

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

NRG Energy, Inc.,)	Docket Nos. EL08-_____000
Complainants)	
)	
v.)	
)	
Entergy Services, Inc.,)	
Respondent)	

**COMPLAINT OF THE NRG COMPANIES
THAT ENTERGY’S TRANSMISSION RATES FORMULA THAT INCLUDES
EXECUTIVE BONUS PAY RELATED TO UNREGULATED MERCHANT
GENERATION IS NOT JUST AND REASONABLE**

Pursuant to Sections 206 and 306 of the Federal Power Act, 16 U.S.C. §§ 824e and 825e (2000), and Rules 206 and 306 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.306 (2007), NRG Energy, Inc. and its affiliated companies¹ (collectively “NRG” or the “NRG Companies”) respectfully submit this Complaint against Entergy Services, Inc. (“Entergy”). The complaint alleges that Entergy’s May 30, 2008 annual transmission rate filing includes bonus compensation paid to Entergy employees that should not be passed on to its transmission service customers.

I. INTRODUCTION

The formula rate utilized by Entergy to establish its Point-to-Point and Network Service transmission service rates for 2008 allows Entergy to include millions of dollars in bonus payments to Entergy employees that should not be passed on to transmission

¹ The NRG Companies operating in the Entergy control area include Louisiana Generating LLC (“LaGen”), Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, and NRG Power Marketing, LLC

customers. NRG requests that the Commission find it is not just and reasonable to pass these costs on to Entergy's captive customers, and set the Entergy's formula transmission rates for hearing and settlement proceedings.

The rates filed by Entergy include bonuses:

- 1) paid to employees based on the financial performance of the company, including specifically the performance of the unregulated generation units;
- 2) that have no relation to the quality of the transmission service provided by Entergy; and
- 3) that are paid to employees that spend none of their time administering the Entergy transmission system.

These bonuses are designed to provide Entergy executives with an incentive to increase the company's share price, which are largely driven by profits resulting from Entergy's unregulated generation assets. Thus, the bonuses that Entergy is passing through to transmission customers are not tied to the quality of service provided to Entergy's regulated transmission customers and should instead be borne by Entergy shareholders.

Indeed, there is a perverse incentive for these executives to increase shareholder profits by reducing investment in the transmission system, thereby lowering the quality of the transmission service provided by Entergy. Further, since the existing rate formula was established pursuant to settlement in 2000, changes in the industry have rendered the existing rate unjust and unreasonable. First, Entergy has greatly increased the bonuses it pays to its employees since 2000, so that these costs have become a significant rate component. Second, revenues from the unregulated portion of Entergy's business have increased disproportionately to the increases in revenues resulting from the regulated portion of the company, compared to when Entergy was solely a highly regulated integrated utility.

The result is that the existing formula transmission rates no longer accurately distinguish between bonuses received by Entergy employees who are “shared” between the company’s merchant generation and transmission functions. The current rates allow Entergy to book one-half of the bonuses received by these shared employees to its transmission rate base, even though the bonuses are distributed based on Entergy’s profitability, which is largely driven by its unregulated power sales revenues.² The rates thus do not reflect the current deregulated market, or adequately ensure that captive transmission customers are not subsidizing Entergy’s non-regulated businesses.

NRG requests that the Commission find that it is unjust, unreasonable and unduly discriminatory to pass employee bonuses through to Entergy’s transmission customers and institute a hearing to determine whether Entergy’s existing transmission rate formula results in unjust and reasonable rates.

II. THE PARTIES

The NRG Companies are all wholly-owned subsidiaries of NRG Energy, Inc. Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC (“LaGen”), and NRG Sterlington Power LLC own approximately 2400 MW of generation facilities in Louisiana. LaGen generates and sells electricity at wholesale to, among others, eleven rural electric cooperatives in Louisiana.³ Through its cooperative customers, LaGen serves a significant portion of the geographic area of the

² As discussed in Section IV.C below, Entergy’s profits largely derive from its unregulated nuclear plants and other non-transmission revenues.

