

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Energy and Power Authority

Docket No. TX06-1-000

ORDER DENYING SECTION 217 PETITION, CONDITIONALLY DISMISSING  
REQUEST FOR DIRECTED TRANSMISSION AND DIRECTING UTILITY TO  
PROVIDE TRANSMISSION SERVICE UNDER OPEN ACCESS TRANSMISSION  
TARIFF

(Issued September 25, 2006)

1. On February 17, 2006, Louisiana Energy and Power Authority (LEPA) filed a petition under section 217 of the Federal Power Act (FPA)<sup>1</sup> requesting the Commission to issue an order requiring Entergy Services, Inc. (Entergy) and Cleco Power (Cleco) to convert or roll over LEPA's existing firm point-to-point transmission service to network integration transmission service under Entergy and Cleco's respective open access transmission tariffs (OATTs).<sup>2</sup> In the alternative, LEPA requests the Commission to issue an order under section 211 of the FPA<sup>3</sup> directing Entergy and Cleco to provide transmission service to LEPA. This order denies LEPA's petition under section 217 of the FPA and proposes to dismiss LEPA's request under section 211 of the FPA unless LEPA can demonstrate why the Commission should not dismiss LEPA's request for directed transmission under section 211. This order also directs Entergy to provide transmission service to LEPA under the existing terms and conditions of Entergy's and Cleco's OATT.

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<sup>1</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, § 1233, 119 Stat. 594, 957 (2005).

<sup>2</sup> The network resources designated in the application are located in both the Entergy and Cleco transmission systems. *See* LEPA Petition, Exhibits 4 and 5.

<sup>3</sup> 16 U.S.C. § 824j (2000).

## **Background**

2. LEPA consists of eighteen Louisiana cities and towns, each of which maintains its own independent municipal power system.<sup>4</sup> LEPA operates a North American Electric Reliability Council (NERC)- and Southwest Power Pool (SPP)-certified control area for its pool members. LEPA is also a member of SPP and participates in the SPP reserve sharing pool. LEPA has no transmission resources of its own and its member communities are transmission-dependent on the Entergy or Cleco electric systems. LEPA estimates its 2006 pool member load at approximately 216 MW. Taking into account SPP-required operating reserves, LEPA requires approximately 248 MW of capacity to meet that load.<sup>5</sup>

3. LEPA states that it has contracted for approximately 185 MW of generation from units owned by its pool members.<sup>6</sup> LEPA further states that it has three, long-term transmission contracts, two with Entergy and one with Cleco,<sup>7</sup> which Entergy administers, using its integrated transmission system.<sup>8</sup> According to LEPA, these contracts provide LEPA and its members with 263 MW of firm transmission capacity.<sup>9</sup> Entergy states that it has a Power Interconnection Agreement and an Electric System Interconnection Agreement with LEPA under which it provides transmission service to

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<sup>4</sup> The LEPA member communities are: Abbeville, Alexandria, Erath, Houma, Jonesville, Kaplan, Lafayette, Minden, Morgan City, Natchitoches, New Roads, Plaquemine, Rayne, St. Martinville, Vidalia, Vinton, Welsh, and Winnfield, Louisiana. Louisiana's pool members are: Houma, Morgan City, New Roads, Plaquemine, Rayne, Vidalia, Welsh and Winnfield, Louisiana.

<sup>5</sup> LEPA Petition at 4.

<sup>6</sup> Houma owns 67.7 MW of generation and Morgan City owns 55.1 MW of generation. LEPA states that it has been purchasing 61 MW of firm capacity and associated energy from the Lafayette Utility System (Lafayette) for the delivery of power from the Rodemacher 2 coal plant. LEPA states that its contract with Lafayette ended on December 31, 2005. LEPA Petition at 12.

<sup>7</sup> Although Cleco and Entergy have multiple interconnections, they operate the two systems separately to provide service to meet each entity's retail service obligations. Cleco provides delivery service for LEPA, including delivery to a point at Morgan City, Louisiana, in the amount of 21 MW. *See* Cleco's Answer at 8 and 10.

<sup>8</sup> LEPA Petition at 7.

<sup>9</sup> *Id.*, Exhibit 2.

