the transmission credits subject to rescission. Cottonwood and Plum Point also assert that the Commission erred by not requiring that existing interconnection customers actually realize value in

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

new transmission rights before their unamortized transmission credits can be rescinded. The only equitable process for allowing retroactive rescission of unamortized transmission credits would be to permit rescission of existing unamortized credits on a dollar for dollar basis only as the Commission is able to make findings that each existing interconnection customer actually has realized substantial value in the form of transferable transmission rights with a market value equal to the rescinded credits.

166. Cottonwood and Plum Point state that the Commission erred in allowing Entergy to implement its reclassification proposal before Entergy has implemented those aspects of its proposal that are needed to ensure that the benefits that justify the reclassification are available to customers. The Commission emphasized the importance of the benefits of the new Weekly Procurement Process and the availability of congestion hedges in justifying the ICT proposal, and Cottonwood and Plum Point assert that the Commission cannot allow Entergy to terminate credits until these benefits are available.

167. Cottonwood and Plum Point also assert that the Commission erred in including optional system upgrades in the reclassification program. Because Optional Upgrades are not a requirement for interconnection and Entergy proposed that a customer funding Optional Upgrades would be entitled to credits, the Commission must preserve credits for Optional System Upgrades. Customers relied on Entergy's inducement through transmission credits when they made the economic decision to fund the upgrades that were not a condition of interconnection.

168. If the Commission accepts Entergy's proposal to reclassify previously incurred interconnection costs, Cottonwood and Plum Point ask that the Commission provide that all reclassifications must be based on the ICT's evaluation against the Base Case. While they acknowledged that the Commission directed Entergy to modify its tariff to reflect this requirement, the Commission did not explicitly direct Entergy to remove sections 5.2.1 and 5.2.2, which use classification methods other than an analysis based on the most recent Base Plan.

169. Cottonwood and Plum Point state that the Commission should have required Entergy to provide additional details and justifications for the procedures the ICT will use to reclassify upgrades based on the Base Plan analysis. Further, the Commission failed to address protests about how the ICT would perform the reclassification based on the Base Plan analysis.[65] In addition, they argue that the Commission failed to address concerns

[65] For example, they state that protestors argued that the Base Case analysis must reflect dispatch assumptions consistent with the assumptions that are used to perform interconnection studies, *i.e.*, with the affected generator's output assumed to be delivered to the grid. If the Base Case, for example, assumes that the generator is not in operation,

(continued)

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

about Entergy's proposal to reclassify upgrades as Base Plan Upgrades only if they have a material effect on reliability in the Base Plan when customers were not relieved of funding such upgrades based on such a materiality standard.

170. Cottonwood and Plum Point ask the Commission to clarify, or alternatively grant rehearing, that Entergy must use a rational and equitable method to allocate credits paid to date among the various upgrades funded by any customer. If a customer has funded multiple facilities, Cottonwood and Plum Point ask that the allocation of credits already received by the customer among these facilities will determine which facilities are exposed to reclassification as Supplemental Upgrades and the resulting loss of repayment through credits or refund as Base Plan Upgrades. Cottonwood and Plum Point also ask the Commission to clarify, or alternatively grant rehearing, to provide that Entergy is required to pay all accrued interest on credits realized to date.

171. The Generator Coalition argues that used transmission credits should only be applied to upgrades that are reclassified as Supplemental Upgrades. It states that Entergy proposes to apply used transmission credits first to Optional System Upgrades, which are the type of upgrades that are most likely to be reclassified as Base Plan Upgrades. The Generator Coalition states that any facility that Entergy considers to have been paid off will not be reclassified and that as a result, facilities that should be rolled into base rates because they benefit the entire system will be financed by a single customer. The Generator Coalition argues that applying used transmission credits to Base Plan Upgrades double-counts the benefit of the pricing policy to Entergy.

172. The Generator Coalition argues that Entergy should apply credits first to Direct Interconnection Facilities, then to Required System Upgrades, and then to Optional System Upgrades. It argues that the facilities where Entergy's proposed Congestion Hedge and Financial Payments are likely to be most useful are the Required System Upgrades and the Optional System Upgrades. The Commission should require Entergy to find ways to maximize the value of its proposed Congestion Hedges and Financial Payments, and applying the credits to Direct Interconnection Facilities helps to do so.

173. Cottonwood and Plum Point ask the Commission to provide that the Commission must approve, prior to ICT reclassifications, all the criteria that the ICT develops and that such criteria must be developed using a meaningful and transparent stakeholder process as well as the results of its reclassification.

---

it would likely indicate that upgrades installed on the assumption that the generator would be operating were not required.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

174. Cottonwood and Plum Point ask the Commission to state that it is not prejudging whether it will approve any future Entergy filings to modify interconnection agreements. They ask the Commission to clarify that parties will be able to challenge whether any change to a customer's interconnection agreement to reflect reclassification is just and reasonable based on the facts presented with respect to that interconnection agreement. The Commission must make an individualized determination for each interconnection agreement.

