

110 FERC ¶ 61,373
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Entergy Services, Inc.

Docket No. ER03-363-003

ORDER ON REHEARING

(Issued March 28, 2005)

1. In this order, we address the request for rehearing filed by Arkansas Electric Cooperative Corporation (AECC) of the Commission's letter order issued in this proceeding on July 2, 2003.¹ The July 2 Order accepted for filing a long-term, firm, point-to-point transmission service agreement between Entergy Services, Inc. (Entergy) and City Water and Light of the City of Jonesboro, Arkansas (Jonesboro) (Jonesboro TSA). As discussed below, we will deny AECC's rehearing request.
2. This order benefits customers by recognizing the effect of settlements intended to avoid protracted litigation.

Background

3. Under the Jonesboro TSA, Entergy will provide Jonesboro with 251 MW of firm point-to-point transmission service from January 1, 2003 to January 1, 2016. The TSA specifies a charge of \$19,404,304, including facility upgrades, tax gross-ups, and operations and maintenance. Jonesboro has agreed to pay this charge as Entergy incurs the expenses estimated to be involved in making upgrades to designated receipt and delivery points on Entergy's and Jonesboro's system. The total cost collected by Entergy from Jonesboro is considered to be prepayment for transmission service. At the time Entergy filed the Jonesboro TSA, it estimated that the prepayment would yield an effective rate for transmission service of \$1.00/kW-month for the 13-year contract period.

¹ *Entergy Services, Inc.*, 104 FERC ¶ 61,028 (2003) (July 2 Order).

4. AECC protested the Jonesboro TSA, expressing concern about potential cross-subsidization and asserting that it and other transmission customers may be asked to pay costs that are not appropriately allocated to them. AECC argued that Entergy's filing did not provide sufficient information to establish that it would collect no more or less than the cost of service being provided. AECC further argued that Entergy's filing lacked both support for the underlying cost estimates and information as to how Entergy translated the \$19,404,304 charge into the estimated effective rate of \$1.00/kW-month. AECC contended that Entergy failed to furnish the Commission with reasonable assurance that the derived \$1.00/kW-month rate would be higher than the system average rate that Entergy's other transmission customers will be obliged to pay and that, therefore, the Jonesboro rate violated the Commission's Transmission Pricing Policy Statement² and, more specifically, the Commission's "higher of" pricing policy.

5. In its answer to AECC's protest,³ Entergy stated that, per the Commission's "higher of" pricing policy, it had determined that the incremental cost-based rate was higher than the \$0.98/kW-month embedded cost-based rate then in effect. Entergy argued that, under "higher of" pricing, the transmission provider (not the transmission customer) has the option of charging the higher of an embedded cost rate (including the costs of the upgrades) or an incremental cost rate. Entergy asserted that, for the transmission upgrades required under the Jonesboro TSA, the incremental cost rate is higher than the embedded cost rate (including the costs of the upgrades). Entergy explained that the then-current rate for transmission on the Entergy transmission system, without the addition of transmission upgrades, was approximately \$0.98/kW-month, based on an approximately \$302 million transmission system revenue requirement. Entergy further asserted that the transmission upgrades planned as a result of the Jonesboro TSA result in an approximately \$2.3 million addition to this revenue requirement, which would increase the rate by \$0.01/kW-month to \$0.99/kW-month.

² *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, FERC Stats. & Regs. ¶ 31,005 (1994), *clarified*, 71 FERC ¶ 61,195 (1995) (Transmission Pricing Policy Statement). In its Transmission Pricing Policy Statement, the Commission recognized "higher of" pricing, but stated that it will consider a broad range of rate design proposals, as long as such proposals meet certain principles. Under "higher of" pricing, when a transmission owner would be required to add transmission assets in order to respond to a request for new or expanded transmission service, the Commission allows the transmission owner to charge transmission customers the higher of either the rolled-in embedded cost for the system as expanded (i.e., a rolled-in rate, which includes expansion costs) or the incremental expansion cost (i.e., a rate based on only expansion costs), but not the sum of the two. *Id.* at 31,137-38.

³ The Commission allowed Entergy's answer. July 2 Order at P 7.

Entergy stated that this calculation demonstrates that the Jonesboro TSA incorporates a rate (\$1.00/kW-month) above the embedded cost rate.

6. Entergy further asserted that it was confident that the total cost included in the Jonesboro TSA represented a fair estimate of project costs, with minimal variance from the final actual project costs. Entergy stated that any costs above estimated costs would be charged to Jonesboro, subject to Commission approval, under the provisions of Entergy's Open Access Transmission Tariff (OATT). However, Entergy asserted that, if there are any cost overruns that cannot be assessed to Jonesboro under the OATT provisions (a highly unlikely event, according to Entergy), those costs would be included in the rate paid by transmission customers. Entergy maintained that this is a fair result, because system upgrades benefit all users.

