

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Entergy Services, Inc.

Docket No. IN07-4-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 18, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Entergy Services, Inc. (Entergy). This order is in the public interest because it resolves all issues relating to three investigations of matters self-reported to Enforcement by Entergy. The matters included violations of the Federal Power Act, 16 U.S.C. § 792, *et seq.* (2000), various Commission regulations, and Entergy's Open Access Transmission Tariff (OATT). This Agreement resolves the investigations through a settlement that provides for a \$3 million payment by Entergy and a compliance plan. The payment consists of a \$2 million civil penalty and a \$1 million payment to the Nike/Entergy Green Schools for New Orleans Partnership, to support energy-related rebuilding of several New Orleans schools that were damaged in 2005 as a result of Hurricane Katrina.
2. The three nonpublic, preliminary investigations were conducted by Enforcement pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006). The matters self-reported by Entergy were: (1) Entergy's loss in April 2005 of all Available Flowgate Capability (AFC) hourly data for the period April 2004 through January 2005; (2) Entergy's AFC system's erroneous responses to certain transmission service requests (TSRs); and (3) Entergy's violations of numerous Open Access Same-time Information System (OASIS) posting requirements.
3. Entergy's AFC hourly data loss occurred in April 2005. The loss occurred when Entergy employees attempted to move the AFC hourly data for the period April 2004 through January 2005 off the AFC computer server onto two sets of digital tapes. Employee errors caused the copying attempt to be unsuccessful for one set of tapes and the other set of tapes to be overwritten. Two outside data recovery firms later confirmed that the data were unrecoverable. Entergy has since revised its archiving and data retention procedures to prevent further data losses.

4. Entergy's loss of the hourly AFC data violated the records retention requirements in section 301 of the FPA, 16 U.S.C. § 825a, and section 37.6(b)(2)(ii) of the Commission's regulations, 18 C.F.R. § 37.6(b)(2)(ii). The lost data were, at the time of the loss, relevant to the evidentiary hearings instituted on December 17, 2004 by the Commission under FPA section 206 to examine the justness and reasonableness of the AFC system (Docket Nos. ER03-1272-003 and EL05-22-000) (held in abeyance). Therefore, the loss violated section 125.2(l), 18 C.F.R. § 125.2(l), of the Commission's regulations, which requires companies to retain data relevant to governmental proceedings.

5. Entergy's TSR response errors consisted of 675 errors found during a test period of June 1, 2005 through December 31, 2005. 466 of the errors occurred on or after August 8, 2005 (the effective date of the pertinent civil penalty provisions of the Energy Policy Act of 2005). The errors resulted from unclear screen indicators in the AFC software, a data update lag, and operator error. Entergy discovered the errors while addressing data discrepancies found by Southwest Power Pool, Inc. (SPP), in the course of SPP's audit of Entergy's AFC system as part of the Independent Coordinator of Transmission proceeding at the Commission in Docket No. ER05-1065-000. Entergy immediately installed temporary measures to prevent further errors and in October 2006 installed a permanent fix developed by the software maker.

6. The TSR response errors violated sections 15.1 and 15.2 and Attachment C of Entergy's OATT, which implements the requirements in section 205(b) of the FPA, 16 U.S.C. § 824d(b).

7. Entergy's OASIS posting failures were extensive, violating the requirements set forth in the Commission's OASIS regulations, OASIS Standards and Communication Protocols (S&CP), Standards of Conduct, and Large Generator Interconnection Procedures (LGIP).

8. Entergy failed to post any curtailment data on its OASIS from March 1, 2005, until January 30, 2006, due to an employee allowing expiration of the digital OASIS certificate required to perform that function. Entergy's failure to post curtailment data violated section 37.6(e)(3)(i) of the Commission's regulations, 18 C.F.R. § 37.6(e)(3)(i).

9. Entergy did not post any transmission service schedule data on its OASIS from July 1, 2005, until January 30, 2006, including numerous transmission service schedules not posted on OASIS between August 8, 2005, and January 30, 2006. This posting failure resulted from employees accidentally losing a software application that was necessary to post transmission service schedule data on Entergy's OASIS. The posting failure violated section 37.6(e)(3)(i) of the Commission's regulations, 18 C.F.R. § 37.6(e)(3)(i).