175. Cottonwood and Plum Point ask the Commission to not allow Entergy to propose modifications to existing interconnection agreements for projects that will not go into commercial operation during the four-year experiment period because the Commission has approved the ICT only on a four-year experimental basis. They assert that the Commission has no basis to conclude that the ICT will exist when credits would otherwise be initiated for projects that do not go commercial during the experimental period. Moreover, the benefits that the Commission anticipates are speculative even during the ICT experiment and are even more speculative with respect to any post-experiment period.

176. The Generator Coalition argues that any upgrade that was an Optional System Upgrade in an interconnection agreement should automatically become a Base Plan Upgrade. Optional System Upgrades are upgrades to the transmission system and are beyond the Point of Interconnection. The Generator Coalition asserts that interconnection customers were not required to fund Optional System Upgrades and only agreed to fund such upgrades on the promise of receiving transmission credits in return.

177. The Generator Coalition also argues that no upgrades should be automatically considered Supplemental Upgrades without first being studied to determine whether they benefit the transmission system. Upgrades that provide a system benefit should not be paid for by a single customer even if they would not have been constructed but for that interconnection customer.

178. The Generator Coalition states that the Commission should grant three clarifications of the *April 24, 2006 ICT Order*. First, if upgrades are reclassified as Base Plan Upgrades, Entergy will immediately refund the interconnection customer the uncredited balance associated with the upgrades plus interest. The Generator Coalition states that Entergy's filing implies that it will make the refunds but does not say so definitely and does not describe a payback method.

179. Second, the Commission should clarify that Entergy cannot impose its pricing policy or seek to reclassify existing upgrades until the Weekly Procurement Process is in place and Entergy proposes a way to compensate customers when funded capacity is sold on a short-term basis. The Generator Coalition states that the customer funding upgrades

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

receives a congestion hedge and a financial payment in return for constructing Supplemental Upgrades, but that the congestion hedge has no value outside of the Weekly Procurement Process. The Commission should require Entergy to delay the pricing proposal until customers are in a position to take advantage of any rights they will receive for funding and constructing Supplemental Upgrades.

180. Third, the Generator Coalition argues that if the Commission does not grant rehearing on the reclassification of existing interconnection facilities, the Commission should clarify that the ICT may not analyze previously incurred interconnection costs while the interconnection agreement is pending before the Commission or if the Commission's orders have been taken to court.

181. SeECA claims that the permanent nature of Entergy's proposed reallocation of previously incurred interconnection costs is contrary to the four-year ICT sunset provision. SeECA argues further allowing the reallocation to be permanent will also discourage the construction of transmission upgrades during the experimental period, which is at odds with the Commission's goal of stimulating transmission investment.

182. SeECA states that allowing reopening of interconnection agreements for the purpose of assigning additional upgrade costs to qualifying facilities violates the Public Utility Regulatory Policies Act (PURPA) because it is contrary to the Commission's obligation to encourage the development of qualifying facilities.[66] It says that if the Commission does not reconsider its decision across the board, it must at least exempt qualifying facilities from the interconnection agreement reopening procedures.

b. Commission Conclusion

183. We deny rehearing of our approval of Entergy's proposal to have the ICT reevaluate previously incurred interconnection costs. We disagree with SeECA and Occidental that we have departed from decisions that respect the sanctity of contracts.[67] First, the Commission is not proposing to abrogate the contracts at issue. The ICT is only allowed to reevaluate those contracts that contain provisions that allow either party to unilaterally request changes to the interconnection under sections 205 or 206 of the FPA. The parties to the interconnection agreement negotiated the right to request that the Commission change the interconnection agreement under the just and reasonable standard. We are merely using that provision to allow the ICT to reevaluate them.

---

[66] 16 U.S.C. § 2601, 2611.

[67] Occidental Request for Rehearing at 18, citing *CPUC*, 99 FERC at 61,383.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Further, the Commission did not do anything generically. We are allowing the ICT to reexamine existing interconnection agreements on a case-by-case basis, and then bring its determination to the Commission to approve any change to a contract, again on a case-by-case basis.

184. We disagree with SeECA and Occidental that we erred in our application of the *Duke Hinds* line of cases. The *Duke Hinds* line raised the issue of the appropriate standard to be met (just and reasonable or public interest), under those interconnection agreements, before the Commission would revise them. The Commission found that since those interconnection agreements 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 what the parties bargained for. After determining the standard of review, the Commission found that we could, under sections 205 and 206 of the FPA, reclassify the facilities at issue and modify the pricing in these interconnection agreements prospectively. 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 interconnection agreements under section 205 or 206 of the FPA to reflect its new approved pricing.

185. As stated by SeECA and Occidental, the *Duke Hinds* cases involved a slightly different factual scenario than is presented to us in Entergy's ICT proposal. However, that line of cases stands for the proposition that the pricing obligations in an interconnection agreement can be modified when the agreement contains a clause allowing unilateral requests for modification.

