

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Entergy Arkansas, Inc.**

)

**Docket No. ER10-2748-001**

**MOTION OF THE ELECTRIC POWER SUPPLY ASSOCIATION  
FOR LEAVE TO COMMENT OUT OF TIME IN SUPPORT  
OF THE ARKANSAS PUBLIC SERVICE COMMISSION**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.212 (2010), the Electric Power Supply Association (“EPSA”)<sup>1</sup> respectfully moves for leave to submit comments out of time in the above-captioned proceeding. EPSA filed a timely motion to intervene in this proceeding, but did not file comments.<sup>2</sup> However, subsequent comments and documents lodged in this proceeding necessitate that EPSA submit the instant comments out of time. EPSA respectfully submits that good cause exists for the Commission to accept these comments, as they will assist the Commission in its deliberations and resolution of this proceeding.

**I. BACKGROUND**

On October 8, 2010, Entergy Services Inc. (“Entergy”) filed proposed amendments<sup>3</sup> to its September 17, 2010 filing in this proceeding<sup>4</sup> to extend the ICT arrangement for two years rather than the initial request for a one-year extension in order to “provide sufficient time to complete the analyses of the possible alternatives or

---

<sup>1</sup> The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>2</sup> See (doc-less) Motion to Intervene of the Electric Power Supply Association, Docket No. ER10-2748-000 (filed Oct. 18, 2010).

<sup>3</sup> Entergy Servs., Inc., Docket No. ER10-2748-001 (filed Oct. 8, 2010) (“October 8 Filing”).

<sup>4</sup> Entergy Servs., Inc., Docket No. ER10-2748-000 (filed Sept. 17, 2010).

changes to the ICT structure and to implement the new approach that is eventually adopted.”<sup>5</sup> This reasoning may be sufficient to support a two-year extension. However, the Arkansas Public Service Commission (“APSC”), Council for the City of New Orleans (“CCNO”) and Union Power Partners, L.P. (“Union Power”) each filed comments highlighting concerns that an extension without any conditional requirements or changes to the ICT arrangement and operation of Entergy’s transmission system could perpetuate chronic problems with open access transmission service in the Entergy region.<sup>6</sup>

In a separate proceeding, on October 29, 2010, the Commission issued a Letter Order<sup>7</sup> from Office of Enforcement Director Norman Bay and an attached Audit Report prepared by the Commission staff (“Audit Report”). This report identified numerous problems with Entergy’s administration of its OATT which “have frustrated and hindered equal access to Entergy’s transmission system and...restricted third-parties ability to serve Entergy’s load.”<sup>8</sup> One conclusion of the Audit Report is that “[i]f the ICT had more ability to administer Entergy’s OATT, many of these issues would have been handled independently and more effectively and efficiently.”<sup>9</sup>

## **II. COMMENTS**

EPSC is filing the instant comments to reiterate concerns expressed by the APSC and to urge the Commission therefore to implement the recommendations of the

---

<sup>5</sup> October 8 Filing at 2.

<sup>6</sup> See Motion to Intervene and Comments of Union Power Partners, L.P. (filed Oct. 8, 2010); Notice of Intervention of the Arkansas Public Service Commission, Docket No. ER10-2748-000 (filed Oct. 8, 2010) (“APSC Comments”); Response of the City Council of New Orleans to the Response of Entergy Services, Inc., Docket No. ER10-2748-001 (filed Nov. 1, 2010) (“CCNO Answer”).

<sup>7</sup> *Entergy Servs., Inc.*, Docket No. PA10-1-000 at 1 (Oct. 29, 2010).

<sup>8</sup> Audit Report at 1.

<sup>9</sup> Audit Report at 1.