³ The cooperative customers of LaGen include Beaugard Electric Cooperative, Inc., Claiborne Electric Cooperative, Inc., Concordia Electric Cooperative, Inc., Dixie Electric Membership Corporation, Jefferson Davis Electric Cooperative, Inc., Northeast Louisiana Power Cooperative, Inc., Pointe Coupee Electric Membership Corporation, South Louisiana Electric Cooperative Association, Southwest Louisiana Electric Membership Corporation, Valley Electric Membership Corporation, and Washington-St. Tammany Electric Corp., Inc.

State of Louisiana. NRG Power Marketing LLC is a power marketer that also engages in wholesale transactions in the Entergy region. The NRG Companies are transmission customers under the Entergy Open Access Transmission Tariff both on their own behalf and on behalf of LaGen's cooperative customers.

Entergy Services is the service company for Entergy Corporation, a registered public utility holding company, organized under the laws of the State of Delaware, with its principal place of business in New Orleans, Louisiana. The transmission service rates charged by the Entergy Operating Companies are subject to the Commission's jurisdiction and are required to be just and reasonable and not unduly discriminatory.

III. COMMUNICATIONS

Communications in connection with this filing should be addressed to:

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IV. BACKGROUND

Entergy's Open Access Transmission Tariff ("Tariff") requires the company to annually update its: (i) long-term and short-term firm point-to-point transmission service, (ii) non-firm transmission service and (iii) network integration transmission service rates (collectively "transmission rates"), based on the actual costs Entergy incurs for the previous calendar year to provide transmission service to its customers.⁴

⁴ See *Entergy Services, Inc.*, 120 FERC ¶ 61,104 (2007).

The current formula rate allows Entergy to recover in jurisdictional transmission rates employee payroll expenses related to its operation of its transmission system. The formula used to determine the rates was accepted by the Commission as part of a settlement approved by the Commission in 2000.⁵ Since 2000, Entergy has turned over operation of its transmission service to the Independent Coordinator of Transmission (“ICT”) and has reduced its role in administering the transmission system. During this same period, transmission customers have experienced a serious decline in the quality and reliability of transmission service throughout the Entergy system. At the same time, Entergy’s profits resulting from its unregulated power sales into the organized markets has greatly increased.

Entergy filed its 2008 rates on May, 30, 2008, in Docket No. ER08-1057-000, as amended on June 6, 2006, in Docket No. ER08-1057-001. Under the Tariff, all parties are allowed 120 days after Entergy’s rate filing to review Entergy’s 2008 rate filing, and may either protest the inputs utilized by Entergy or challenge the formula rate itself.⁶ NRG is challenging the rate formula in this Complaint and is also filing a protest of the inputs filed concurrently in Docket Nos. ER08-1057-000 and -001. The Tariff specifically provides that Entergy’s 2008 rates are subject to refund or surcharge until the latest of: (1) the end of the 120-day review period, if at such time there is no outstanding, unresolved complaint; (2) the final resolution of any complaint filed; or (3) the completion of any required corrections.⁷

V. COMPLAINT

⁵ *Entergy Services, Inc.*, Opinion No. 430, 85 FERC ¶ 61,163 (1998), *order on reh’g*, 91 FERC ¶ 61,153 (2000).

⁶ See Entergy Tariff, Attachment H, Appendix 1 at Section 5.

⁷ See *id.*

A. The Current Entergy Rate Is Not Just And Reasonable Because It Passes Non-Transmission Related Costs On To Transmission Customers.