10. Entergy failed to list on its OASIS six system planning and network impact studies that were performed during the two years prior to June 21, 2006. This failure violated section 37.6(b)(2)(iii) of the Commission's regulations, 18 C.F.R. § 37.6(b)(2)(iii).
11. Entergy failed to post certain interconnection request information regarding eleven interconnection requests it received between October 18, 2003, and the present. This posting failure violated section 3.4 of the LGIP.
12. Entergy failed to maintain active links for the emergency circumstances deviation and information disclosures links on its OASIS until April 6, 2006, with the exception that during the fall of 2004, staff informed Entergy, as part of a Standards of Conduct compliance review of all transmission providers' OASIS nodes, that these two links were non-operational. Shortly thereafter, Entergy activated the links and Enforcement reviewed their effectiveness. However, 15 months later, when Entergy's outside counsel reviewed those links, the links were no longer operational. The failure to maintain the active links violated section 358.4(a)(2) of the Commission's Standards of Conduct regulations, 18 C.F.R. § 358.4(a)(2).
13. Entergy failed to post numerous "acts of discretion" during the three years prior to May 16, 2006, including four acts of discretion Entergy had exercised on behalf of one of its affiliates. This posting failure violated sections 37.6(g)(4) and 358.5(c)(4) of the Commission's Standards of Conduct regulations, 18 C.F.R. §§ 37.6(g)(4) and 358.5(c)(4).
14. Entergy also violated numerous requirements of section 37.5(b)(2) of the Commission's OASIS S&CP.
15. Entergy provided exemplary cooperation in Enforcement's investigations into the self-reported matters.
16. The matters described above were generally the result of low-level employees' inadvertent actions, done without the knowledge or acquiescence of senior management. The matters did not reflect undue preference or undue discrimination and resulted in little or no quantifiable harm.
17. Of the violations at issue here, the TSR response errors and the OASIS posting failures violated a provision of Part II of the FPA or a Commission order or regulation implementing a provision of Part II of the FPA and occurred, in part, on or after August 8, 2005. Therefore, under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b) (2006), the Commission may impose a civil penalty for the TSR response errors and OASIS posting failures that occurred on or after August 8, 2005.

18. In approving the Agreement, the Commission considered the factors set forth in section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), and our *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 (2006). The facts pertaining to these enforcement factors are set forth in the Agreement. Of note are Entergy's self-reporting of the matters, to which we accord great weight, and Entergy's exemplary cooperation in the investigations. We also note that the violations resulted in relatively minimal harm to customers and the market. The Commission is of the opinion that the civil penalty agreed upon is appropriate.

19. The dedication of a portion of the monetary payment in this case to a charitable entity is a highly exceptional matter. In this case, Entergy will pay a \$2 million penalty and will make a \$1 million donation to the Nike/Entergy Green Schools for New Orleans Partnership. Approval of this aspect of the settlement, however, does not constitute an endorsement by the Commission of this particular organization. Rather, in this case, the Commission has allowed such donation strictly in light of the unique challenges faced by the New Orleans community in the wake of Hurricane Katrina. In the future, entities entering into a settlement with the Commission should not expect to include contributions to charities in such settlements.

20. In addition, we emphasize, as with all payments under this agreement, none of these payments will be recovered from Entergy Operating Companies' ratepayers or has been, or will be, deducted from income as a charitable contribution or otherwise for federal and state tax purposes. Moreover, the amount of the payment to the Nike/Entergy Green Schools for New Orleans Partnership shall be in addition to, and not in place of, any commitments, formal or informal, external or internal, that Entergy has made to contribute, whether in cash or in kind, or to otherwise support this organization or any like cause.