LEPA from specified resources to specified loads.<sup>10</sup> Cleco states that the transmission and delivery service specified in its Electric System Interconnection Agreement with LEPA is largely based upon the output of LEPA's ownership interest in Rodemacher Power Station Unit 2, although the agreement contemplates that there will be deliveries from other power sources as well.<sup>11</sup> Additionally, Cleco states that it delivers specified quantities of electric energy to Entergy, the City of Alexandria, and Morgan City at delivery points listed in the agreement.<sup>12</sup>

### **LEPA's Petition**

4. LEPA states that, in anticipation of the expiration of the contract with Lafayette,<sup>13</sup> under which it purchased 61 MW of firm capacity and associated energy, it entered into negotiations with Constellation Energy Commodities Group, Inc. (Constellation) to provide firm requirements service from network resources yet to be identified.<sup>14</sup>

5. LEPA states that, as a condition precedent to the Constellation power supply arrangement, it needs to obtain necessary network integration transmission service.<sup>15</sup> In order to access potential generation resources, LEPA seeks to convert its existing firm, point-to-point transmission service agreements with Entergy and Cleco to network transmission service under Entergy and Cleco's respective OATTs. LEPA states that, accordingly, it filed applications with both Entergy and Cleco for network integration transmission service on June 7, 2005.<sup>16</sup> In response, on August 23, 2005, Entergy informed LEPA that there was no available transmission capacity from either the Dynegy or Exxon Mobil facilities to LEPA and that the 13 MW Southwestern Power Association

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<sup>10</sup> Entergy's Answer at 5.

<sup>11</sup> Cleco's Answer at 4. LEPA is entitled to 104.6 MW of the Rodemacher Power Station Unit No. 2's output. *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 12. LEPA states that much of its co-owned generating resources is aging and has become inefficient and expensive to operate. *Id.* at 16.

<sup>14</sup> LEPA states that possible generation resources include the Dynegy Calcasieu facility near Sulphur, Louisiana, and the Exxon Mobil Cogeneration facility near Beaumont, Texas. *Id.* at 14.

<sup>15</sup> LEPA Petition at 15.

<sup>16</sup> *Id.*

(SWPA) resource was only available for a grandfathered allocation of 6 MW. Cleco stated in its response to LEPA's application for network transmission service that there was no available transmission capacity available for LEPA to serve its member, Morgan City. Cleco informed LEPA that its request required voltage support and metering upgrades. Cleco also conditioned its study on Entergy's grant of transmission capacity.<sup>17</sup> LEPA states that, based on the claimed lack of available transmission capacity by both Entergy and Cleco to access the Constellation generation options, it explored other alternatives. LEPA states that Entergy indicated that LEPA could rollover the prior rights from Lafayette to other Lafayette resources. However, LEPA states that Lafayette has no desire to run its remaining old, inefficient gas and oil units to provide service to LEPA and that service from those units would be a highly expensive and inefficient way to provide power to LEPA members and their consumers.<sup>18</sup>

6. LEPA argues that, in general, Entergy and Cleco's existing transmission systems lack sufficient transmission capacity for transmission-dependent utilities to access competing sources of generation. LEPA maintains that Entergy and Cleco have engaged in a conscious "rust-down policy" of adding little or no transmission, at least in the critical congested areas, as load has grown.<sup>19</sup> LEPA states that Entergy and Cleco have recently curtailed power production from coal plants because of constraints, thus incurring the extraordinarily high cost of energy from gas or oil fired plants for their own captive customers, as well as for the customers of the co-owners of the coal plants.<sup>20</sup> LEPA further argues that Entergy and Cleco are shifting the costs of correcting existing transmission constraints to customers making new requests for transmission service, including existing customers for whom Entergy is obligated to provide in its system planning.<sup>21</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 15-16.

<sup>19</sup> *Id.* at 24.

<sup>20</sup> *Id.* at 25.

<sup>21</sup> *Id.* at 21-25. LEPA states that the system impact study that Entergy performed revealed that, to accommodate LEPA's request for transmission service, Entergy would need to construct network upgrades costing approximately \$150 million. *Id.* at Exhibit No. 14. Cleco has indicated in its answer that it would need to provide additional voltage support facilities to accommodate LEPA's transmission request at a cost of approximately \$500,000. Cleco's answer at Exhibit No. 2 (System Impact Study for LEPA's transmission request, July, 2005).