186. We disagree with Cottonwood and Plum Point that Entergy's proposal to reclassify previously incurred interconnection costs is not consistent with or superior to the *pro forma* OATT. Entergy filed its proposal on the ICT, pricing, and the Weekly Procurement Process as a package, and the *April 24, 2006 ICT Order* accepted it as a package. As stated above, Entergy's proposal does not need to be perfect, or even the most desirable, it need only be reasonable.[68] Regardless of whether certain parties believe that the ICT proposal should be better, we found it to be just and reasonable, as modified by the Commission. Therefore, we deny rehearing.

187. Cottonwood and Plum Point assert that the Commission should not have accepted Entergy's proposal because the requirement to construct these upgrades was imposed on affected customers by a non-independent transmission owner. However, under the just

[68] *See* n.20, *supra*.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

and reasonable standard, if any of the interconnection facilities are reclassified as supplemental upgrades, the customer will benefit from the same firm transmission rights that will be given to customers entering into new interconnection agreements. Further, we disagree that the possible rescission of future transmission credits retroactively alters customers' expectations. In the *Duke Hinds* line of cases, the Commission modified the cost allocation responsibility for certain interconnection agreements. However, because the parties to those contracts included the right to unilaterally file to modify the contract, their expectation should have been that aspects of the contract, including the cost allocation, could be modified.

188. We disagree with the Generator Coalition and SeECA that the Commission is applying Entergy's pricing proposal retroactively. Our decision would only apply prospectively and offends neither the filed rate doctrine nor the rule against retroactive ratemaking. Our decision would only allow changes to *future* rates assessed by Entergy against customers for transmission service under Entergy's OATT.[69]

189. As discussed in detail in the section concerning cost allocation for new investment, Entergy's pricing proposal is not a departure from the previous policy of providing transmission credits for constructing network upgrades. The Commission has also denied rehearing as to the assertion that the ICT proposal is an exception to the rule against "and" pricing and is invalid in the absence of express statutory or regulatory authorization.

190. We disagree with Cottonwood and Plum Point that Entergy will not provide customers funding Supplemental Upgrades with valuable transmission rights. As discussed above, the transmission rights are sufficiently valuable to compensate those paying for Supplemental Upgrades. Further, any customer whose interconnection facilities are reclassified as Supplemental Upgrades will receive more of a benefit than a customer paying for new Supplemental Upgrades because it has been receiving credits and will receive the transmission rights even though part of the cost of the facility has been rolled into Entergy's transmission rates.

191. Cottonwood and Plum Point claim that Entergy has for ten years required that generators fund upgrades. We believe that this bolsters the Commission's determination that the ICT proposal, including the reevaluation of previously incurred interconnection costs, is just and reasonable. If a previously funded upgrade is found to be a Supplemental Upgrade, the customer will receive valuable rights for funding that

---

[69] *Duke Hinds II* at P 29.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

upgrade. Although the Commission did not describe exactly how it will analyze individual section 205 applications that Entergy might make, there is precedent on the standard of review for a filing under section 205.

192. Cottonwood and Plum Point assert that, because generators often do not directly obtain transmission service, an existing interconnection customer with Energy Resource Interconnection Service (ERIS) does not receive any congestion rights under Entergy's proposal. First, we note that, in general, ERIS by itself provides the interconnection customer with no expectation that it will be protected from congestion. Nevertheless, if an interconnection customer with ERIS takes point to point service to deliver the output of its generating facility to load, and that service uses capacity created by a Supplemental Upgrade that the interconnection customer funded, the interconnection customer will not be charged congestion for the use of that capacity. (See Attachment T, section 4.1.) This is true notwithstanding the fact that the interconnection customer may prefer not to take transmission service directly. Indeed, if another customer takes long-term service that uses the capacity created by the Supplemental Upgrade, then the interconnection customer will receive compensation. Such compensation may be viewed, at least in part, as a measure of the value of the congestion hedge provided by the funded Supplemental Upgrade.

193. Cottonwood and Plum Point further contend that the financial compensation for third-party use specifically excludes the designation of a Network Resource on a short-term basis using a prior Supplemental Upgrade. In the *April 24, 2006 ICT Order*, the Commission did not have enough information to make a finding with respect to compensation when the funded capacity is sold on a short-term basis. In order to make a reasoned determination, we required Entergy to file a detailed explanation of the necessary technical changes needed to provide such compensation and the time and cost of establishing such a compensation system. Entergy has done so in its compliance filing in Docket No. ER05-1065-002 and we have received comments on Entergy's filing. The Commission will therefore address this issue in our order on Entergy's compliance filing.

