

116 FERC ¶61,276  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Jon Wellinghoff.

Entergy Services, Inc.

Docket Nos. ER91-569-032  
ER91-569-033  
ER91-569-034  
ER91-569-035  
ER01-666-007  
ER01-666-008  
ER01-1675-005  
ER01-1675-006  
ER01-1804-006  
ER01-1804-007  
ER02-862-007  
ER02-862-008  
EL04-123-000  
EL04-123-006  
EL05-105-000  
EL05-105-004

ORDER DISMISSING REHEARING AND ACCEPTING COMPLIANCE FILINGS  
AND TERMINATING SECTION 206 PROCEEDING

(Issued September 22, 2006)

1. On June 26, 2006, Entergy Services, Inc. (Entergy) submitted, on behalf of the Entergy Operating Companies<sup>1</sup> and the Entergy Affiliates,<sup>2</sup> a filing in compliance with

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<sup>1</sup> The Entergy Operating Companies are: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

the Commission's May Order.<sup>3</sup> In the May Order, the Commission accepted, subject to modification, revisions to the market-based rate tariffs and cost-based rate tariffs filed on behalf of the Entergy Operating Companies and Entergy Affiliates. Also, the Commission set for hearing and settlement judge procedures EWO Marketing's proposed cost-based rate tariffs. The Commission directed Entergy to make a further compliance filing to revise the tariffs and to address the period between the refund effective date in this proceeding and the effective date of the filings accepted in the May Order. Additionally, the Commission directed Entergy to make refunds and file a refund report.

2. In compliance with the May Order, Entergy filed revisions to its market-based rate tariffs and cost-based rate tariffs. In this order, the Commission accepts for filing Entergy's revised tariff sheets,<sup>4</sup> effective February 27, 2005,<sup>5</sup> as requested.<sup>6</sup> Accordingly,

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<sup>2</sup> The Entergy Affiliates are: EWO Marketing LP (EWO Marketing), Entergy Power Ventures, LP, Entergy Solutions Supply Ltd. (Entergy Solutions), Warren Power, LLC, and Entergy Power, Inc.

<sup>3</sup> *Entergy Services, Inc.*, 115 FERC ¶61,260 (2006) (May Order).

<sup>4</sup> EWO Marketing, L.P., FERC Electric Tariff Original Volume No. 1, Second Revised Sheet No. 2, First Revised Sheet Nos. 6-8, (Superseding First Revised Sheet No.2 and Original Sheet Nos. 6-8); Entergy Power Ventures, L.P., FERC Electric Tariff, Original Volume No.1, Third Revised Sheet No. 2, Second Revised Sheet No. 3, First Revised Sheet Nos. 6-8, (Superseding Second Revised Sheet No. 2, First Revised Sheet No. 3, Original Sheet Nos. 6-8); Entergy Solutions Supply Ltd., Rate Schedule FERC No.1, Third Substitute Sheet Nos. 1-9 (Superseding Second Substitute Sheet Nos. 1-6, Original Sheet Nos. 7-9); Warren Power, LLC, FERC Electric Tariff, Original Volume No. 1, Third Substitute Sheet No. 2, First Revised Sheet Nos. 5-7, (Superseding Second Substitute Sheet No. 2, Superseding Original Sheet Nos. 5-7); Entergy Power, Inc., FERC Electric Tariff, First Revised Volume No. 1, First Revised Sheet Nos. 1-8, (Superseding Original Sheet Nos. 1-8); Entergy Services, Inc., FERC Electric Tariff, Second Revised Volume No. 4, Second Revised Sheet No. 3, First Revised Sheet Nos. 12-14, (Superseding First Revised Volume No. 4, First Revised Sheet No. 3 and Original Sheets Nos. 12-14); Entergy Service, Inc., FERC Electric Tariff No. 5, First Revised Sheet Nos. 1-2 and First Revised Sheet Nos. 3-57 (Superseding Original Sheet Nos. 1-57); EWO Marketing, L.P. First Revised Sheet No. 1, FERC Electric Tariff No. 2, First Revised Sheet Nos. 1-49, Original Sheet Nos. 50-53, (Superseding Original Sheet Nos. 1-49); EWO Marketing, L.P., FERC Electric Tariff No. 3, First Revised Sheet Nos. 2-53, (Superseding Original Sheet Nos. 2-53).

this order terminates the section 206 proceeding in Docket No. EL04-123-000.

3. Also in this order, the Commission accepts for filing Entergy's refund report, filed in compliance with the May Order, as well as a notice of change in status. Additionally, the Commission dismisses as moot L-M Municipals' request for rehearing of the May Order.