The Federal Power Act requires that all jurisdictional rates are just and reasonable, and not unduly discriminatory.⁸ Entergy's formula transmission service rates, however, are not just and reasonable because they include bonus payments made to Entergy employees to transmission customers in the transmission service revenue requirements, without any evidence that these payments are related to the provision of transmission service.⁹

Importantly, the employee bonuses that Entergy is attempting to role into rate base are not tied to improving the reliability of the transmission system or the quality of the transmission service offered to customers. The bonus pay thus provides no incentive for Entergy employees to better serve their transmission customers because the bonuses are not designed to reward employees for running an efficient transmission system. Instead, the bonus compensation is directly tied to factors such as the financial performance of Entergy Corp and the price of the company's stock. Incentives to increase shareholder profitability are properly borne by Entergy's shareholders and should not be included in transmission rates.

Several state regulatory commissions have previously considered this issue and directed Entergy to remove millions in bonus payments from their state jurisdictional rates, finding that these bonuses provided no benefits to ratepayers. The Commission should join these state regulatory bodies in finding that these employee bonuses provide

⁸ 16 U.S.C. § 824d (2000).

⁹ See, e.g., *Public Service Commission v. FERC*, 813 F. 2d 448, 456 (D.C. Cir. 1987) (disallowing costs in ratebase that provided no benefit to ratepayers).

no benefits to transmission service customers, and should be born by Entergy's shareholders.

For example, the Arkansas Public Service Commission ("Arkansas PSC") directed Entergy to reduce the level of incentive pay and stock options included in retail rates by over \$21 million.¹⁰ The Arkansas PSC found that many of the bonuses paid to Entergy employees were tied exclusively "to financial performance [and] are clearly designed to directly, materially, and measurably increase stockholder value[.]"¹¹ The Arkansas PSC "did not find substantive evidence of any material benefit to ratepayers attributable to those programs strictly tied to the stock prices of Entergy Corp."¹²

The Louisiana Public Service Commission ("Louisiana PSC") likewise found that \$5 million in incentive compensation paid to Entergy executives based on the company's financial performance were not properly recoverable in retail rates. The Louisiana PSC found that:¹³

These bonuses are not directly linked to matters such as rate stability, service quality, outage reductions, minimizing length of outages, reduction in numbers of complaints and other such rate and service-related matters. Since we conclude that the bonuses are unrelated to any benefits to ratepayers, shareholders, and not customers, should bear the cost of these incentive payments.

¹⁰ See In the Matter of the Application of Energy Arkansas, Inc. for Approval of Changes in Rates for Retail Electric Service, Docket No. 06-101-U, Order No. 10, issued June 15, 2007.

¹¹ *Id.* at p. 68 (emphasis in original).

¹² *Id.*

¹³ See In re: Application of Entergy Louisiana, Inc. for a Change in its Rates and Charges so that those Rates and Charges Will be Sufficient to Permit the Company to Recover All of its Costs, and to Provide the Company with a Reasonable Opportunity to Earn an Increased Rate of Return on its Rate Base that is Just and Reasonable and the Reflects Accurately the Company's Cost of Capital, Order No. U-20925 RRF 2004, issued May 18, 2005, at p. 3.

The Commission should follow the reasoning of these state commissions and find that it is not reasonable to include in transmission rates financial incentive payments to Entergy executives based on factors other than the functioning of the transmission system.

Finally, including these bonus payments in 2008 transmission rates ensures that transmission customers will be charged these new higher rates regardless of whether the bonuses are earned or even paid out to Entergy employees.

B. The State Of The Transmission System Does Not Justify Bonus Payments To Entergy Transmission Function Employees.

The current condition of the Entergy transmission system does not justify bonus payments to Entergy executives for their work on the transmission system. The transmission system in Entergy suffers from numerous transmission constraints and lacks sufficient infrastructure to even reliably fulfill its firm transmission service obligations.

LaGen, which is dependent on the Entergy transmission system to serve its native load customers, has experienced first hand the problems with the Entergy transmission system. For example, LaGen has noted a serious increase in Transmission Load Relief orders (“TLRs”) ordered on the Entergy system in the past two years. While Level 5 TLRs used to be relatively rare, today they are a near weekly occurrence and are seriously impacting LaGen’s reliability planning and its ability to responsibly meet its native load obligations.