194. Cottonwood and Plum Point assert that the Commission erred in including optional system upgrades in the reclassification program. We disagree. The purpose of the ICT's review of previously incurred interconnection costs is to determine, through objective analysis, whether the costs are associated with Base Plan Upgrades or Supplemental Upgrades and, therefore, whether the costs are properly recoverable from the interconnection customer or through Entergy's transmission rates. Such an analysis necessarily looks at the function that each upgrade performs and, for this purpose, it makes no difference whether an upgrade was originally classified as an optional or required upgrade, or a direct interconnection facility.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

195. The Commission clarifies that all reclassifications must be based on the ICT's evaluation against the Base Case. We believe that our requiring Entergy to modify its tariff to reflect this requirement was sufficiently clear and that there is no need for a specific directive to remove sections 5.2.1 and 5.2.2. If Entergy's revised Attachment S is not sufficiently clear that all reclassifications must be based on the ICT's evaluation, we will address that matter in our order on Entergy's compliance filing.

196. The Commission disagrees with Cottonwood and Plum Point that there is not sufficient detail on the procedures the ICT will use to reclassify upgrades based on the Base Plan analysis. The ICT must perform any reevaluation using the same methods used to evaluate new interconnection requests. For example, the ICT must use the same dispatch assumptions it would be required to use if the facility were new.

197. The Commission agrees with Cottonwood and Plum Point that Entergy must use a rational and equitable method to allocate credits paid to date among the various upgrades funded by any customer. For purposes of determining whether a facility has been fully credited, Entergy proposes to attribute paid credits first to optional upgrades, then to required upgrades, and then to direct interconnection facilities. We believe that Entergy's proposal provides for a rational and equitable allocation. As we stated above, the purpose of the ICT's review of previously incurred interconnection costs is to determine through objective analysis whether the costs are properly recoverable from the interconnection customer or through Entergy's transmission rates. In general, the costs of Supplemental Upgrades would be recoverable from the interconnection customer (and thus should not be eligible for credits) whereas the costs of Base Plan Upgrades would be recoverable through transmission rates (and thus should be fully eligible for credits). Applying past credits in the order proposed by Entergy maximizes the likelihood that the credits will be applied in a manner that is consistent with this cost classification, as ultimately determined by the ICT. The reason is that optional and required upgrades are more likely to provide broad reliability benefits and therefore be classified as Base Plan Upgrades, while direct interconnection facilities are more likely to benefit only the interconnection customer and therefore be classified as Supplemental Upgrades.

198. Cottonwood and Plum Point also ask the Commission to clarify, or alternatively grant rehearing, to provide that Entergy is required to pay all accrued interest on credits realized to date. We clarify that the calculation of the amount of accrued interest owed to the customer to date should be based on the amount of credits to which the interconnection customer is entitled from the date that the customer funded the upgrade until such date that the Commission revises the upgrade to be a Supplemental Upgrade, as determined by the ICT.

199. We clarify that the Commission must approve all the criteria that the ICT develops.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

200. Cottonwood and Plum Point ask the Commission to clarify, or alternatively grant rehearing, that the Commission is not prejudging whether it will approve any future Entergy filings to modify interconnection agreements. In the *April 24, 2006 ICT Order*, the Commission stated that "The Commission will not prejudge the outcome of any ICT review of previously incurred interconnection costs."[70] Thus, the point is clear. As in any similar proceeding before the Commission, parties will be able to challenge any filing made reallocating previously incurred interconnection costs.

201. The Commission agrees with Cottonwood and Plum Point that Entergy may not propose modifications to existing interconnection agreements for projects that will not go into commercial operation during the four-year initial period. In the *April 24, 2006 ICT Order*, the Commission stated that 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.[71] Any transmission project that is going into service after the four-year initial term is a prospective transmission upgrade and would not be eligible for Entergy's proposed pricing treatment if the ICT experiment ends. However, if the ICT continues beyond the four-year period, such transmission upgrades would be eligible for Entergy's pricing plan.

202. The Commission denies the Generator Coalition's request that any Optional System Upgrade in an interconnection agreement automatically become a Base Plan Upgrade. Because an independent entity will be making allocation decisions, the Commission has allowed Entergy more flexible pricing. Therefore, the "at or beyond" test does not apply.

203. As requested by the Generator Coalition, the Commission clarifies that the ICT may not analyze previously incurred interconnection costs while the interconnection agreement is pending before the Commission or if the Commission's orders have been appealed to an appellate court.[72] In the *April 24, 2006 Order*, we stated our determination was consistent with Entergy's original proposal, which provided that, for payments whose disposition is currently the subject of judicial appeal, the ICT will not make a determination on cost assignment until the appeals process is completed.[73]

---

[70] *April 24, 2006 ICT Order* at P 238.

[71] *Id.* at P 99.

[72] *Id.* at 237.

[73] *See* Entergy petition, Docket No. ER04-699-000 at 22-23.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

204. In the *April 24, 2006 ICT Order*, the Commission did not make a finding as to whether the cost treatment for reclassified facilities would outlive the initial term of the ICT. However, we stated that Commission determinations in that order in no way limit parties' contractual rights to unilaterally pursue reopening the interconnection agreements in the future. Therefore, SeECA's assertion that there is a "permanent nature" to any reallocation of previously incurred interconnection costs is premature.