7. In its petition, LEPA is seeking an order requiring Entergy and Cleco to allow it to exercise its rollover rights with regard to pre-Order No. 888 transmission contracts, adding new points of receipt and delivery not already included in the existing contracts.<sup>22</sup> In support, LEPA relies, in part, on section 217 of the FPA. LEPA argues that, under section 217, it is entitled to use the firm transmission rights, or equivalent tradable or financial transmission rights, to deliver the output of its own facilities or purchased energy, or the output of other generating facilities or purchased energy.<sup>23</sup> LEPA maintains that section 217 prohibits Entergy from delaying its right to rollover the contracts.<sup>24</sup>

8. Alternatively, LEPA requests that the Commission order Entergy and Cleco to provide the requested transmission service under section 211 of the FPA. In support, LEPA states that it has met the requirements for an order under section 211 because: (a) it has requested transmission service from Entergy at least 60 days prior to filing its petition; (b) its request will not unreasonably impair system reliability; (c) the order will not require Entergy to transmit electric energy that replaces electric energy Entergy is required to provide to LEPA pursuant to a contract or Commission-approved rate schedule; (d) issuing the order would be in the public interest; and (e) the order satisfies section 212 of the FPA.<sup>25</sup>

### **Notice of Filing and Responsive Pleadings**

9. Notice of LEPA's filing was published in the *Federal Register*, 71 Fed. Reg. 11,602 (2006), with interventions or protests due on or before March 10, 2006. The Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi (collectively, MDEA Cities) and Constellation Energy Commodities Group, Inc. filed motions to intervene. East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas (collectively, East Texas Cooperatives); and Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating, LLC, NRG Sterlington Power, LLC, NRG Power Marketing, Inc. (collectively, NRG Companies) filed motions to intervene and comments. Entergy and Cleco filed answers to LEPA's petition. NRG Companies

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<sup>22</sup> *Id.* at 14, 20-21.

<sup>23</sup> *Id.* at 21-25.

<sup>24</sup> *Id.* at 24.

<sup>25</sup> 16 U.S.C. § 824k (2000).

and East Texas filed answers to Entergy's and Cleco's answers. Entergy filed answers to the comments. American Public Power Association filed a motion to intervene out-of-time. The Louisiana Public Service Commission filed a motion to intervene out-of-time.

### **Entergy's and Cleco's Answers**

10. Entergy states that the concept of rollover typically refers to a customer's right under section 2.2 of the OATT to continue to obtain transmission service when that customer's existing contract for service expires by its own terms or becomes subject to renewal.<sup>26</sup> Entergy states that the two interconnection agreements are not set to expire, and therefore, are not subject to renewal or rollover under their own terms, until 2014. Accordingly, Entergy insists that LEPA is asking the Commission to order *new* transmission service from *new* resources, *i.e.*, to provide network integration transmission service from approximately 307 MW of new resources that are not included under LEPA's two existing firm transmission contracts.<sup>27</sup> According to Entergy, the concept of "rollover" does not apply to this request.<sup>28</sup> Rather, LEPA is seeking new network integration service.<sup>29</sup>

11. In regard to LEPA's request under section 211 of the FPA, Entergy states that LEPA has not satisfied the requirement to make a good faith request for transmission service because the transmission service that LEPA is requesting in its section 211 petition differs in material respects from the network integration transmission service that LEPA requested from Entergy.<sup>30</sup> Entergy further contends that the Commission should reject LEPA's petition under section 211 of the FPA because LEPA has failed to

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<sup>26</sup> Entergy points out that LEPA neither discussed nor referenced section 2.2 of the *pro forma* OATT in support of its claim for conversion of service. Entergy Answer at 11-12.

<sup>27</sup> *Id.* at 3, 4, 7-8.