Based on NRG’s review of NERC TLR data, in 2007, there were 29 Level 5 TLRs issued on the Entergy system, resulting in the curtailment of over 47,000 MW of firm transmission service, with LaGen absorbing almost 7,000 MW of those scheduled

curtailments.¹⁴ In the first five months of 2008, Entergy's Independent Coordinator of Transmission ("ICT") has already issued 17 Level 5 TLRs curtailing more than 42,000 MW of firm transmission service.¹⁵ These Entergy TLRs represent more than 18% of all Level 5 TLRs called throughout the Eastern Interconnection in 2007, and over 21% of the Level 5 TLRs called in the Eastern Interconnection in the first five months of 2008.¹⁶

Equally alarming is the increase in redispatch of network resources experienced by Entergy's transmission customers in the five months of 2008. These redispatch obligations are in addition to the schedule curtailments ordered by the ICT. NRG's review indicates that through May of this year, the ICT has already called for about 16,093 MW of redispatch of network resources, with LaGen contributing about 3,866 MW. This compares to the redispatch of only 2,933 MW of network resources throughout the entirety of the Entergy region in 2007, including the redispatch of about 74 MW of LaGen's network resources. Thus, the tag data reveals an escalating problem, which has required LaGen to redispatch more of its network resources in the first four months of 2008 than the entire Entergy system redispatched in 2007.¹⁷ These escalating

¹⁴ Percentages were calculated from two separate areas of NERC website. Total number of level 5 TLRs across the interconnect are calculated from the data chart off trend data located at following link:

www.nerc.com/pub/sys/all_updl/oc/scs/logs/trends.htm

The number of level 5 TLRs Entergy called were calculated by totaling the number of Level 5 TLRs reported in the NERC TLR logs found here:

<http://www.nerc.com/~filez/Logs/tlrlogs.html>

¹⁵ *Id.*

¹⁶ Notably, significant reliance on TLRs to manage congestion is not the rule in other Southern regions of the Eastern Interconnection. For example, TLRs are rarely if ever used in the Duke Power Company or Southern Company balancing authority areas. A review of the NERC TLR logs available at: <http://www.nerc.com/~filez/Logs/tlrlogs.html> shows a comparative absence of TLRs filed by the Duke and Southern Company systems.

¹⁷ By comparison, prior to 2007, Entergy never called more than 9 Level 5 TLRs in a single year. In fact, between 2000 and 2006, Entergy called a total of 25 Level 5 TLRs. *Id.*

transmission system problems are evidence that it is inappropriate for Entergy employees to be receiving bonus compensation for the performance of the transmission system.

Additionally, the Entergy transmission system is now operated by the Southwest Power Pool (“SPP”) in its role as the ICT. All network customers pay for the costs of the ITC through their transmission rates. Because the ICT now bears a large portion of the responsibility for the operation and functioning of the Entergy transmission system, it is improper for transmission customers to be paying bonuses to Entergy employees who now have a reduced roll in operating the transmission system.

C. Entergy’s Profits Result Largely From Non-Regulated Power Sales And Not Their Transmission Function.

Many of the employees receiving bonus compensation are “shared” employees – that is, they provide services in support of both Entergy’s non-regulated generation function as well as duties related to the operation of the Entergy transmission system. The existing formula rate, however, does not attempt to apportion the bonuses received by these dual-function employees and instead allows one-half of all bonuses paid to these shared employees to be rolled into transmission service rates. The current formula results in Entergy’s transmission customers subsidizing the large bonuses paid to Entergy senior managers for work that they do for the non-regulated generation side of the company.