21. We conclude that the penalty and compliance plan specified in the Agreement provide a fair and equitable resolution of these matters and are in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.)	Docket No. IN07-4-000
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STIPULATION AND CONSENT AGREEMENT

INTRODUCTION

Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Entergy Services, Inc., acting on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively Entergy) enter into this Stipulation and Consent Agreement (Agreement) to resolve all outstanding issues of fact and law arising from three nonpublic investigations conducted by Enforcement pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006), concerning violations of the Federal Power Act (FPA), 16 U.S.C. § 792, *et seq.* (2006), various Commission requirements, and Entergy’s Open Access Transmission Tariff (OATT). All three matters were self-reported by Entergy to Enforcement and Entergy fully and timely cooperated with the subsequent investigations described more fully below. As more fully described below, Enforcement concluded that the violations were largely inadvertent, that they did not result in any undue discrimination or preference, and that the resulting economic harm was immaterial.

A. STIPULATION

Enforcement and Entergy hereby stipulate and agree to the following:

Background

1. Entergy is a provider of electric transmission service in Louisiana, Texas, Arkansas, and Mississippi. Entergy’s electric transmission system consists of over 15,000 miles of transmission lines and associated terminal facilities. Entergy’s transmission system is required, as part of the Commission’s policies fostering “open access” for transmission service, to make available an Open Access Same-time Information System (OASIS) node, where all users and potential users of that transmission system have equal access to information about available transmission capacity, prices, and other information that will enable them to obtain open access non-discriminatory transmission service. In addition, the Commission’s Standards of Conduct and Large Generator Interconnection Procedures (LGIP) require a transmission provider to post specific information on its OASIS. Finally, the Commission has imposed on

Entergy system-specific OASIS requirements for Entergy's Available Flowgate Capability (AFC) system (described below).

2. As required by its OATT, Entergy uses the AFC system to process requests for transmission service that fall within an 18-month horizon. Entergy's AFC system began operation in April 2004. As customers submit short-term transmission service requests (TSRs), the AFC system automatically processes the TSRs by using AFC values and "response factors" to determine the effect of requested transmission service on the relevant AFC values. Commission regulations and orders require Entergy to maintain for specified periods certain data relevant to its AFC system. On November 17, 2006, Entergy's AFC system came under the coordination of an Independent Coordinator of Transmission (ICT), Southwest Power Pool, Inc. (SPP), as approved by the Commission in Docket No. ER05-1065-000. *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006).

3. Entergy self-reported three matters to Enforcement. First, on October 21, 2005, Entergy informed Commission staff that in April 2005, in an attempt to archive data following a server crash, Entergy employees inadvertently deleted all hourly model data for Entergy's AFC system for the period April 2004 through January 2005.

4. Second, on February 8, 2006, Entergy informed Enforcement that Entergy's AFC system made a number of TSR response errors. Entergy initially reported that 91 errors occurred during a seven-month test period of June 1, 2005 through December 31, 2005. On August 10, 2006, Entergy reported 584 additional errors for the seven-month test period, for a total of 675 errors during the test period. It is possible that similar errors occurred on Entergy's AFC system since the inception of its operations in April 2004.

5. Third, on January 26, 2006, Entergy informed Enforcement that Entergy failed to post curtailment and transmission service scheduling data on its OASIS node, due to inadvertent failures related to its automated posting process. Entergy subsequently reported, in May 2006, that as a result of a self-initiated audit it had identified instances where it failed to post additional data on its OASIS and comply with several of the Commission's OASIS posting requirements, including the Commission's OASIS regulations and the specific posting requirements listed in the Commission's Standards of Conduct, LGIP, and OASIS Standards and Communications Protocols (S&CP).

6. Enforcement opened nonpublic, preliminary investigations into each of Entergy's reports. In each investigation, Enforcement examined, *inter alia*, the causes of the violations, whether the violations reflected any undue preference or undue discrimination by Entergy, and whether the violations caused harm. Enforcement concluded that the violations were not the result of preference or undue discrimination and did not result in material harm. This Agreement resolves those investigations, as more fully described below.