<sup>28</sup> *Id.* at 11, 15-16.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> Entergy states that in its application for network integration transmission service, LEPA requested that Entergy designate existing resources plus three new resources: the Beaumont facility; the Calcasieu facility; and the purchases from the SWPA. However, in its petition, LEPA requests that the Commission order Entergy to provide broader service necessary to allow LEPA to execute the proposed power supply arrangement with Constellation or other providers, as well as to provide the network service needed for Morgan City and Houma. Entergy's Answer at 32-33.

demonstrate that an order directing the requested transmission service would not unreasonably impair the continued reliability of Entergy's transmission system.<sup>31</sup> In fact, Entergy argues, reliability would be harmed. In addition, Entergy argues, granting the application would abrogate rights under an existing agreement.<sup>32</sup>

12. In any event, Entergy states that, until LEPA agrees to possible redispatch of its own resources and agrees to be responsible for the cost of that redispatch, Entergy cannot reliably provide the transmission service that LEPA is seeking without transmission upgrades.<sup>33</sup> Entergy disagrees with LEPA's claims that Entergy has failed to make reasonable reliability upgrades to its transmission grid. Entergy states that it has been investing substantial sums in its transmission system over the past few years, and that its total investment in its transmission system between 1998 and 2004 totaled over \$1.4 billion.<sup>34</sup> Entergy states that this amount of investment in transmission is hardly consistent with a policy geared toward "rusting down" the transmission system.<sup>35</sup>

13. With regard to NERC standards, Entergy states that it must demonstrate compliance with both NERC and Southeastern Electric Reliability Council (SERC) standards; that it must submit self-certification standards, data reporting form submittals, and periodic audits. Entergy further states that it makes compliance filings to the SERC on a routine basis, demonstrating Entergy's continued compliance with NERC standards and any applicable regional programs. Entergy states that SERC audited Entergy's transmission planning department in September 2004 and found that Entergy was in full compliance with NERC standards. Entergy also states that NERC recently conducted a review of its redispatch and curtailment policy and found that Entergy's planning and operating practices are consistent with reliability requirements and are non-discriminatory. Entergy states that transmission congestion is not a sign of a poorly planned transmission system; rather, congestion is an economic issue, not a reliability issue, and will often arise on a transmission system that is planned in accordance with good utility practice.<sup>36</sup> Entergy states that LEPA attempts to leave the impression that its request for transmission service is about preserving reliability. However, according to

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<sup>31</sup> *Id.* at 26.

<sup>32</sup> *Id.* at 10, 14, 17, 27-31.

<sup>33</sup> *Id.* at 36.

<sup>34</sup> Entergy's Amended Answer filed March 30, 2006 at 1.

<sup>35</sup> Entergy Answer at 23.

<sup>36</sup> *Id.* at 24-25.

Entergy, LEPA's petition is really about economics, *i.e.*, LEPA's desire to avoid the costs of transmission upgrades or redispatch that are needed to accommodate the 307 MW of new transmission service it is requesting.<sup>37</sup>

14. Cleco argues that LEPA has no contractual right to conversion or rollover of its existing contractual transmission service to network transmission service under an OATT.<sup>38</sup> Cleco also opposes LEPA's request for an order directing service under section 211.<sup>39</sup> Cleco states that it has worked with LEPA and Entergy regarding the provision of the new transmission service requested by LEPA to serve load located in Morgan City, Louisiana.<sup>40</sup>

15. Cleco states that the upgrades necessary to accommodate LEPA's transmission request require approximately \$500,000 for voltage support additions.<sup>41</sup> With regard to LEPA's arguments concerning the availability of Morgan City and Houma City generating units, Cleco states that it has studied LEPA's request for transmission service as if the Morgan City resources were available to be committed and dispatched as needed operationally for energy service. Cleco states that, when they are not available and committed, there are system conditions that will result in an overload on Entergy's transmission system, not Cleco's; therefore, the Morgan City units must be placed online beforehand and be dispatched to avoid overloading Entergy's transmission system.<sup>42</sup> Cleco states that the Commission must ensure that LEPA bear its appropriate share for increased transmission system costs when LEPA's units cannot be dispatched.<sup>43</sup>

### **Comments**

16. East Texas Cooperatives filed comments in support of LEPA's petition, arguing that they and other transmission-dependant utilities in the Entergy region have experienced the same problems LEPA has described in obtaining network integration

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<sup>37</sup> Entergy's Answer at 13.

<sup>38</sup> Cleco Answer at 5, 12-16.

<sup>39</sup> *Id.* at 16-24.

<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* at Exhibit No. 2 (System Impact Study for LEPA's Transmission Request, July 2005).