205. We disagree with SeECA that Entergy's pricing proposal violates PURPA. Various parties argue that Entergy's pricing proposal will not promote transmission investment. For the reasons discussed in detail above, we disagree. We do not find that this analysis would be different for qualifying facilities. Therefore, we deny SeECA's request for rehearing asserting that our approval of Entergy's pricing proposal will not encourage the development of qualifying facilities.

E. Weekly Procurement Process

206. In the *April 24, 2006 ICT Order*, we stated that the Weekly Procurement Process appeared to permit merchant generators and other wholesale suppliers to compete to serve loads that participate in the Weekly Procurement Process. We denied requests that we require the Weekly Procurement Process to be a joint procurement process because our earlier orders on the ICT had already determined that Entergy did not need to establish a joint procurement process.

207. The Commission found that Entergy's proposed Weekly Procurement Process met the Commission's Order Nos. 888 and 889 requirements for functional separation of the merchant and transmission functions. Moreover, we found 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.

208. We also found that the Weekly Procurement Process is sufficiently transparent because Entergy provided interested parties with feedback, information and examples at various meetings and technical conferences in 2004 and 2005. With regard to transparency of prices, we did not require disclosure of bid and offer data because this could lead to strategic bidding behavior, not the least-cost bidding strategies. We stated that as Entergy and Weekly Procurement Process participants gain experience with various aspects of the procurement process, it will evolve and improve over time.

209. The Commission also found that it was unnecessary to have the Weekly Procurement Process be under the ICT and that this would delay the implementation of the ICT. We were comfortable with the oversight authority of the ICT with respect to the

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Weekly Procurement Process. If the ICT thinks that Weekly Procurement Process operations are not working or are being administered in an unfair manner, the ICT is to inform the Commission and retail regulators.

210. The Commission stated that our approval of the entire package of the ICT, Weekly Procurement Process and Entergy's pricing proposal was predicated in large part on the substantial benefits associated with the Weekly Procurement Process as discussed in the *April 24, 2006 ICT Order*. We stated that we expect that Entergy will begin Weekly Procurement Process operations approximately 14 months from the date of that order and that if the Weekly Procurement Process is not operational after 14 months we may reevaluate all of our approvals.

1. Requests for Rehearing

211. TDU Intervenors argue that the *April 24, 2006 ICT Order* ignored numerous substantial issues regarding the Weekly Procurement Process proposal, including: conferring automatic Network Resource status on resources selected in the Weekly Procurement Process will grant Entergy preferential access to transmission service; the restriction against offering capacity to more than one participating buyer in the Weekly Procurement Process will result in Entergy having preferential access to available resources; the provision that self-schedules in the Weekly Procurement Process are not binding will distort AFC calculations based on the Weekly Procurement Process output and allow for gaming by Entergy; and Entergy's discretion to modify the output of the Weekly Procurement Process gives it the ability to game the process.

212. TDU Intervenors state that a key feature of the Weekly Procurement Process proposal is that generation sources selected in the Weekly Procurement Process will have the status of new Network Resources and therefore a guarantee of firm transmission service. They argue that while the ICT will be responsible for granting and denying transmission service in the Weekly Procurement Process, approval of transmission service for Entergy's uses under the Weekly Procurement Process will be automatic. TDU Intervenors state that the Weekly Procurement Process does not allow resources offered to Entergy in the Weekly Procurement Process to be offered to other participating network customers, which will result in Entergy becoming the preferred buyer. They assert that the Weekly Procurement Process will enhance the advantages Entergy already enjoys as the largest buyer in the market by assuring firm transmission service for the supplies chosen in the Weekly Procurement Process optimization.

213. TDU Intervenors assert that the Weekly Procurement Process could create undue discrimination in access to the Entergy transmission system because participants that do not receive an attractive array of bids, load serving entities that do not participate in the Weekly Procurement Process, and sellers that are not chosen by Entergy in the Weekly

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Procurement Process will only be able to do business using "the transmission leftovers" from the Weekly Procurement Process. TDU Intervenors claim that Entergy will thus be able to avoid any obligation to provide comparable transmission access and service.

214. TDU Intervenors argue that the *April 24, 2006 ICT Order* did not address concerns that the Weekly Procurement Process' treatment of self-scheduled resources undermines the validity of the optimization results. It is not clear how the transmission solutions resulting from the optimization process can be credible if the Weekly Procurement Process participants are not required to adhere to the self-schedules reflected in the optimization.

215. TDU Intervenors argue that the *April 24, 2006 ICT Order* did not confront arguments that the Weekly Procurement Process creates numerous "gaming" opportunities for Entergy. Allowing the submission of non-binding self-schedules may create opportunities to game the Weekly Procurement Process. The TDU Intervenors maintain that Entergy, by submitting self-schedules for selected resources, can either increase or mitigate anticipated loadings on particular flowgates. The flows associated with the self-schedules will influence the outcome of the optimization process and may result in the selection of resources that cannot be accommodated if the self-scheduled resources are not used.