Further, a large portion of Entergy’s profits for 2007 result from the operation of its unregulated generation function, and not from the functioning of its transmission system. For example, in 2007, Entergy’s unregulated nuclear units earned over \$539 million in net income.¹⁸ By contrast, the 2007 net income from all of Entergy’s other

¹⁸ Entergy 10-K filing at p. 2, *available at*: <http://www.shareholder.com/entergy/edgar.cfm?DocType=Annual,Quarterly&Year=&CIK=65984,1427437>

operations (including regulated and unregulated wholesale power sales, transmission system revenues and retail utility operations) is \$682 million.¹⁹ Further, in its public filing, Entergy attributes its record profits “primarily to higher earnings at Entergy Nuclear[.]”²⁰ Thus, any bonuses based on Entergy’s financial performance result in regulated transmission customers directly subsidizing the operations of Entergy’s unregulated subsidiary. The formula rate currently on file, however, allows Entergy to include bonuses paid to these employees in their imbedded transmission costs as if these bonuses were made in recognition of the employee’s work on the Entergy transmission system.

D. Compliance With The Commission’s Rules Regarding Complaints

Under Section 206, the Complainant is required to both demonstrate that the existing rate is unjust and unreasonable or unduly discriminatory, as well as propose a new lawful rate.²¹ The NRG Companies propose that the Commission replace the existing transmission service formula rate with a new rate that excludes bonus payments to Entergy employees unless Entergy can show that the bonuses are paid based on improved functioning of the Entergy transmission system. Certainly, any bonuses paid on factors such as share price or on the company’s financial performance should be excluded from transmission rate base.

¹⁹ *Id.*

²⁰ Entergy recently reported that per share profits for the first quarter increased from \$1.03 in 2007 to \$1.55 per share for the same period in 2008. *See* April 16, 2008 First Quarter Earnings Guidance, *available at*: <http://www.shareholder.com/entergy/releaseDetail.cfm?ReleaseID=304857>.

²¹ 16 U.S.C. § 824e(b) (2000).

The Commission's Rules and Regulations, 18 C.F.R. § 385.206 also require that NRG address several additional factors that are not discussed in the body of this Complaint.

The Pendency Of Issues Involved In This Complaint Before The Commission Or In Any Other Venue:

The transmission rates proposed by Entergy in its May 30, 2008 filing are pending before the Commission in Docket Nos. ER08-1057-000 and -001, but are not pending in any other venue to the best of NRG's knowledge and belief.

NRG Has Not Attempted To Settle This Dispute:

Entergy's position is that its current rate formula allows it to include bonus compensation into its transmission rates. Entergy believes that its current rate formula mandates inclusion of these costs. Thus, no settlement will occur unless the Commission first institutes a Section 206 investigation into whether Entergy's existing rate formula is resulting in just and reasonable rates and set this matter for hearing and settlement judge proceedings.

Effect Of This Complaint On Competition And The Harm To NRG:

The NRG Companies take transmission service from Entergy and are thus will be required to pay the transmission service rates the Commission adopts in this proceeding. Passing on employee bonus compensation that is not related to the functioning of the transmission system harms competition by both increasing transmission rates and insulating Entergy's generation function from the full costs of its operations.

VI. CONCLUSION

NRG requests that the Commission find that Entergy's inclusion of bonus compensation in the transmission rate base is not just and reasonable, and direct Entergy to:

- (1) Replace the existing formula with a formula that excludes bonus compensation paid to Entergy employees; and
- (2) Recalculate its 2008 transmission rates without the bonus compensation included in the payroll expenses.

The Commission should find that only payroll costs incurred by Entergy related to the improved functioning of the Entergy transmission system should be included in transmission rates. Currently, any benefits provided by these pay incentives accrue only to Entergy shareholders and it is those shareholders that should bear those costs, not Entergy's transmission customers.

WHEREFORE, NRG requests that the Commission grant this complaint and order Entergy to remove bonus compensation from its transmission rates.

Respectfully submitted,

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June 27, 2008

Attorneys for the NRG Companies

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this day upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 27th day of June 2008.

/s/ Abraham Silverman
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