<sup>42</sup> *Id.* at 25-26.

<sup>43</sup> *Id.* at 26.



transmission service on the Entergy transmission system, and that these experiences highlight the chronic problems on the Entergy system that the Commission must address if competition is to take root in the Entergy region.<sup>44</sup>

17. East Texas Cooperatives also state that Entergy's transmission planning process is inadequate because it excludes load-serving entities (LSE) in the region. East Texas Cooperatives submit that, in a true joint planning process, Entergy and other LSEs in the region would develop together a long-term transmission plan addressing the needs of all users of the Entergy system.<sup>45</sup>

18. East Texas Cooperatives further argue that, although Entergy is maintaining its transmission system to meet minimum levels of reliability as defined by NERC and SERC, this does not mean that it is planning and building its system in a manner consistent with Order No. 888.<sup>46</sup> East Texas Cooperatives maintain that the *pro forma* OATT requires that Entergy plan to serve its network customers in a manner comparable to the way in which Entergy uses its transmission system to serve its native load customers. East Texas Cooperatives state that, under Order No. 888, network transmission service should put the transmission customer in the same position as the transmission provider itself for transmission service over its network.<sup>47</sup> According to East Texas Cooperatives, Entergy does not put its network customers in the same position as Entergy itself when Entergy plans its transmission system.<sup>48</sup>

19. NRG Companies maintain that Entergy has allowed its transmission system to become overloaded to the point of near-constant congestion, with the result that any

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<sup>44</sup> East Texas Cooperatives Comments at 5-6; East Texas Cooperatives Answer at 2. East Texas Cooperatives state that the problems that LEPA has experienced in obtaining network service to accommodate new network resources are identical to those they experienced when they attempted to secure network transmission service from Entergy to facilitate their request for transmission from Plum Point. East Texas Cooperatives Comments at 5-6. To support their position, East Texas Cooperatives incorporate their comments filed in the Independent Coordinator of Transmission (ICT) proceeding in Docket No. ER05-1065-000.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.*, citing *Florida Power and Light Co.*, 113 FERC ¶ 61,290, at P 9 (2005).

<sup>48</sup> *Id.*

single contingency in the base case triggers the need for upgrades.<sup>49</sup> They contend that, had Entergy maintained its transmission system over the last decade to ensure reliable service for its native load transmission, such as the customers of LEPA, transmission from newly designated resources would require only incremental upgrades instead of upgrades that Entergy should have already made to meet its transmission obligations.<sup>50</sup> NRG Companies argue that the Commission should not permit Entergy to shift the costs of correcting existing overloads to customers making requests for transmission service, particularly when those customers are longstanding native transmission load customers.<sup>51</sup>

20. NRG Companies also claim that the opportunity to support new transmission requests through redispatch is a fiction. They contend that, while Entergy claims that customers have the opportunity to redispatch their own resources to mitigate upgrade costs, only Entergy has sufficient size, geographic diversity, and resources to rely on redispatch as a substitute for building upgrades that will remedy both the incremental impacts of the customer's transaction and the existing overloads on the system. They maintain that, since only Entergy can use redispatch, network customers, rather than Entergy, will bear the burden of funding all significant upgrades to the Entergy system.<sup>52</sup>

21. NRG Companies also state that the participant funding component of Entergy's ICT proposal is not the solution for Entergy's failure to adequately fulfill its OATT obligations. NRG Companies argue that Entergy's participant funding proposal is designed to shift the costs of transmission upgrades to its competitors and to the transmission dependant utilities on its system.<sup>53</sup>

22. NRG Companies state that the Commission should not approve Entergy's ICT proposal, unless and until identified deficiencies in Entergy's transmission system are corrected. Specifically, with regard to the issues raised by LEPA in its petition, NRG Companies ask the Commission to direct Entergy to file a transmission plan, within three months, for correcting all of the overloads in the base case and for providing continued service to its native load and network customers for the next ten years free from problems

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<sup>49</sup> NRG Companies' Comments at 6-9.

<sup>50</sup> *Id.* at 9.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 14.