7. In its response to Entergy's answer, AECC argued that the central purpose of the Transmission Pricing Policy Statement is to hold the embedded cost rate customer harmless, and that this goal cannot be achieved by mechanical comparison of the rate for the proposed incremental service with the embedded cost rate that happens to be in effect on the day the incremental service contract is signed. AECC stated that the relevant question is whether there is sufficient reason to believe that the incremental rate in the Jonesboro TSA would be less than the embedded cost rate over the life of the TSA. AECC asserted that Entergy should have shown and supported reasonable projections of future embedded cost rates,⁴ and if it could not, Entergy may not avail itself of the "higher of" option.

July 2 Order

8. In the July 2 Order, the Commission accepted the Jonesboro TSA for filing, effective January 1, 2003. Relevant to AECC's concerns, we stated:

[While AECC is] concerned about potential cross-subsidization . . . [t]hese concerns are more appropriately raised in the context of rate proceedings where rates to AECC . . . are at issue, and not in this case. In fact, [Louisiana Generating LLC] recognized in its protest that this issue can be addressed in Entergy's next rate redetermination.⁵

⁴ On this point, AECC argues that incremental cost pricing is not an acceptable alternative unless there is a reasonable assurance that over the span of a transmission service agreement, the new customer requiring expanded facilities will pay at least as much as existing customers for its use of the grid.

⁵ July 2 Order at P 8 (footnote omitted).

Request for Rehearing

9. On rehearing, AECC reiterates its previous cross-subsidization arguments and asserts that the Commission accepted the Jonesboro TSA in contravention of the Transmission Pricing Policy Statement. AECC argues that, by finding that AECC's concerns were more appropriately raised in Entergy's next rate redetermination proceeding, the Commission disregarded AECC's legal claim in this proceeding. AECC states that it did not come to the Commission with a general plea for protection from cross-subsidization, but rather the specific legal contention that the Commission may not accept the Jonesboro TSA because it directly contradicts established Commission policy. More specifically, AECC contends that the Transmission Pricing Policy Statement gives transmission owners a "higher of" option, not a "lower of" option, while, under the Jonesboro TSA, Entergy may charge Jonesboro the lower incremental cost rate (rather than a higher embedded cost rate).

10. AECC argues that it is not apparent how anything that might happen in a subsequent rate proceeding involving AECC's rates could undo the Commission's approval of the Jonesboro TSA at issue here. AECC maintains that Entergy clearly believes that it will have the absolute right to recover all of its system transmission costs under the annual rate redetermination formula and that the July 2 Order erroneously does nothing to disabuse Entergy of that expectation. AECC argues that, if the Commission's acceptance of the Jonesboro TSA is to stand, there is only one way that AECC could be fully protected from having to subsidize a below-cost Jonesboro rate via a subsequent rate redetermination proceeding: the Commission must make absolutely clear that Entergy alone bears the risk of under-recovery under the Jonesboro TSA. AECC contends that, at the very least, the Commission should have suspended and set for hearing issues concerning the justness and reasonableness of the Jonesboro rate.

Discussion

11. We will deny AECC's request for rehearing. Subsequent to the July 2 Order, in Docket No. ER04-638-000, Entergy submitted proposed revisions to its transmission service rate formula, removing from the embedded cost rate calculation any revenues generated under incrementally-priced contracts, as well as the loads associated with such contracts. These contracts include the Jonesboro TSA. AECC intervened in that case and raised the same concerns it has raised here, namely, that embedded cost customers may be forced to subsidize Entergy's incremental cost rates when those rates fall short of collecting a load-ratio share of Entergy's transmission revenue requirement. By order issued May 6, 2004,⁶ the Commission accepted and suspended the proposed tariff

⁶ *Entergy Services, Inc.*, 107 FERC ¶ 61,119 (2004).

revisions and established hearing and settlement judge procedures.

12. On October 22, 2004, Entergy filed an uncontested settlement agreement in Docket No. ER04-638-000, which removed from Entergy's formula rate calculation any revenues collected under the Jonesboro TSA for years 2003 and 2004 and the associated loads. The settlement specifies that Entergy will calculate the OATT transmission service rates in Docket No. ER04-886-000, Entergy's 2004 OATT rate redetermination proceeding, by treating the revenues and loads related to the Jonesboro TSA as proposed in Entergy's March 11, 2004 filing in Docket No. ER04-638-000 and as implemented by the revised tariff sheets attached to the settlement. Intervenors in Docket No. ER04-638-000, including AECC, agreed not to oppose this treatment of the Jonesboro TSA. The settlement's terms for the Jonesboro TSA continue through April 30, 2006. The Commission approved the settlement on January 25, 2005.⁷

13. We find that the settlement resolves AECC's concerns through April 30, 2006. In addition, the settlement also states that Entergy is to inform the parties in Docket No. ER04-638-000 no later than 45 days prior to filing any change in the formula rate treatment of incrementally-priced contracts. When Entergy seeks to revise its formula rate treatment of the Jonesboro TSA, AECC may raise its concerns, if any, at that time.

The Commission orders:

AECC's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷ *Entergy Services, Inc.*, 110 FERC ¶ 61,051 (2005).