## **I. Background**

4. On August 9, 2004, as supplemented on November 19, 2004, Entergy submitted for filing generation market power screens to comply with *AEP Power Marketing, Inc.*, 107 FERC ¶61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶61,026 (2004) (July 8 Order). On December 17, 2004,<sup>7</sup> the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>8</sup> to examine whether Entergy may continue to charge market-based rates in the Entergy control area and established a refund effective date.<sup>9</sup> On June 30, 2005, the Commission issued an order establishing hearing

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<sup>5</sup> The refund effective date in Docket No. EL04-123-000 is February 27, 2005.

<sup>6</sup> We note that the change in status reporting requirement is effective March 21, 2005, the effective date of Order No. 652. *See Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005) (Order No. 652).

<sup>7</sup> *Entergy Services Inc.*, 109 FERC ¶61,282 (2004) (December Order), *order on reh'g*, 111 FERC ¶61,145 (2005) (Rehearing Order).

<sup>8</sup> 16 U.S.C. §824e (2000).

<sup>9</sup> On May 5, 2005, the Commission instituted a second 206 proceeding (in Docket No. EL05-105-000) to investigate whether Entergy satisfies the Commission's transmission market power and affiliate abuse or reciprocal dealing standards for the grant of market-based rate authority and established a refund effective date under the provisions of section 206. The Commission stated that similar transmission market power concerns had been raised in Docket No. EL05-52-000, Entergy's Independent Coordinator of Transmission (ICT) proposal, and that the EL05-52-000 proceeding may resolve most of petitioners' concerns. Similarly, allegations that Entergy engaged in affiliate abuse were raised in the ongoing Request For Proposal proceeding in Docket No. ER03-583. Accordingly, the Commission determined that it would hold the investigation of Entergy's transmission market power and affiliate abuse concerns in abeyance pending  
(continued....)

procedures to examine Entergy's Delivered Price Test (DPT), in order to determine whether Entergy should be allowed to retain market-based rate authority for transactions in the Entergy control area. On July 22, 2005, Entergy filed, on behalf of the Entergy affiliates conducting power sales in the Entergy control area, a notice stating that it was withdrawing the pending request for renewal of market-based rate authority for transactions in the Entergy control area and would file proposed cost-based rates.

5. In the May Order, the Commission accepted, subject to modification as discussed further below, revised tariff sheets filed by Entergy, effective July 22, 2005. Specifically, Entergy's filing included: (1) proposed amendments to the market-based rate tariffs of the Entergy Operating Companies and Entergy Affiliates to limit sales of capacity and energy at market-based rates to areas outside of the Entergy control area; (2) cost-based rate tariffs for sales by the Entergy Operating Companies of energy and capacity within and outside of Entergy's control area with a term of less than one year; and (3) cost-based rate tariffs for sales by EWO Marketing in the Entergy control area.

6. In the May Order, the Commission directed Entergy to make refunds, with interest, and file a refund report after making such refunds, to the extent that the Entergy Operating Companies made any sales under their market-based rate tariffs in the Entergy control area after July 22, 2005.

7. Also in the May Order, the Commission directed Entergy to address the period between the refund effective date (February 27, 2005) and the effective date of the cost-based rate tariffs accepted in the May Order (July 22, 2005). Consistent with the April 14 Order, the Commission directed Entergy to make a compliance filing proposing case-specific mitigation (such as that contained in the cost-based rate tariffs accepted in the May Order) or agreeing to the default cost-based rates for the period between the refund effective date and the effective date of the Entergy Operating Companies' cost-based rate tariffs.

8. Also, the Commission directed modifications to Entergy's market-based and cost-based tariffs. Specifically, the May Order directed Entergy to make a compliance filing which would limit sales of capacity and energy at market-based rates to areas outside of the Entergy control area. The Commission directed the Entergy Operating Companies and Entergy Affiliates to revise their tariffs to include the change in status reporting requirement adopted by the Commission's regulations in Order No. 652. The Commission also directed the Entergy Operating Companies and the Entergy Affiliates to

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the outcome of Docket Nos. EL05-52-000 and ER03-583. *See* May 26 Order, 115 FERC ¶ 61,260 at P 43 and Rehearing Order, 115 FERC ¶ 61,145 at P 1, 12 and 16.

revise their tariffs to include language stating that they will not make sales to affiliates “without first receiving” Commission authorization of the transaction under section 205 of the FPA.<sup>10</sup> Also in the May Order, the Commission noted that Entergy Solutions has on file a code of conduct that differs from the Commission’s standard code of conduct with regard to the simultaneous disclosure of market information. Therefore, we directed Entergy Solutions to revise its code of conduct to provide that all market information shared between the Entergy Operating Companies and Entergy Solutions will be disclosed simultaneously to the public.