AFC Data Loss

7. In April 2005, employees of Entergy's Transmission Business Unit's (TBU) IT group, Technology Delivery, lost all hourly AFC model data from the start of the AFC system in April 2004 through January 31, 2005. The AFC system generates substantial numbers of large data files. In late March 2005, the large amount of data files caused the server to crash. As a result of that crash, Technology Delivery employees attempted to move all the hourly AFC data files that had been created from the inception of the AFC system through January 2005 off the AFC server by archiving them. For this archiving operation, the employees used the software program normally used for creating regular backups of TBU data.
8. The employees intended to make two copies of the data files before deleting the originals from the server. However, the employees left the software in a "default setting" that allowed the process to "continue on error," *i.e.*, to continue with the operation, including deleting the original files from the server, even if the copying process failed. The copying process for one set of tapes failed. The system proceeded to delete the original data files from the server. Further, the retention date on the remaining set of tapes had not been set correctly. Several weeks later, on May 5, 2006, one of the Entergy employees found that the tapes had been overwritten as part of the regular backup process. This left Entergy with no copies of the data files. Entergy subsequently contracted with two outside data recovery firms to attempt recovery of the files. Although one of the firms was able to recover a limited amount of data from one of the sets of tapes, the remaining files on both sets of tapes are largely unrecoverable.
9. After the loss of the data, Entergy began using DVDs in addition to tapes for its data archiving and took appropriate disciplinary action against the employees involved. Entergy has not lost any other AFC data since that time, and Entergy has correctly retained and posted other types of AFC data, such as monthly data, since the start of the AFC system. In early 2006, Entergy retained outside IT consultants SAIC to review Entergy's data handling procedures and facilities. Entergy subsequently implemented many of SAIC's recommendations and is in the process of implementing others.
10. Entergy's loss of the hourly AFC data violated sections 301(a) and (b) of the FPA, 16 U.S.C. §§ 825a(a) and (b). The loss also constitutes a failure to retain certain months of data for the full six-month period required under section 37.6(b)(2)(ii) of the Commission's regulations, 18 C.F.R. § 37.6(b)(2)(ii). Moreover, at the time of the loss, the AFC data were relevant to governmental proceedings, including ongoing (though held in abeyance) evidentiary hearings instituted on December 17, 2004, by the Commission under FPA section 206 to examine the justness and reasonableness of the AFC system (Docket Nos. ER03-1272 and EL05-22) (AFC Section 206 Proceeding). Thus, the loss violated section 125.2(l) of the Commission's regulations, 18 C.F.R. § 125.2(l).

TSR Response Errors

11. On February 8, 2006, as supplemented on August 10, 2006, Entergy self-reported that its AFC system had responded erroneously to 675 TSRs during the period June 1, 2005, through December 31, 2005 (a seven-month sample period chosen by Entergy because it encompassed peak periods). The TSR response errors consisted of 113 erroneous grants, 465 erroneous refusals, and 97 erroneous counteroffers.

12. Entergy discovered 91 of these errors (72 erroneous grants and 19 erroneous refusals, for a total of 91 errors) in early January 2006 in the course of responding to a data request from SPP as part of an audit of the AFC system that SPP conducted at Entergy's request. Specifically, SPP had inquired about discrepancies between TSR responses and AFC impact logs (which record the AFC values that serve as the basis for the AFC system granting, refusing, or counteroffering each TSR). In reviewing those discrepancies, Entergy discovered several TSR response errors. Based on that discovery, Entergy analyzed all TSR responses during the seven-month sample period.

13. Entergy's TSR response errors were inadvertent. The errors resulted from three causes: (1) a lag in updating the data between the AFC server and the operator's computer where the TSR response was determined; (2) a problem with the images on the operator's computer screen, which provided incomplete information about the real status of transmission availability; and (3) human error on the part of the operator, such as simply clicking the wrong response key.

14. Entergy and the manufacturer of the AFC software, AREVA, immediately developed and implemented a short-term fix and daily monitoring procedure. Entergy also initiated the development by AREVA of a long-term software fix. AREVA delivered the long-term fix to Entergy in late July 2006; after testing and adjustments, Entergy brought the long-term fix on-line in mid-October 2006.