<sup>53</sup> *Id.* at 24. The Commission conditionally approved Entergy's Independent Coordinator of Transmission filing in *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006) (ICT Order).

with overloads, stability, voltage or frequency. NRG Companies state that, within three months, following an opportunity for comment and review, the Commission should accept Entergy's plan, with any required modifications. NRG Companies request that the Commission require Entergy to complete all of the upgrades needed to bring the system into good utility practice, as well as those upgrades called for to serve the projected system load through 2010, within six months. NRG Companies state that, to the extent Entergy has not completed the necessary upgrades at that time, the Commission should consider appropriate exercise of its EPAct enforcement powers.<sup>54</sup>

### **Entergy's Answers to Comments**

23. Entergy answers that the Commission should reject the comments of NRG Companies and East Texas Cooperatives because they are not relevant to the issues raised in this proceeding.<sup>55</sup> Entergy argues that NRG Companies' attack on Entergy's overall transmission planning and operations has nothing to do with LEPA's specific request for transmission service in this proceeding.<sup>56</sup> Entergy further argues that East Texas Cooperatives' arguments similarly are not relevant to the issues in this proceeding, because they relate to East Texas Cooperatives' request to designate as a new network resource a coal-fired base load power plant that Plum Point Energy Associates will construct near Osceola, Arkansas. Entergy states that it has already responded to East Texas Cooperatives' request, which, in any case, is not relevant to LEPA's request, which is the subject of this proceeding.<sup>57</sup>

24. Entergy also states that there is no evidence that its transmission system is under-built.<sup>58</sup> Entergy states that it plans its transmission system so that it can: (a) meet all firm service commitments; (b) ensure that it can serve network customers' existing and projected network loads on a firm basis; and (c) satisfy long-term firm point-to-point transmission service commitments.<sup>59</sup> Entergy states that it also plans its transmission system so that network customers can use their existing designated network resources consistent with the OATT.

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<sup>54</sup> *Id.* at 24-25.

<sup>55</sup> Entergy's March 27 Answer to Comments at 7.

<sup>56</sup> *Id.* at 7-8.

<sup>57</sup> *Id.* at 9.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

25. Entergy states that it does not plan its system to allow network customers to use any specific generation resource at any particular time,<sup>60</sup> and that it is not obligated to plan and construct its transmission system so that every resource is deliverable to every load at all times, without the need for additional upgrades or redispatch. Entergy submits that doing so would be exceedingly costly and inefficient, and that neither the OATT nor any applicable reliability standard requires such a transmission system.<sup>61</sup> Entergy states that the real issue in this proceeding does not concern Entergy's compliance with the OATT or applicable reliability standards, but instead is about congestion and who pays to relieve it, particularly when customers seek to designate new, and previously unplanned for, resources.<sup>62</sup>

### **NRG Companies' Response to Entergy's Answer**

26. NRG Companies argue that the Commission should not permit Entergy to include pre-existing overloads in its base case modeling for customer service requests under the OATT.<sup>63</sup> NRG Companies contend that Entergy's use of such modeling when evaluating transmission requests does not satisfy the overarching requirement that Entergy implement its OATT consistent with good utility practice and in a non-discriminatory manner.<sup>64</sup> NRG Companies maintain that, by adopting inconsistent base case models for reliability planning and for the evaluations of customer service requests, Entergy is shifting the funding of upgrades to its OATT customers.<sup>65</sup>

## **Discussion**

### **Procedural Matters**

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of the proceeding, the lack of undue prejudice or delay and the parties'

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 5.

<sup>62</sup> *Id.*

<sup>63</sup> NRG Companies April 12 Answer at 7.

<sup>64</sup> *Id.* at 8.

<sup>65</sup> *Id.*

interest, we find good cause to grant, under Rule 214, the untimely, unopposed motions to intervene of American Public Power Association and the Louisiana Public Service Commission.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept NRG Companies' April 12, 2006 answer, East Texas Cooperatives' April 21, 2006 answer, and Entergy's March 27, 2006 as amended on March 30, 2006 and May 8, 2006 answers, because they have provided information that assisted us in our decision-making process.

### **Analysis**

#### **Conversion and Rollover Requests**

29. LEPA essentially requests that it be allowed to: (1) convert its transmission service under its existing, grandfathered agreements to network transmission service under Entergy's and Cleco's OATTs; or (2) roll over, pursuant to Order No. 888, its existing transmission service to network transmission service under Entergy's and Cleco's OATTs. Significantly, under both scenarios, LEPA is requesting an entirely different transmission service than it is receiving under its existing grandfathered agreements.