9. Additionally, the May Order stated that Entergy proposed to use the non-rate terms and conditions of the Western Systems Power Pool Agreement (WSPP Agreement)<sup>11</sup> verbatim for the cost-based rate tariffs. However, the Commission found that the WSPP Agreement contains provisions for types of services and rates for those services that Entergy is not proposing to offer and therefore directed Entergy to submit a compliance filing that revises the Entergy Operating Companies’ cost-based rate tariffs to describe only the services, rates, terms and conditions that Entergy is proposing to offer under the Entergy cost-based rate tariffs.

10. Similarly, the Commission found that EWO Marketing’s proposed cost-based rate tariffs appeared to include terms and conditions which were based on the Edison Electric Institute Master Agreement, many of which are not relevant to the service EWO Marketing proposes to offer. Accordingly, the Commission required EWO Marketing to submit a compliance filing that revises its cost-based rate tariffs to describe only the services, rates, terms, and conditions that EWO Marketing is proposing to offer.

## **II. Request for Rehearing**

11. L-M Municipals filed a timely request for rehearing of the May Order. L-M Municipals state that the Commission erred in its modification of Entergy’s definition of the area within which Entergy cannot sell power at market based rates. L-M Municipals state that the modification makes two of the three L-M Municipals, Lafayette and LEPA, subject to market-based rates. L-M Municipals state that the tariff language originally proposed by Entergy permitted sales at market-based rates in all of the adjoining control areas other than Lafayette and LEPA. L-M Municipals state that the determination to leave Lafayette and LEPA within the area in which Entergy had given up its market-based rate authority made sense because Entergy had not attempted to show that it did not

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<sup>10</sup> See *Aquila, Inc.*, 101 FERC ¶61,331 at P 12 (2002).

<sup>11</sup> See *Western Systems Power Pool*, 55 FERC ¶61,099 (1991).

have market power over transactions to Lafayette and LEPA.<sup>12</sup> However, in the May Order, the Commission directed Entergy to clarify the proposed tariff language so that the market-based rate tariff only applies to sales outside of Entergy's control area. L-M Municipals state, on rehearing, that both LEPA and Lafayette are outside the Entergy control area because they operate their own control areas. L-M Municipals further state that Entergy did not itself seek authority to make sales to LEPA and Lafayette at market-based rates.

### **III. Entergy's Compliance Filings**

#### **A. Amendments to Market-Based Rate Tariffs**

12. As amended, Entergy's compliance filing includes revisions to the market-based rate tariffs to limit the applicability of the market-based rate tariff to sales outside of Entergy's control area and outside of the LEPA and Lafayette control areas. Entergy states that this provision addresses the concern expressed by L-M Municipals in their request for rehearing.

13. Entergy's compliance filing includes the change in status reporting requirement adopted by the Commission in Order No. 652. It also includes language stating that Entergy will not make sales to affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA.

14. Also, Entergy Solutions revised its code of conduct to provide that all market information shared between the Entergy Operating Companies and Entergy Solutions will be disclosed simultaneously to the public.

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<sup>12</sup> For purposes of Entergy's market power analysis, Entergy treated LEPA and Lafayette as being in the Entergy control area.

15. Last, Entergy removed the market behavior rules from their tariffs.<sup>13</sup>

### **B. Cost-Based Rate Tariffs**

16. Entergy's compliance filing includes revisions to the Entergy Operating Companies' cost-based rate tariffs to describe only the services, rates, terms and conditions that Entergy is proposing to offer under the Entergy cost-based rate tariffs and to remove irrelevant provisions. Specifically, Entergy has eliminated the definitions that are not applicable to service that will be provided by the Entergy Operating Companies, amended other definitions to fit the services that will be provided, and added or amended provisions such as addressing the role of Entergy Services, as agent for the Entergy Operating Companies. Entergy specifically defined the services offered under the tariff and removed all provisions of the WSP Agreement<sup>14</sup> that no longer apply. Entergy has also amended the cost-based rate tariffs to conform the language regarding affiliate sales to the changes required in the May Order. Also, Entergy revised the EWO Marketing cost-based rate tariffs to describe only the services, rates, terms, and conditions that EWO Marketing is proposing to offer.

### **C. Refund Report**

17. As directed by the Commission in the May Order, Entergy reported, on June 26, 2006, that it refunded to the applicable customers the amounts collected in excess of the rates ordered by the Commission in this proceeding, including interest.

### **D. Effective Date**

18. To address the period of time between the refund effective date (February 27, 2005) and the effective date of the cost-based rate tariffs (July 22, 2005), Entergy proposed that the mitigation be the same for the entire period. Entergy calculated the

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<sup>13</sup> On February 16, 2006, the Commission issued an order rescinding Market Behavior Rules 2 and 6, effective February 27, 2006. *See Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization Holders*, 114 FERC ¶ 61,165 (2006). The Commission also adopted a final rule codifying Market Behavior Rules 1, 3, 4 and 5 in the Commission's regulations, effective February 27, 2006. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9,695 (Feb. 27, 2006), FERC Stats. & Regs. ¶31,208. As a result, the Market Behavior Rules no longer will be part of sellers' market-based rate tariffs.