Audit Report. The Audit Report identifies a long list of violations and non-compliance that have plagued the Entergy system for a number of years, and for which Entergy has been assessed fines in the past.<sup>10</sup> As such, the Audit Report offers incontrovertible evidence that aspects of Entergy's ICT arrangement for oversight of the Entergy system must be improved immediately. This work is being addressed by the Entergy Stakeholder Policy Committee and the Entergy Regional States Committee ("E-RSC"), but may be assisted by FERC's strict enforcement of timely compliance by Entergy with the corrective actions outlined in the Audit Report, or through separate direction developed in this proceeding. EPSA supports the work of the E-RSC and the Entergy Stakeholder Policy Committee. Additionally, it is important that the ICT arrangement be extended for a two year period as requested by ESI and supported by numerous stakeholders, including SPP. However, approval of this contract extension cannot be interpreted by Entergy as another "pass" on improvements for the duration of the contract term.

The APSC, which made recommendations for ICT improvements before the Audit Report was issued, outlined six recommended changes to the ICT arrangement on which any extension should be contingent. Of note, several of the APSC recommendations were subsequently identified as problems or violations in the Audit Report. Additionally, Entergy recently disclosed that the U.S. Department of Justice ("DOJ") has opened a civil investigation of competitive issues concerning certain

---

<sup>10</sup> *Id.* at 2 n.3.

generation procurement, dispatch and transmission system practices and policies of its utility companies.<sup>11</sup>

Clearly, as demonstrated by pleadings filed in this proceeding, the Audit Report, and the ongoing DOJ investigation, market participants continue to experience barriers to open access transmission service and anti-competitive behavior. The ICT was initially implemented to resolve these types of concerns, and the various state regulators with oversight of Entergy united to form the E-RSC to develop additional reforms of Entergy's transmission system. While the E-RSC process may be the appropriate venue to consider many of these issues, that group has identified certain low hanging fruit to allow the ICT to improve transmission access in the region that to date has not been addressed. Clearly, at this stage and with the evidence before us, the status quo can no longer be tolerated and Entergy can no longer be allowed to create impediments to improvements.

Therefore, EPSCA reiterates the concerns expressed in this proceeding, as well as by the Commission's own Office of Enforcement in the Audit Report. EPSCA would go further, in fact, by pointing out that such behavior and systemic non-compliance would not be tolerated in markets administered by an independent system operator or a regional transmission organization ("ISO/RTO"); non-RTO regions require an equal level of scrutiny from the Commission. Utilities outside of RTOs can and should be transparent in their operations as open access carriers. As the Commission considers the implementation of performance metrics for the organized markets, the Commission cannot disregard known violations and improper practices in the non-ISO/RTO markets

---

<sup>11</sup> Press Release, *Entergy Cooperating with the U.S. Department of Justice on Civil Investigation* (issued Oct. 12, 2010), available at: [http://www.entergy.com/news\\_room/newsrelease.aspx?NR\\_ID=1898](http://www.entergy.com/news_room/newsrelease.aspx?NR_ID=1898).

which continue to receive a pass in terms of fines or required improvements. It is insufficient, in light of the overwhelming evidence of Entergy's multiple violations of the Commission's open access requirements, to put off improvements or corrective actions until after Entergy's future structure is considered and implemented, or performance metrics have been developed and implemented for the non-ISO/RTO markets. To do so is to continue to tolerate a grossly untenable situation in which a utility benefits and consumers are harmed.

### **III. CONCLUSION**

Wherefore, for the foregoing reasons, EPSA respectfully requests that the Commission grant its motion to submit these comments out of time and consider the comments herein on the Entergy ICT arrangement and related request for a two year extension.

Respectfully submitted,

A handwritten signature in cursive script, reading "Nancy Bagot", is written over a horizontal line.

Nancy Bagot, Vice President of Regulatory Affairs  
Electric Power Supply Association  
1401 New York Ave, NW  
11<sup>th</sup> Floor  
Washington, D.C. 20005

November 16, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the comments by via email or postal mail upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., November 16, 2010.

A handwritten signature in black ink, appearing to read "Nancy Bagot", written over a horizontal line.

Nancy Bagot, VP Regulatory Affairs