216. TDU Intervenors note that Entergy has responded to such concerns by citing a need for operational flexibility to respond to changes in system conditions or economic opportunities. They respond that they understand the need for operational flexibility, but that the potential effects of non-binding self-schedules on the AFC calculations raise serious concerns, especially when the result of the Weekly Procurement Process is the assurance of firm transmission for resources selected by Entergy. TDU Intervenors state that operational flexibility should be available for all transmission users on a comparable basis. The Commission should require that Weekly Procurement Process participants that do not use self-scheduled resources they have submitted to the Weekly Procurement Process optimization for pay any redispatch costs incurred by other users as a result of this deviation.

217. TDU Intervenors argue that the *April 24, 2006 ICT Order* did not resolve their concerns about Entergy's right to modify the output of Weekly Procurement Process optimization runs. They argue that this provision enables Entergy to modify the Weekly Procurement Process optimization outcomes as it wants.

218. TDU Intervenors argue that the *April 24, 2006 ICT Order* did not address other ambiguities in the Weekly Procurement Process. They assert that it is unclear how the Weekly Procurement Process would model in the optimization process any transmission uses by Network Customers not participating in the Weekly Procurement Process. TDU

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

Intervenors assert that the modeling assumption for load not covered by NITS Network Resources under the various runs is nebulous. The resources that will be modeled as serving Network Customer load not covered by that customer's Network Resources must be within the Entergy system, but not self-scheduled or offered into the Weekly Procurement Process. TDU Intervenors assert that there may be no such uncommitted resources to model if suppliers participate actively in the Weekly Procurement Process, and it would not then be clear how the optimization process would proceed. The description of the modeling process contains no information about the criteria that would be used to select resources assumed to serve the loads of non-participating Network Customers not covered by their Network Resources.

219. TDU Intervenors also argue that it is unclear how the Weekly Procurement Process will model Entergy's recent purchases of 900 MW of capacity under liquidated damages contracts. They state that Entergy has not identified any delivery points for the liquidated damages contracts and has not reported whether Entergy or the sellers have the right to determine the delivery point for specific deliveries. TDU Intervenors assert that how the liquidated damages contracts are modeled in the Weekly Procurement Process optimization process could have a very significant effect on the output of the optimization runs and AFC calculations.

220. TDU Intervenors state that Entergy has not explained how it proposes to resolve any conflicting uses of constrained facilities that may result from the simultaneous optimization runs that Entergy proposes to conduct for itself and other Weekly Procurement Process participants. The optimal resource array for Entergy and another participant may require the use of the same constrained flowgate. Therefore, resolving conflicting uses will determine whether Entergy will be able to engage in undue discrimination and grant itself preferred access to flowgates.

221. TDU Intervenors assert that the *April 24, 2006 ICT Order* assumes that oversight by the ICT will ensure that the Weekly Procurement Process operates in a fair and non-discriminatory manner. They argue that the discriminatory features of the Weekly Procurement Process are structural and the ICT will not be able to alter them.

222. TDU Intervenors state that the *April 24, 2006 ICT Order* accepts the Weekly Procurement Process with the expectation that it will reduce costs for Entergy's customers. They state that Entergy's benefit estimates are focused on the benefits to be enjoyed by its retail customers. The potential for benefits to Entergy's retail customers does not justify processes that will discriminate against other load serving entities. TDU Intervenors state that the Commission's acceptance of discriminatory elements cannot be reconciled with the principle of comparable access to transmission embodied in Order No. 888.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

223. SeECA states the Commission failed to meaningfully address SeECA's arguments regarding Entergy's proposed Exempt Transmission Capacity mechanism. In its Protest to Entergy's filing, SeECA had argued that Entergy's congestion protection proposal is deficient. Specifically, SeECA argued:

> [T]he congestion protection Entergy is proposing to provide will be for generation redispatch through a mechanism called Exempt Transmission Capacity, which is delineated under Section 8.1 of Entergy's proposed Attachment V. However, Entergy's proposal for Exempt Transmission Capacity is too limited in scope….
>
> This proposal would only provide an exemption from generation redispatch charges if the specific transmission facilities whose capacity rating was increased through the upgrade were binding. This narrow approach does not recognize the nature of some network transmission upgrades. Specifically, not all transmission constraints are related to the capacity rating of specific transmission facilities. For example, if the upgrades addressed a voltage and reactive power constraint to imports into a particular portion of the transmission system, the specific facilities upgraded will not be binding, but rather overall imports into the voltage-constrained area will be binding. Similarly, if the upgrades addressed a transient stability constraint to exports from a particular portion of the transmission system, the specific facility upgrades will not be binding, but rather overall exports out of the transient stability-constrained area will be binding. Entergy's Exempt Transmission Capacity proposal is deficient in that it does not address these circumstances. It is also deficient in that it does not define how transmission congestion costs will be handled prior to the implementation of the Weekly Procurement Process.

224. SeECA states that, although the *April 24, 2006 ICT Order* briefly noted SeECA's argument when summarizing parties' positions, it did not meaningfully respond to this argument.

