

124 FERC ¶ 61,125
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 Arkansas, Inc. Docket No. ER08-750-000

Entergy Arkansas, Inc. Docket No. ER08-751-000

Entergy Arkansas, Inc. Docket No. ER08-752-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE UPDATE,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES
AND CONSOLIDATING PROCEEDINGS

(Issued July 31, 2008)

1. In this order, we accept for filing the City of Osceola, Arkansas (Osceola) 2008 Wholesale Formula Rate Update (2008 Update) in Docket No. ER08-750-000, and suspend it for a nominal period, to become effective March 1, 2008, as requested, subject to refund. We also establish hearing and settlement judge procedures, and consolidate this proceeding with the ongoing proceedings in Docket Nos. ER08-751-000 and ER08-752-000.¹

I. Background

2. On March 28, 2008, Entergy Services, Inc. (Entergy) filed the 2008 Update on behalf of Entergy Arkansas, Inc. (Entergy Arkansas) to redetermine the formula rate charges and the transmission loss factor in accordance with the Power Coordination,

¹ Docket Nos. ER08-751-000 and ER08-752-000 are addressed by separate Commission orders to be issued concurrently with this one.

Interchange and Transmission Service Agreements between Entergy Arkansas and Osceola, as well as settlements of prior updates (Agreements).

3. Entergy Arkansas requests that the redetermined charges and transmission loss factor become effective March 1, 2008, in accordance with the Agreements.

II. Notice of Filing and Responsive Pleadings

4. Notice of Entergy Arkansas' filing was published in the *Federal Register*, 73 Fed. Reg. 19,210 (2008), with comments, protests or interventions due on or before April 18, 2008.² On April 18, 2008, Arkansas Electric Cooperative Corporation (AECC) filed a motion to intervene and Osceola and the City of Hope, Arkansas (Hope) (collectively, Arkansas Cities) filed a joint protest and motion to consolidate this proceeding with the proceedings in Docket Nos. ER08-751-000 and ER08-752-000.³ On June 2, 2008, Arkansas Cities supplemented their protest with additional comments.

5. In their initial pleading Arkansas Cities state that Entergy Arkansas will file its FERC Form No. 1 annual report by April 18, 2008, and because they have until June 1, 2008 to file additional comments, they reserve the right to make further comments in the future. Arkansas Cities also move to consolidate Docket Nos. ER08-751-000 and ER08-752-000 with this proceeding because the filings are similar and pertain to Entergy Arkansas' 2008 Wholesale Formula Rate Update. They contend it is in the public interest to consolidate these proceedings and that the cases are likely to result in settlements. They also point out that last year's proceedings were consolidated as well, and that counsel for AECC has stated to Arkansas Cities that AECC does not oppose consolidation.

6. In their June 2, 2008 supplement to their protest, Arkansas Cities raise a number of concerns: (1) how any start-up costs associated with Entergy's past efforts at developing a Regional Transmission Organization and Independent Coordinator of Transmission are being dealt with in this proceeding; (2) how costs associated with hurricanes Rita and Katrina are being allocated; (3) the incentive compensation plans allocated to Entergy Arkansas; (4) the decrease in the net capability for owned and firm purchased capability; (5) whether Entergy Arkansas can collect its MSS-3 costs in the energy rate and how

² The Agreements provide that, because Entergy Arkansas' FERC Form No. 1 annual report was to be filed April 18, 2008, Osceola would have until June 1, 2008 to review the calculation of the rate redetermination and file comments.

³ All three reflect separate 2008 Wholesale Formula Rate Updates for each entity. Docket No. ER08-751-000 was submitted for AECC and Docket No. ER08-752-000 was submitted for the City of West Memphis, Arkansas, the City of Prescott, Arkansas, Hope, the City of North Little Rock, Arkansas, and the City of Thayer, Missouri.

such costs would be collected; (6) the increase in total administrative and general Operation and Maintenance (O&M) expenses; (7) increases in taxes other than income taxes; (8) how Independent Power Producer (IPP) investment in transmission is being handled and if Entergy Arkansas has refunded any IPP investment through transmission service credits; (9) the increase in production O&M expenses; (10) the increase in transmission O&M expenses; and (11) how the City Water & Light Plant of Jonesboro, Arkansas' transmission agreement is being treated under the current filing and whether it is being subsidized by other customers.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. All the motions to intervene were timely filed because they all met the settlement deadline for comments, which as previously mentioned, was June 1, 2008.

B. Hearing and Settlement Judge Procedures

8. Entergy Arkansas' 2008 Update raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

9. Our preliminary analysis indicates that Entergy Arkansas' 2008 Update has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy Arkansas' 2008 Update for filing, suspend it for a nominal period, make it effective March 1, 2008, subject to refund, and set it for hearing and settlement judge procedures.

10. 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.⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁴ 18 C.F.R. § 385.603 (2008).

otherwise, the Chief Judge will select a judge for this purpose.⁵ 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 continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

11. Given the common issues of law and fact, we will grant the Arkansas Cities' motion to consolidate this proceeding with the ongoing proceedings in Docket Nos. ER08-751-000 and ER08-752-000 for purposes of settlement, hearing and decision.

The Commission orders:

(A) Entergy Arkansas' proposed 2008 Update is hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2008, as requested, subject to refund, as discussed in the body of this order.

(B) Docket No. ER08-750-000 is hereby consolidated with Docket Nos. ER08-751-000 and ER08-752-000.

(C) 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., Ch. I), a public hearing shall be held concerning Entergy Arkansas' 2008 Update. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), 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.

⁵ 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 Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(E) 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.

(F) 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.