30. We will deny LEPA's requests. As Entergy explains, it is willing to work with LEPA as to its request to convert its existing transmission service to service under Entergy's OATT. However, as Entergy points out, under a settlement agreement, LEPA is required to give one year's notice of its desire to convert its existing transmission service to service under Entergy's OATT.<sup>66</sup> LEPA has failed to provide that notice and, accordingly, we deny its request to convert.

31. With respect to LEPA's rollover request, we note that section 2.2 of Entergy's OATT provides that all firm customers (requirements and transmission-only), upon expiration of their contracts, or at the time their contracts become subject to renewal or rollover, have a right to continue to take service from their existing transmission provider.<sup>67</sup> LEPA, however, is not now seeking to continue to take transmission service

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<sup>66</sup> See Letter Order dated March 22, 1996 in Docket No. ER96-1114-000, accepting Settlement Agreement between LEPA and Entergy. Settlement Agreement at P 7. See also Entergy March 10 Answer at 15-16; LEPA Petition at 19.

<sup>67</sup> Entergy OATT, section 2.2 (Reservation Priority for Existing Firm Service Customers).

upon the expiration of its contracts, or at the time the contracts become subject to renewal or rollover. Rather, LEPA is seeking to terminate its existing transmission service prior to the expiration of its contracts (which terminate in 2014, at the earliest<sup>68</sup>) in favor of new transmission service that would commence immediately. Because LEPA's rollover request is not within the scope of the terms and conditions of section 2.2, we will dismiss its request.<sup>69</sup>

32. Moreover, even if LEPA's conversion and rollover requests were proper, we would deny its requests. LEPA is not simply seeking to convert or roll over the same transmission service that it is currently receiving under its existing grandfathered agreements. Rather, LEPA is requesting an entirely new transmission service that places different demands on the transmission systems of Entergy and Cleco. As the Commission explained in Order No. 888 with respect to rollover requests:

[I]f a customer chooses a new power supplier and this substantially changes the location or direction of the power flows it imposes on the transmission provider's system, the customer's right to continue taking transmission service from its existing transmission provider may be affected by transmission constraints associated with the change.<sup>70</sup>

33. While LEPA may request to convert or roll over its existing transmission service to a different transmission service, such request is, in effect, a request for new service and is necessarily subject to the availability of transmission capacity on the Entergy and Cleco systems. We find that Entergy and Cleco have properly considered LEPA's request for new transmission service. Their studies show that the new service requires transmission upgrades and that the requested service would not be available until the transmission provider completes construction of those upgrades. Absent LEPA's agreement to pay for such upgrades, Entergy and Cleco are under no obligation to

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<sup>68</sup> Entergy's Answer at 12, n.5.

<sup>69</sup> Because LEPA, at this time, has not met the threshold requirements for seeking conversion or rollover, we will not address in this proceeding its concerns, nor those of NRG Companies and East Texas Cooperatives, that Entergy and Cleco have deliberately added little or no transmission capacity in congested areas to the detriment of LEPA. As we noted in our April 24, 2006 order approving the ICT, interested parties will be able to air their concerns regarding transmission issues involving Entergy through a stakeholder process that the ICT will implement. *See* ICT Order at 115 FERC ¶ 61,095 at P 63-64. Interested parties may also present their concerns to the Commission pursuant to section 206 of the FPA.

<sup>70</sup> Order No. 888-A, at 30,198 n.52.

construct the necessary upgrades and to provide the transmission service to LEPA. In this regard, we note that under the Commission's pricing policy LEPA would be required to pay the higher of either Entergy's (or Cleco's) embedded costs (rolled-in rate) or the incremental costs of the system upgrade.<sup>71</sup> Thus, if LEPA wants the new service, assuming it has met the threshold requirements to obtain the service, it must pay for any necessary upgrades consistent with the Commission's pricing policy.