225. SeECA states that the Commission should have required Entergy to establish a non-discriminatory process for third-party suppliers to qualify to provide automatic generation control and operating reserves. SeECA notes that, although Attachment V provides qualified third-party suppliers with the opportunity to provide ramp rate, Automatic Generation Control (AGC) capability, AGC range, and operating reserves availability with their bids to the Entergy Energy Management Organization (EMO) and other participating Network Customers, Entergy has not provided a non-discriminatory process for third-party suppliers to qualify to provide AGC capability or operating reserves. SeECA argues that the inability of third party suppliers to qualify to provide

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

AGC capability and operating reserves may cause the Weekly Procurement Process optimization process to unduly favor Entergy's Network Resources. SeECA asserts that the Commission's failure to respond to SeECA's arguments contravenes reasoned decisionmaking.

2. Commission Conclusion

226. We will deny rehearing. In accepting the Weekly Procurement Process in the *April 24, 2006 ICT Order*, we stated that the Weekly Procurement Process is sufficiently transparent.[74] We also found 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 and comparable basis.[75]

227. Many of the arguments raised on rehearing are simply speculation about how the Weekly Procurement Process will function or what intervenors claim could be adverse effects of the Weekly Procurement Process. These include, for example, TDU Intervenors' assertions that conferring automatic Network Resource status on resources selected in the Weekly Procurement Process will grant Entergy preferential access to transmission service; that the restriction against offering capacity to more than one participating buyer in the Weekly Procurement Process will result in Entergy having preferential access to available resources; that Entergy's discretion to modify the output of the Weekly Procurement Process gives it the ability to game the process; that the Weekly Procurement Process not allowing resources offered to Entergy in the Weekly Procurement Process to be offered to other participating network customers will result in Entergy becoming the preferred buyer; and that allowing Entergy to modify the outcome of the Weekly Procurement Process optimization process in order to remedy "Implementation Errors" enables Entergy to modify the Weekly Procurement Process optimization outcomes as it wants.

228. In response to these assertions about potential adverse effects, the Commission will be monitoring the Weekly Procurement Process through the regular reports for any adverse outcomes. Further, we note that a Weekly Procurement Process Participant can file a section 206 complaint if it believes that any these types of discriminatory actions are occurring. We believe that the various metrics along with the reporting requirements which we required in the *April 24, 2006 ICT Order* will help the ICT, the Commission,

---

[74] *Id.* at P 292.

[75] *Id.* at P 291.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

and stakeholders to monitor how the Weekly Procurement Process is working and allow Weekly Procurement Process Participants to express concerns to the Commission. Active participation by stakeholders in the Users Group should also aid in the identification and correction of any data problems that may occur in the Weekly Procurement Process. As we stated in the *April 24, 2006 ICT Order*, our approval of the entire package of the ICT, Weekly Procurement Process and Entergy's pricing proposal is predicated in part on the substantial benefits associated with the Weekly Procurement Process.[76] Adequate remedies are available to identify and address any problems that may arise as the Weekly Procurement Process operates. At the same time, we repeat our conclusion from the *April 24, 2006 ICT Order* that as Entergy and the Weekly Procurement Process participants gain experience with various aspects of the Process, the Weekly Procurement Process will evolve and improve over time.[77]

229. Intervenors have raised some concerns that we will commend to the ICT for its consideration as it oversees the Weekly Procurement Process. While we do not rule on the validity of TDU Intervenors' position, the ICT should monitor the Weekly Procurement Process closely with those concerns in mind.

230. Many of the issues raised by TDU Intervenors are "nuts and bolts" issues that should be resolved as the Weekly Procurement Process is put into operation. These include: how the Weekly Procurement Process would model in the optimization process any transmission uses by Network Customers not participating in the Weekly Procurement Process; how the Weekly Procurement Process will model Entergy's recent purchases of 900 MW of capacity under liquidated damages contracts; how Entergy proposes to resolve any conflicting uses of constrained facilities that may result from the simultaneous optimization runs that Entergy proposes to conduct for itself and other Weekly Procurement Process participants. We expect the ICT to ensure that these issues are worked out.

231. TDU Intervenors state that the Commission has accepted the Weekly Procurement Process in the expectation that it will reduce costs for Entergy's customers. They say that potential benefits for retail customers do not justify the adoption of the Weekly Procurement Process. TDU Intervenors are mistaken on this point. They ignore our

---

[76] *Id*. at P 296.

[77] *Id*. at P 292.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

statements in the *April 24, 2006 ICT Order* that our approval of Entergy's proposal is predicated in part on substantial benefits of the Weekly Procurement Process for both wholesale and retail customers.[78]

232. Our statement in the *April 24, 2006 ICT Order*, that we will be looking at the level of savings that Entergy's retail customers enjoy during the four-year period was only one of several potential indicators we listed of successful operation of the Weekly Procurement Process. We also stated that throughout the four-year term of the ICT, the Commission will evaluate whether the Weekly Procurement Process meets our expectations, and we required additional reporting and prescribed metrics to enable us and others to evaluate the benefits of the Weekly Procurement Process for all customers.[79] The Weekly Procurement Process can create significant benefits for all of Entergy's customers, and the feedback mechanisms we have mandated will help to ensure that those benefits are realized.

