

120 FERC ¶ 61,104
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.

Entergy Services, Inc.

Docket No. ER07-927-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 30, 2007)

1. On May 22, 2007, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, Entergy), filed its 2007 annual rate redetermination (2007 Rate Redetermination) in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7 of its Open Access Transmission Tariff (OATT). In this order, we accept for filing Entergy's proposed 2007 Rate Redetermination, and suspend it for a nominal period, to become effective June 1, 2007, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. Entergy's OATT provides for an annual redetermination of rates for long-term and short-term firm point-to-point transmission service and non-firm transmission service and for network integration transmission service, based on actual data for the immediately preceding calendar year.¹ Entergy makes the rate redetermination filing on or about May 1 of each year with the redetermined rates becoming effective, subject to refund, for bills rendered on or after June 1 of that year for service during the preceding calendar month and remaining in effect for

¹ The annual rate redetermination formula was first established in a partial settlement approved by the Commission in Docket No. ER95-112-000. *Entergy Services, Inc.*, Opinion No. 430, 85 FERC ¶ 61,163 (1998), *order on reh'g*, 91 FERC ¶ 61,153 (2000).

twelve months. Rates are redetermined according to the formula as defined in Entergy's OATT.

3. Entergy's OATT provides that all parties, including the Commission's staff, shall have 120 days after each rate redetermination filing to review the redetermined rates and to file a complaint with the Commission regarding them. It also provides that the redetermined 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.² It further provides that a corrected filing of the redetermined rates shall be submitted to the Commission and, after final acceptance by the Commission, any required refund or surcharge shall be made to each customer on the next normal monthly billing.

Entergy's Filing

4. Entergy is seeking a network transmission service revenue requirement of \$434,234,516. Entergy proposes to increase its long-term firm transmission rate from \$1.22/kWh-Month to \$1.32/kWh-Month, which is an increase of 8.2 percent. Entergy also proposes to increase its short-term firm monthly transmission rate from \$1.29/kWh-Month to \$1.42/kWh-Month, which is an increase of 10.1 percent.³ Entergy proposes to increase its hourly on-peak non-firm transmission rate from \$0.00371 to \$0.00409/kWh, which is an increase of 10.2 percent.⁴

5. Entergy requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of June 1, 2007. Entergy states that the requested effective date of June 1, 2007 is provided for in section 7 of Appendix A to Schedule 7 and in section 5 of Appendix 1 to Attachment H of its OATT. Accordingly, Entergy asserts that waiver is appropriate because Commission policy permits such waiver where "the rate change and the effective date are prescribed by contract, such as annual rate revisions required by contract to become effective on a date specified in the contract..."⁵

² See Entergy Services, Inc., FERC Electric Tariff, Second Revised Vol. No. 3, Original Sheet Nos. 144-45.

³ In the instant filing, Entergy also proposes to increase its weekly and daily firm transmission service rates.

⁴ Entergy also proposes to increase its hourly off-peak non-firm transmission rate from \$0.00176/kWh to \$0.00194/kWh, which is an increase of 10.2 percent.

⁵ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

Notice, Interventions, and Protests

6. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 30,586 (2007), with protests or interventions due on or before June 12, 2007. Timely motions to intervene were filed by: Cleco Power LLC; East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (jointly); NRG Companies; the City of Prescott, the Conway Corporation, and the West Memphis Utilities Commission; and the City Water & Light Plant of the City of Jonesboro, Arkansas. A notice of intervention was filed by the Louisiana Public Service Commission. A timely motion to intervene and protest was filed jointly by South Mississippi Electric Power Association, the Arkansas Electric Cooperative Corporation, the Mississippi Delta Energy Agency and its members, the Public Service Commission of Yazoo City, Mississippi, and the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (collectively, Joint Intervenors). A timely motion to intervene, protest, and request for settlement proceeding was filed by the Louisiana Power Authority, the Lafayette Utilities System, and the Municipal Energy Agency of Mississippi (collectively, L-M Municipals). Entergy filed an answer to Joint Intervenors' and L-M Municipals' protests.

7. Joint Intervenors assert that the rates proposed in the filing may be excessive and therefore unjust and unreasonable and unduly discriminatory. They allege that further investigation through the discovery and complaint period will be required.

8. Joint Intervenors identify the following issues that they assert require further information: transmission rate base, transmission expense calculations, administration and general expenses, costs associated with the Entergy Services labor costs, and accumulated deferred income taxes. They maintain that further analysis and inquiry is required to determine whether the costs associated with Katrina and Rita are recorded in Entergy's Regulatory Asset account(s), its operation and maintenance (O&M) expenses, or plant in service. Joint Intervenors also state that further investigation is needed to determine whether Entergy has removed all of the Independent Coordinator of Transmission costs from its transmission rates and placed them in Schedule 10.⁶

9. L-M Municipals contend that increases in the return component and the total transmission expense components of Entergy's transmission rate formula have resulted in an increase in the long-term firm transmission rate from the existing settlement rate. L-M Municipals state that for network customers these increases result in an increase in Entergy's revenue requirement of \$43.6 million to \$434.2 million, which Entergy has not explained. Therefore, L-M Municipals request that the Commission establish settlement judge proceedings to enable Entergy to justify and explain its rate to customers.

⁶ Joint Intervenors' Protest at 12.

Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notice of intervention and timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

B. Proposed Annual Rate Redetermination

11. Entergy's 2007 Rate Redetermination raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

12. Our preliminary analysis indicates that the proposed 2007 Rate Redetermination has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the 2007 Rate Redetermination for filing, suspend it for a nominal period, make it effective June 1, 2007,⁷ subject to refund, and set it for hearing and settlement judge procedures.

13. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to

⁷ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

⁸ 18 C.F.R. § 385.603 (2007).

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Entergy's 2007 Rate Redetermination is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2007, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Entergy's proposed 2007 Rate Redetermination. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.