15. Entergy self-reported the initial 91 errors to Enforcement on February 8, 2006. Later, in August 2006, Entergy discovered that its method for identifying errors had been incomplete, and that the AFC system had made an additional 584 errors during the seven-month test period. The newly-discovered errors consisted of 41 erroneous grants, 446 erroneous refusals, and 97 erroneous counteroffers. Thus, in all, Entergy found 113 erroneous grants, 465 erroneous refusals, and 97 erroneous counteroffers, for a total of 675 TSR response errors made by the AFC system during the seven-month test period. These errors represented less than 1.8% of the total number of TSRs acted on during this period and less than 1% on a megawatt-hour basis. Many of these violations occurred on or after August 8, 2005.

16. Entergy and Enforcement estimated: (i) lost sales and profits for nonaffiliates due to an erroneous TSR response; and (ii) economic benefit for affiliates due to an erroneous TSR response. In most cases, no harm to nonaffiliates was found. In the cases where harm was found, the total harm to nonaffiliates from the errors during the seven-month test period was approximately \$70,000. In all cases, no economic benefit to affiliates was found.

17. While Entergy's inadvertent TSR response errors did not result in undue discrimination or preference and caused no material harm, they nevertheless violated sections 15.1 and 15.2 and Attachment C of Entergy's OATT. As such, they violate regulations and orders implementing section 205(b) of the FPA, 16 U.S.C. § 824d(b), which is in Part II of the FPA.

OASIS and Standards of Conduct Posting Failures

18. On January 26, 2006, Entergy informed Enforcement that earlier that month, Entergy employees discovered that Entergy had not posted on OASIS: (1) transmission curtailment data from March 1, 2005, onward; and (2) transmission service schedule data from July 1, 2005, onward. On March 22, 2006, Entergy informed Enforcement it had hired outside counsel to review Entergy's compliance with the Commission's OASIS requirements. On May 16, 2006, Entergy provided Enforcement with the results of that review, which found numerous areas in which Entergy's OASIS was not in compliance with the Commission's various OASIS requirements, and waived the attorney-client privilege and work product doctrine for that report. Specifically, Entergy's OASIS was in violation of the Commission's OASIS posting requirements and the specific posting requirements set forth in the Commission's OASIS S&CP, Standards of Conduct, and LGIP.

19. Pursuant to section 37.6(e)(3)(i) of the Commission's regulations, Entergy is required: "[w]hen any transaction is curtailed or interrupted . . . [to post] notice of the curtailment or interruption on the OASIS, and . . . state on the OASIS the reason why the transaction could not be continued or completed." 18 C.F.R. § 37.6(e)(3)(i). On March 1, 2005, the software application that Entergy used to post curtailment data on its OASIS ceased to post those data because an employee allowed the digital OASIS certificate for performing that function to expire. Consequently, Entergy failed to post any curtailment data on its OASIS from March 1, 2005, until January 30, 2006, in violation of the Commission's regulations. Many of those violations occurred between August 8, 2005, and January 30, 2006.

20. Pursuant to section 37.6(f) of the Commission's regulations: "Information on transmission service schedules must be recorded by [Entergy, as a transmission provider] and must be available on [its] OASIS for download. Transmission service schedules

must be posted [by Entergy] no later than seven calendar days from the start of the transmission service.” In late June 2005, a Technology Delivery employee failed to remove a software application from the personal/corporate computer of another employee who was leaving Entergy’s employment. That application was necessary to post transmission service schedule data on Entergy’s OASIS. Consequently, on July 1, 2005, when that computer was returned to the Technology Delivery group upon the employee’s departure from Entergy, the application ceased providing transmission service schedule data to Entergy’s OASIS. As a result, Entergy did not post any transmission service schedule data on its OASIS from July 1, 2005, until January 30, 2006, in violation of section 37.6(e)(3)(i) of the Commission’s regulations. Many of those violations occurred between August 8, 2005, and January 30, 2006.

21. Under section 37.6(b)(2)(iii) of the Commission’s regulations, system planning and network impact studies that are performed for customers must be listed on OASIS and the actual studies must be made publicly available upon request in electronic form. A list of such studies must also be posted on OASIS, and the studies themselves are to be retained for two years. Entergy failed to include on its posted list six studies that were performed during the two years prior to June 21, 2006; none of these studies was performed for an affiliate. Entergy’s failure to list the studies violated section 37.6(b)(2)(iii) of the Commission’s regulations. Several of these violations occurred on or after August 8, 2005.