233. SeECA's arguments have been dealt with previously, and we do not see a need to respond at length here. In its August 22, 2005 answer, Entergy stated that voltage and dynamic stability limitations are represented in the AFC calculations in the form of a megavolt ampere limit on certain lines or combinations of lines which are defined as proxy flowgates for the AFC calculations. Entergy states that to the extent a customer-funded Supplemental Upgrade increases capacity by relieving these types of constraints, the customer will receive a hedge associated with the additional flowgate capacity.[80] Entergy also noted in its answer that it was developing the technical details associated with third-party supply of automatic generation control and operating reserve and that it will make those details available before Weekly Procurement Process operations.[81] We remind Entergy of this pledge.

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

234. In order to measure the success of the ICT and the Weekly Procurement Process, the Commission required the ICT to file a publicly available assessment with the Commission and state regulators every twelve months. This assessment must address

---

[78] *Id*. at P 305.

[79] *Id*.

[80] Entergy August 22, 2005 Answer at 77-78.

[81] *Id*. at 69.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

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. We also required the ICT, before submitting each of these reports, to survey Entergy's transmission customers and obtain their views on how the ICT and Entergy are performing.

235. The Commission also stated that we intend to have regular meetings with the affected state commissions to discuss the assessments soon after they are issued to further ensure that this Commission receives the feedback we need to gauge the effectiveness of the ICT and the Weekly Procurement Process.

236. Finally the Commission also laid out metrics that we will consider when evaluating the success of the ICT, IT systems and the Weekly Procurement Process, including the ICT's success in performing its duties and enhancing transmission access, the accuracy rate of posted AFC data compared to that experienced before the ICT, whether the number of complaints filed at the Commission during the four-year period declines, and issues involving the completeness and accuracy of Entergy's data and the recent loss of AFC data.

1. Requests for Rehearing

237. Occidental asserts that the metrics adopted by the Commission are vague and will delay any improvement over the status quo because they will only monitor, not remedy any problems. Occidental asserts that the metrics are unworkable because there is no baseline of pre-ICT data from which to measure improvement, so there is no way to establish the direct, statistical effect of the ICT.[82]

238. The Generator Coalition argues that the Commission should require specific quality control measures. The Commission in the *April 24, 2006 ICT Order* established reporting requirements designed in part to monitor quality control issues. The Generator Coalition argues that the Commission must mandate more requirements. It states that there are many quality control problems on Entergy's system placing independent power producers at a significant competitive disadvantage. The Commission should address these issues, require new quality control measures, establish specific standards, and develop new reporting requirements to monitor progress. The Generator Coalition states

[82] *See* Occidental Request for Rehearing at 16-17.

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

that implementation of the ICT is an opportunity to require Entergy to establish a formal process that allows market participants to raise transmission-related concerns and a formal process for resolving such issues in a timely manner.

2. Commission Conclusion

239. We disagree with Occidental that the metrics adopted by the Commission are insufficient. In order to remedy any problems with the ICT or Weekly Procurement Process, it is necessary to monitor them. The periodic reports must include information relating to the metrics, but must also include a survey of transmission customers so that the Commission can hear their views on how the ICT and Entergy are performing. This information should allow any problem with the ICT to be identified and fixed. If a problem occurs, the Commission will take steps to remedy it. Further, with regard to Occidental's concern that there is no baseline of pre-ICT data from which to measure improvement, we disagree that a solid baseline is necessary. The ICT's monitoring of issues such as data loss, inaccurate and incomplete data, and inaccurate modeling assumptions adds transparency to the Entergy system that was previously unavailable. We expect that Entergy's market participants will include in the required survey whether they have seen an improvement over the status quo in these areas. Further, the Commission will be able to examine whether the number of complaints filed at the Commission during the four year period declines because we have information regarding previous complaints against Entergy. In this way, the Commission and Entergy's retail regulators will be able to evaluate the ICT.

240. We deny the Generator Coalition's request to require new quality control measures. The metrics and reporting requirements set out in the *April 24, 2006 ICT Order* are sufficient to monitor the ICT experiment. However, we can modify these metrics if the periodic reports show that a facet of the ICT or Weekly Procurement Process needs further monitoring. Further, the survey required of market participants will allow them to raise any transmission-related concerns they have. Finally, 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 Entergy 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 concerns related to the provision of transmission service under the tariff, including the AFC

20060925-3011 Issued by FERC OSEC 09/22/2006 in Docket#: ER05-1065-001

process, transmission modeling and studies, and commercial practices associated with reserving service over OASIS.[83] The Commission does not believe any further stakeholder process is necessary.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[83] Emphasis added.