

128 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Arkansas, Inc.

Docket No. ER09-877-000

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

(Issued August 4, 2009)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) 2009 Wholesale Formula Rate Update (2009 Update) for the City of Osceola, Arkansas, and suspend it for a nominal period, to become effective March 1, 2009, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. On March 23, 2009, Entergy Services, Inc. (Entergy) filed the 2009 Update on behalf of Entergy Arkansas to redetermine the formula rate charges and the transmission loss factor in accordance with the Power Coordination, 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, 2009, in accordance with the Agreements.

II. Notice of Filing and Responsive Pleadings

4. Notice of Entergy Arkansas' filing was published in the *Federal Register*, 74 FR 14795 (2009), with comments, protests or interventions due on or before April 13, 2009.¹ On March 31, 2009, Entergy filed corrections in its supporting workpapers. The

¹ Entergy states that the Agreements provide that, because Entergy Arkansas' FERC Form No. 1 annual report was to be filed April 18, 2009, interested parties would have until June 1, 2009 to review the calculation of the rate redetermination and file comments.

Arkansas Electric Cooperative Corporation filed a motion to intervene and Osceola filed a protest and motion to intervene. On June 2, 2009, Osceola supplemented its protest with additional comments.

5. Osceola also states that it submitted initial data requests to Entergy on April 20, 2009, and Entergy informed Osceola that it would not be submitting responses to these data requests until after June 1, 2009. Osceola states that since Entergy has not submitted responses to the data request, Osceola was unable to fully analyze Entergy's filing, and therefore reserves the right to make more substantive comments in the future. Osceola also raises a number of concerns with Entergy's filing: (1) the amount of accumulated deferred income taxes included in the filing; (2) the increase in transmission operation and maintenance expense; (3) the incentive compensation plan allocated to Entergy Arkansas; (4) the reduction in Entergy Arkansas' owned capability and net capability calculation disparity; (5) a disparity in Entergy Arkansas' energy rate inputs; (6) why taxes other than income taxes have increased; (7) how independent power producer investment in transmission is being handled and if Entergy Arkansas has refunded any independent power producer investment through transmission service credits; (8) why there was an increase in production operation and maintenance expenses; (9) how costs associated with the recovery efforts due to the Hurricanes Rita and Katrina are being allocated; and (10) the nuclear depreciation rate.

III. Discussion

A. Procedural Matters

6. 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.

B. Hearing and Settlement Judge Procedures

7. Entergy Arkansas' proposed 2009 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.

8. Our preliminary analysis indicates that Entergy Arkansas' proposed 2009 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' proposed 2009 Update for filing, suspend it for a nominal period, make it effective March 1, 2009, subject to refund, and set it for hearing and settlement judge procedures.

9. While we are setting these matters for a trail-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.² 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.³ 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.

The Commission orders:

(A) Entergy Arkansas' proposed 2009 Update is hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2009, as requested, 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 Arkansas' proposed 2009 Update. 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 (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

² 18 C.F.R. § 385.603 (2008).

³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone (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).

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.