22. Under the LGIP, Entergy must maintain a list of all interconnection requests on its OASIS. Section 3.4 of the LGIP requires that that list must also provide certain information related to each interconnection request. Entergy failed to include, in violation of that provision, some of that required information for each of the eleven large generator interconnection requests it received between October 18, 2003, and the present. Many of these violations occurred on or after August 8, 2005.

23. Under the Standards of Conduct, specifically section 358.4(a)(2) of the Commission’s regulations, a transmission provider must report to the Commission and post on its OASIS or Internet website each emergency that resulted in any deviation from a Standards of Conduct requirement within 24 hours of such a deviation. In addition, section 358.5(b)(3) of the Commission’s regulations requires that if an employee of a transmission provider discloses information in a manner contrary to the requirements of the Standards of Conduct, the transmission provider must immediately post such information on its OASIS or Internet site. Both the emergency circumstances deviation and information disclosures links on Entergy’s OASIS were non-operational for substantial periods prior to April 6, 2006. During the fall of 2004, Enforcement contacted Entergy and informed it that these two links were non-operational. Shortly thereafter, Entergy activated the links and Enforcement reviewed their effectiveness. However, 15 months later, during a self-initiated review by Entergy’s outside counsel, the links were no longer operational.

24. Sections 37.6(g)(4) and 358.5(c)(4) of the Commission's Standards of Conduct require that a transmission provider keep a log available for the Commission's review, detailing the circumstances and manner in which it exercised its discretion under any terms of its OATT. The information contained in that log must be posted on the transmission provider's OASIS within 24 hours of such an act of discretion. Although some Entergy system operators recorded acts of discretion in an "exceptions log" located on a computer terminal, some of the entries were not then uploaded to the OASIS, so some acts of discretion were not posted. Specifically, Entergy failed to post 22 out of 65 acts of discretion during the three years prior to May 16, 2006, in violation of sections 37.6(g)(4) and 358.5(c)(4) of the Commission's regulations. Four of those 22 instances involved Entergy exercising its discretion on behalf of one of its affiliates. Several of these violations occurred on or after August 8, 2005.

25. Under section 37.5(b)(2) of the Commission's regulations, a transmission provider must operate its OASIS in compliance with the Commission's OASIS S&CP, Version 1.4. Entergy violated ten discrete S&CP requirements. Many of these violations occurred on or after August 8, 2005.

26. No customers were directly harmed in a quantifiable manner by any of Entergy's OASIS violations. In particular, Entergy did not provide information to any transmission customer (affiliate or nonaffiliate) concerning any information that was not posted on its OASIS in order to provide an undue preference to either its merchant functions or affiliates. Entergy had no off-OASIS discussions (*e.g.*, via telephone) with its merchant functions or affiliates concerning transmission information that was not posted on Entergy's OASIS. However, these OASIS violations resulted in some lack of transparency with respect to the transmission information posted on Entergy's OASIS. When transmission customers are not able to view and download in standard formats information regarding the transmission system, they may be less able to: (1) make prudent business decisions regarding, *inter alia*, available products and desired services; and (2) determine how their treatment compares to that of their competitors.

27. Entergy and its transmission system have been the subject of numerous proceedings at the Commission, several involving issues similar to the matters self-reported by Entergy. These proceedings and reports include: (1) staff's *Audit Report on Entergy's Generator Operator Limits*, Docket No. PA04-17-000 (December 17, 2004) (noting errors made by the system Entergy used prior to the AFC system); (2) staff's *Audit Report on Standards of Conduct and Open Access Same-Time Information System (OASIS) at Entergy Corporation*, Docket No. FA02-45-000 (noting errors in complying with certain OASIS posting obligations); (3) the AFC Section 206 Proceeding mentioned above, instituted by the Commission on December 17, 2004, 109 FERC ¶ 61,281 (in abeyance) (to examine the justness and reasonableness of Entergy's AFC system); and (4) staff's audit of Entergy's records retention compliance, Docket No. FA06-1-000

(October 6, 2006) (finding Entergy Operating Companies out of compliance with Entergy's internal record retention control policies and procedures). In light of these proceedings, some of which included findings of violations, Entergy was on notice that Entergy needed to be especially vigilant in ensuring compliance in its transmission system operations.