34. In the near future, the ICT of Entergy's system will conduct studies which will identify the upgrades necessary to meet applicable reliability standards on the Entergy system, including honoring existing long term firm service commitments and serving growth in network loads.<sup>72</sup> To the extent LEPA believes that Entergy did not accurately model its request for transmission, it may submit to the ICT a new request for service. As Entergy points out in its answer, under Entergy's OATT, LEPA will be charged under the Commission's "higher of" transmission pricing policy. If the costs of the upgrades are rolled in under that policy, the ICT will, once it is in place, analyze the upgraded facilities to determine whether such facilities should be designated as Base Plan Upgrades (which will continue to be rolled into base transmission rates) or Supplemental Upgrades (which will be directly assigned).<sup>73</sup>

#### **Section 217 of the FPA**

35. LEPA argues that new section 217 of the FPA<sup>74</sup> means that its "rollover [rights] cannot be blocked."<sup>75</sup> Specifically, LEPA relies on section 217(b)(2), which says that any load-serving entity:

[i]s entitled to use the firm transmission rights, or equivalent tradable or financial transmission rights, in order to deliver the output or purchased

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<sup>71</sup> See *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,005, at 31,137-38 (1994), *clarified*, 71 FERC ¶ 61,195 (1995) (Transmission Pricing Policy Statement).

<sup>72</sup> Base plan investments are eligible for recovery in transmission rates. All other upgrades are supplemental and are paid by the party requesting service.

<sup>73</sup> Entergy's Answer at 35.

<sup>74</sup> Pub. L. No. 109-58, § 1233(a), 119 Stat. 594, 957 (2005) (to be codified at 16 U.S.C. § 824q).

<sup>75</sup> Petition at 24.

energy, or the output of other generating facilities or purchased energy to the extent deliverable using the rights, to the extent required to meet the service obligation of the load-serving entity.<sup>[76]</sup>

36. LEPA, however, fails to meet this criterion. As discussed above, LEPA is not seeking rollover rights, but rather new and additional receipt and delivery points. In other words, LEPA's firm transmission rights do not encompass the generation resources from which it is seeking transmission, and electric energy from the other generation resources that it seeks to use is not "deliverable using the [firm transmission] rights" that LEPA currently has. Therefore, we find that section 217 does not, in fact, support LEPA's request for transmission from the new points of generation.

### **Section 211 of the FPA**

37. We propose to dismiss the applications under section 211 of the FPA because Entergy and Cleco have offered to provide the requested transmission service to LEPA under their OATTs. Entergy can accommodate LEPA's request, consistent with the rates, terms and conditions specified in its OATT regarding network upgrades and redispatch. Since the requested transmission service is available under Entergy's and Cleco's respective OATTs, the instant case appears to be moot.<sup>77</sup> Therefore, we will dismiss LEPA's section 211 petition unless LEPA can demonstrate, within 30 days of the date of this order, why we should not dismiss its request as moot.<sup>78</sup> We remind Entergy of its obligation to provide transmission service under its OATT and we therefore direct Entergy to accommodate LEPA's request in a timely manner, consistent with the terms and conditions of its OATT and our Transmission Pricing Policy Statement.

#### **The Commission orders:**

(A) LEPA's request to convert or roll over point-to-point transmission service to network transmission service as proposed under Entergy and Cleco's respective OATTs is denied, as discussed in the body of this order.

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<sup>76</sup> 119 Stat. 958 (to be codified at 16 U.S.C. § 824q(b)(2)).

<sup>77</sup> In any event, were we to grant LEPA's section 211 request, we would do so pursuant to the rates, terms and conditions of Entergy's and Cleco's OATTs.

<sup>78</sup> See *Laguna Irrigation District*, 91 FERC ¶ 61,340 (2000) (proposing to dismiss request for interconnection and to direct interconnection under the transmission provider's OATT).



(B) LEPA's petition pursuant to section 217 of the FPA is hereby denied, as discussed in the body of this order.

(C) LEPA's petition pursuant to section 211 of the FPA will be dismissed, effective 30 days from the date of this order, and Entergy and Cleco will be directed to provide transmission service pursuant to their OATTs, unless LEPA can demonstrate within 30 days of the date of this order, why the case should not be dismissed as moot, as discussed in the body of this order.

(D) If LEPA fails to demonstrate that its petition for transmission pursuant to section 211 of the FPA should not be dismissed, Entergy is hereby directed to accommodate LEPA's request for transmission under Entergy's OATT in a timely manner.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.