<sup>14</sup> *Western Systems Power Pool*, 55 FERC ¶61,099 (1991).

refunds assuming the February 27, 2005 effective date. Entergy has revised all the proposed tariff sheets to reflect this revised effective date of February 27, 2005, rather than July 22, 2005.

#### **E. Change in Status**

19. The change in status filing informs the Commission that, subsequent to Entergy's last market power analysis, Entergy added long-term purchase power contracts totaling 1440 MW in the Entergy control area. Entergy also informs the Commission of long-term purchase power contracts that have subsequently ended. Entergy states that the additional capacity does not result in any failures in the pivotal supplier screen in any geographic market and does not result in any failures of the market share screen in any geographic markets outside the Entergy control area. Entergy states that the filing represents a non-material change in status with respect to the Entergy Affiliates' authorization to sell power at market-based rates.

#### **IV. Notice of Filings and Responsive Pleadings**

20. Notice of Entergy's June 20, 2006 change in status filing was published in the *Federal Register*, 71 Fed. Reg. 37,931 (2006), with comments, interventions, and protests due on or before July 11, 2006. None was filed.

21. Notice of Entergy's June 26, 2006 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 38,634 (2006), with comments, interventions, and protests due on or before July 17, 2006. None was filed.

22. Notice of Entergy's July 11, 2006 refund report was published in the *Federal Register*, 71 Fed. Reg. 41,794 (2006), with comments, interventions, and protests due on or before August 1, 2006. None was filed.

#### **V. Discussion**

##### **A. Compliance Filing**

23. The Commission finds that Entergy's compliance filing complies with the Commission's directives in the May Order. The Commission accepts Entergy's various tariff revisions to the market-based rate and cost-based rate tariffs, effective February 27, 2005, the refund effective date. The Commission finds that Entergy has addressed the mitigation for the entire refund period.

24. With regard to Entergy's revised language which provides that Entergy's market-based rate tariffs only apply "to sales outside of Entergy's control area and outside of the LEPA and Lafayette control area," the Commission accepts this revision and finds that

this language clearly identifies the areas where Entergy has market-based rate authorization.

25. Additionally, the Commission will accept Entergy's notice of change in status filing.

### **B. Rehearing**

26. L-M Municipals express concern that the market-based rate tariffs, as accepted by the Commission in the May Order, would permit Entergy to make sales at market-based rates to LEPA and Lafayette. However, Entergy's revised tariff sheets clarify that the market-based rate tariffs will not apply to LEPA and Lafayette. Accordingly, we find that Entergy's revised market-based rate tariffs adequately address L-M Municipal's rehearing request. On this basis, we will dismiss the rehearing request as moot.

### **C. Refund Report**

27. We will accept Entergy's refund report for filing. Entergy has calculated refunds consistent with the Commission's requirements, and there are no protests in opposition. The refund report does not include refunds from EWO Marketing, Entergy Power Ventures, LP, Entergy Solutions Supply Ltd., Warren Power, LLC, and Entergy Power, Inc. (collectively, Entergy Affiliates). The Entergy Affiliates commit to making a separate refund report filing at the conclusion of the ongoing proceeding related to the Entergy Affiliates' proposed cost-based rates set for hearing and settlement judge procedures in the May Order.<sup>15</sup>

### **D. Docket No. EL04-123-000**

28. The Commission terminates the section 206 proceeding established in Docket No. EL04-123-000. That proceeding was established to investigate generation market power issues in the Entergy control area. Based on the above findings, the Commission finds that there is no further need for the proceeding in this docket.<sup>16</sup>

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<sup>15</sup> Entergy's July 11, 2006 Filing at 1 n. 2.

<sup>16</sup> We note that this order does not terminate the 206 proceeding instituted in Docket No. EL05-105-000 to investigate whether Entergy satisfies the Commission's transmission market power and affiliate abuse or reciprocal dealing standards for the grant of market-based rate authority.

**E. Reporting Requirement**

29. Entergy must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>17</sup>

30. Entergy is directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Entergy's compliance filing and revised tariff sheets are accepted, effective February 27, 2005, as discussed in the body of this order.

(B) Entergy's revised tariff sheets incorporating the change in status reporting requirement adopted in Order No. 652 are hereby accepted for filing, effective March 21, 2005.

(C) Entergy's refund report is accepted for filing.

(D) The Commission hereby terminates the section 206 proceeding established in Docket No. EL04-123-000.

(E) Entergy's next updated market power analysis is due within three years of the date of this order.

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<sup>17</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶31,175, *order on reh'g*, 111 FERC ¶61,413 (2005).

(F) L-M Municipals' request for rehearing is dismissed, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

( S E A L )

Magalie R. Salas,  
Secretary.