28. Entergy's violations occurred without its senior management's knowledge or acquiescence. After the discovery of the violations, Entergy took immediate steps to remedy the causes of the violations, including but not limited to disciplining some of the involved employees, reorganizing some of the relevant business units, installing new management, and implementing new software and business processes. In addition, Entergy extended extraordinary cooperation to Enforcement during the investigations, including but not limited to a voluntary waiver of material that Entergy otherwise would have claimed as privileged attorney-client communications. Entergy's management is ultimately responsible for ensuring that Entergy employees receive appropriate compliance training, that Entergy managers and supervisors monitor and assess employees' compliance behaviors, and that Entergy's Chief Compliance Officer ensures appropriate training and monitoring for compliance with respect to the Standards of Conduct. Entergy has made further commitments to enhance its compliance program, in conjunction with the implementation of the ICT proposal in Docket No. ER05-1065-000.

B. REMEDIES

For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigations of Entergy's violations of the FPA, Commission regulations and orders, and Entergy's OATT, Enforcement and Entergy agree that after the Commission issues an order approving this Agreement without material modification, Entergy shall take the following actions:

1. Entergy shall pay a monetary remedy of \$3,000,000 consisting of: (a) a civil penalty in the amount of \$2,000,000 payable to the United States Treasury, by wire transfer or other expeditious means, within ten days of the Commission issuing an order approving this Agreement without material modification; and (b) a payment of \$1,000,000 dedicated to the Nike/Entergy Green Schools for New Orleans Partnership (a charitable entity dedicated to developing energy-efficient "Green Schools" for the City of New Orleans in light of the devastation caused by Hurricane Katrina), by wire transfer or other expeditious means payable to the Greater New Orleans Foundation for ultimate payment to the Nike/Entergy Green Schools for New Orleans Partnership, within twenty days of the Commission issuing an order approving this Agreement without material modification. The amount of the payment to the Greater New Orleans Foundation for ultimate payment to the Nike/Entergy Green Schools for New Orleans Partnership shall be in addition to, and not in place of, any commitments, formal or informal, external or internal that Entergy has made to contribute, whether in cash or in kind, or to otherwise

support, the Greater New Orleans Foundation, the Nike/Entergy Green Schools for New Orleans Partnership or any like cause.

2. Entergy affirms, under oath, that none of the payments required in Paragraph 1 above has been or will be recovered from Entergy Operating Companies ratepayers or has been or will be deducted from income as a charitable contribution or otherwise for federal and state tax purposes. The dedication of a portion of the monetary remedy in this case to a charitable entity is a *highly exceptional* matter. It is being employed strictly in light of the unique challenges faced by the New Orleans community in the wake of Hurricane Katrina and the unique opportunity to further the use of energy efficient and alternative fuel technologies in connection with the rebuilding of the schools in that community.

3. In order to ensure compliance, and coordinating with its ICT as necessary, Entergy shall:

- a. Submit a report under oath to Enforcement covering each six month period from the date of the Commission order approving this Agreement without material modification, for a period of one year. Entergy will submit each report 30 days after the end of each six month period. In said report, Entergy shall:
 - i. State whether, during the six month period, there has been any loss of AFC data required to be retained by Entergy or its agents; if so, Entergy will identify the data, the circumstances of the loss, and any remedial actions taken or planned in response to the loss;
 - ii. State whether, during the six month period, any transmission service requests were responded to by the ICT in a manner inconsistent with the AFC values calculated by Entergy's AFC system or the values calculated by any successor system thereto; if so, Entergy will identify each error, the circumstances of the error, and any remedial actions taken or planned in response to the error. This requirement may be satisfied by Entergy tendering to Enforcement a statement by the ICT addressing these matters, along with reasonable efforts by Entergy to verify the same; and
 - iii. State whether, during the six month period, any OASIS-related posting requirements were violated by Entergy or its agents; if so, Entergy will identify each violation, the circumstances of the violation, and any remedial actions taken or planned in response to the violation.

