

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket Nos. ER06-706-000  
ER06-706-001

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

(Issued July 26, 2006)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) 2006 Wholesale Formula Rate Update (2006 Update), and suspend it for a nominal period, to become effective March 1, 2006, as requested, subject to refund. We also establish hearing and settlement judge procedures.

**Background**

2. On March 8, 2006, as amended on March 23, 2006, Entergy Services, Inc. (Entergy Services) filed the 2006 Update on behalf of Entergy Arkansas to redetermine the formula rate charges and the Transmission Loss Factor in accordance with various agreements and settlements it has with numerous customers.<sup>1</sup> Additionally, the filing

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<sup>1</sup> The 2006 Update is filed in accordance with: (1) the Power Coordination, Interchange, and Transmission Service Agreements (PCITA) between Entergy Arkansas and the City of Osceola, Arkansas (Osceola), the Cities of Campbell and Thayer, Missouri (Missouri Cities), and the Arkansas Electric Cooperative Corporation (AECC); (2) the Transmission Service Agreement between Entergy Arkansas and the City of Hope, Arkansas (Hope); (3) the Network Integration Transmission Service Agreements between Entergy Arkansas and the Cities of North Little Rock, Arkansas and West Memphis, Arkansas (West Memphis); (4) the 1994 Joint Stipulation between Entergy Arkansas and AECC accepted by the Commission in Docket No. ER95-49-000 (unpublished letter order), as revised by the 24th Amendment to the AECC PCITA on March 26, 1996 in Docket No. ER96-1116 (unpublished letter order); (5) the formula rate revisions accepted by the Commission on February 21, 1995 in Docket No. ER95-393-000 (unpublished letter order), as applicable to Hope, Osceola, the City of Prescott,

(continued...)

redetermines the distribution rate charged to: (1) the Cities of North Little Rock, Arkansas and West Memphis under the Network Integration Transmission Service Agreements between Entergy Arkansas and those Cities, and (2) Prescott under Service Agreement No. 1, Schedule 5 of the Open Access Transmission Tariff between Entergy Arkansas and Prescott.

3. Entergy Arkansas requests waiver of the Commission's 60-day prior notice requirement, so that the 2006 Update is effective on March 1, 2006, in accordance with the Agreements.

### **Notice of Filings and Responsive Pleadings**

4. Notices of the filings were published in the *Federal Register*, 71 Fed. Reg. 14,195 (2006), 71 Fed. Reg. 17,088 (2006), and 71 Fed. Reg. 23,914 (2006), with comments, interventions, and protests due on or before March 29, 2006, April 13, 2006, and May 5, 2006, respectively. AECC filed a timely motion to intervene. Arkansas Cities and Cooperative (ACC)<sup>2</sup> filed a timely motion to intervene and protest. Entergy Services filed an answer.

5. ACC raises a variety of issues and requests that the filing be set for hearing. Among other things, it expresses concern that Entergy Arkansas has not adequately supported the formula rate redetermination. Specifically, ACC states that certain cost components, including O&M labor costs and administrative and general expenses, reflect inaccurate totals. ACC also objects to the net capability calculation. It expresses concern about the effect of certain other pending Entergy Services cases on the instant proceeding, including the Purchase Power Agreements at issue in Docket No. ER03-583-000.<sup>3</sup>

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Arkansas (Prescott) and the Missouri Cities; (6) the settlement accepted by the Commission on July 2, 1999 in *Entergy Services Inc.*, 88 FERC ¶ 61,020 (1999); (7) the settlement accepted by the Commission on September 16, 2004 in *Entergy Services Inc.*, 108 FERC ¶ 61,238 (2004); and (8) the settlement accepted by the Commission on July 22, 2005 in *Entergy Services Inc.*, 112 FERC ¶ 61,091 (2005) (collectively, Agreements).

<sup>2</sup> Arkansas Cities and Cooperatives consist of: Osceola, Prescott, the West Memphis Utilities Commission, the Conway Corporation, and Farmer's Electric Cooperative Corporation.

<sup>3</sup> On June 30, 2005, the Presiding Judge issued an initial decision in that proceeding. The initial decision is currently pending before the Commission. See *Entergy Services, Inc.*, 111 FERC ¶ 63,077 (2005).

## **Discussion**

### **Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F. R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy Arkansas' answer and will, therefore, reject it.

### **Hearing and Settlement Judge Procedures**

8. Entergy Arkansas' 2006 Update 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.

9. Our preliminary analysis indicates that Entergy Arkansas' filing 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 Entergy Arkansas' 2006 Update for filing, suspend it for a nominal period, make it effective March 1, 2006,<sup>4</sup> as requested, 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.<sup>5</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

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<sup>4</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (the Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

<sup>5</sup> 18 C.F.R. § 385.603 (2005).

otherwise, the Chief Judge will select a judge for this purpose.<sup>6</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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' 2006 Update is hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2006, 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' 2006 Update. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2005), 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 sixty (60) days of the date of this order, 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

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<sup>6</sup> 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](http://www.ferc.gov) – click on Office of Administrative Law Judges).

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 )

Magalie R. Salas,  
Secretary.