- b. In order to ensure continued compliance, Entergy will contract for an audit by an independent auditor, to be chosen by Entergy with Enforcement approval. The independent auditor will submit an audit report contemporaneously to Entergy and Enforcement, covering the first year from the date of the Commission order approving this Agreement without material modification. The audit report will be submitted 45 days after the end of the first year. Said audit report will:
 - i. State whether, during the first year, any AFC data required to be retained under then current Commission rules and regulations by Entergy, its agents, or the ICT were lost; if so, the auditor will identify the data, the circumstances of the loss, and any remedial actions taken or planned in response to the loss;
 - ii. State whether, during the first year, any transmission service requests were responded to by the ICT in a manner inconsistent with the AFC values calculated by Entergy's AFC system or the values calculated by any successor system thereto; if so, the auditor will identify each error, the circumstances of the error, and any remedial actions taken or planned in response to the error;
 - iii. State whether, during the first year, any OASIS-related posting requirements were violated by Entergy, its agents, or the ICT; if so, the auditor will identify each violation, the circumstances of the violation, and any remedial actions taken or planned in response to the violation; and
 - iv. Describe and evaluate the effectiveness of Entergy's compliance training and monitoring programs relating to these transmission system operations, during the first year.
- c. At Enforcement's discretion, Entergy will contract for a similar second independent audit, covering the second year from the date of the Commission order approving this Agreement without material modification. Enforcement will inform Entergy within 90 days of receiving the first audit report whether a second audit is required. If a second audit is required, the audit report will be submitted contemporaneously to Enforcement and Entergy 45 days after the end of the second year.
- d. Submit a report on the following remediation efforts Entergy has described to Enforcement but not yet completed, within 90 days of the Commission issuing an order approving this Agreement without material modification: (1) the Transmission and OASIS Compliance Procedures Manual; (2) the

reorganization of Entergy's transmission-related information technology operations; (3) assessment of data backup and OASIS posting procedures; and (4) personnel and disciplinary actions, including provisions within the performance and compensation criteria of relevant supervisors, managers and agents responsible for compliance designed to enhance accountability for compliance.

- e. Develop and submit to Enforcement a schedule and plan, which will be subject to Enforcement approval, for a regulatory compliance plan (including training, management and supervision, and monitoring programs) for its TBU employees, within 90 days of the Commission issuing an order approving this Agreement without material modification.
- f. Make all arrangements and coordinate with the ICT to facilitate and ensure the timely completion of the foregoing compliance requirements.

C. TERMS

1. The effective date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to Entergy and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Entergy. This Agreement does not constitute an admission or acknowledgment by Entergy of liability to any third party.

2. Commission approval of this Agreement without material modification shall release Entergy and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Entergy from, and forever bar the Commission from bringing against Entergy, any and all administrative or civil claims arising out of, related to or connected with, the violations described in this Agreement.


3. Failure to make a timely payment or to comply with the compliance plan agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act, 16 U.S.C. § 792, *et seq.*, and may subject Entergy to additional action under the enforcement and penalty provisions of the FPA.

4. If Entergy does not make the payments above at the time agreed by the parties, interest payable to the United States Treasury and the Greater New Orleans Foundation for ultimate payment to NIKE/Entergy Green Schools for New Orleans Partnership will begin to accrue, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due, in addition to the payments specified above and any other remedy or penalty imposed pursuant to Paragraph C.3 above.

5. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Entergy has been made to induce the signatories or any other party to enter into the Agreement.
6. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Entergy shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Enforcement and Entergy.
7. The Agreement binds Entergy and its agents, successors and assigns. The Agreement does not create or impose any additional or independent obligations on Entergy, or any affiliated entity, its agents, officers, directors or employees, other than the obligations identified in Sections B and C of this Agreement.
8. In connection with the payment of the civil penalty provided for herein, Entergy agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. Entergy further waives rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.
9. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.
10. The undersigned representative of Entergy affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.
11. The Agreement may be signed in counterparts.

12. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Susan J. Court, Director
Office of Enforcement

Date 12/20/06



Richard J. Smith
Group President Utility Operations
Entergy Services, Inc.

Date 12/19/06