

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. ER06-1088-000

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

(Issued August 8, 2006)

1. On June 1, 2006, Entergy Services, Inc., as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (Entergy), filed its 2006 annual rate redetermination (2006 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). The Commission accepts the filing and suspends it for a nominal period to be effective June 1, 2006, subject to refund, and establishes 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 twelve months. Rates are redetermined according to the formula rates 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

¹The 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).

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

Entergy's Filing

4. Entergy filed its 2006 Rate Redetermination on June 1, 2006, and requested an effective date of June 1, 2006. Entergy is seeking a network transmission service revenue requirement of \$394,454,206. Entergy proposes to increase its long-term firm transmission rate, from \$1.11/kW per month to \$1.22/kW per month, which is an increase of \$0.11/kW per month (9.9 percent increase). Entergy also proposes to increase its short-term firm transmission rate from \$1.18/kW per month to \$1.29/kW per month, which is an increase of \$0.11/kW per month (9.3 percent increase).

5. Entergy requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of June 1, 2006.

Notice, Interventions, and Protests

6. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 34,913 (2006), with protests or interventions due on or before June 22, 2006. Timely motions to intervene were filed by: Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (jointly); East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc, and Tex-La Electric Cooperative of Texas, Inc. (jointly); the City Water & Light Plant of the City of Jonesboro, Arkansas (CWL), the Louisiana Power Authority (LEPA), the Lafayette Utilities System (LUS), and the Municipal Energy Agency of Mississippi (MEAM) (LEPA, LUS, and MEAM collectively, "L-M Municipals"). A timely motion to intervene and protest was filed jointly by the Arkansas Electric Cooperative Corporation (AECC), the Mississippi Delta Energy Agency (MDEA) and its members, the Public Service Commission of Yazoo City, Mississippi (Yazoo City), the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale) and South Mississippi Electric Power Association (SMEPA), (collectively, "Joint Intervenors"). An additional timely motion to intervene and protest was filed by the Cities of Prescott, Arkansas, the Conway Corporation, and the West Memphis Utilities Commission (AC). On July 7, 2006, Entergy filed an answer in response to the protests and the outcome of the hearing and settlement judge procedures established herein.

7. Joint Intervenors state that the rates proposed in the filing may be excessive and therefore unjust and unreasonable and unduly discriminatory. They allege that more information will be needed to determine the reasonableness of Entergy's rate increase in

² See Entergy's OATT, Schedule 7 at 7.

light of the uncertainty surrounding Entergy's treatment of the damage it sustained from hurricanes Katrina and Rita in 2005. They note that rather than including those costs as a cost in that year, Entergy has deferred those expenses as a Regulatory Asset. Joint Intervenors assert that closer examination of Entergy's accounting treatment is warranted in light of the sizable hurricane damage costs. In addition, Joint Intervenors state that Entergy's filing has not clearly identified how much of its capitalized cost stemming from the hurricane damage has been included in the instant rate filing. Joint Intervenors further state that in order to assess the appropriateness of these expenses, and, in turn, the reasonableness of Entergy's proposed rates, further analysis and discovery will be required.

8. Furthermore, Joint Intervenors also identified the following issues or potential issues: transmission rate base, transmission plant in service, general plant accumulated depreciation, revenue credits, rate divisor, and transmission expense calculations.³ They maintain that further analysis and inquiry is required to determine whether all revenue credits and loads have been accounted for and reconciled in Entergy's filing to insure that Entergy's revenue requirements and rates are not excessive.

9. AC states that there seems to be discrepancies in the following areas that require further examination: tax rates; network transmission service revenue requirement items; and prepayments. AC is also concerned about the allocation of the costs of the hurricanes in the context of administrative and general expenses and labor ratios. AC claims that there could be a problem with Entergy's Independent Power Producer's (IPP) Prepayment credits shown on Exhibit D.16 and on page 269 of Entergy Arkansas' Form 1. AC also states that the Panda UPP on Exhibit D.16.2.1 shows a zero balance while Entergy Arkansas' Form 1, line 15 shows a balance of \$1,918,550. In addition, AC alleges that they are currently being charged excessive rates regarding Energy Imbalance Services (EIS) by methods used by Entergy that are in fact eliminating protections from these types of charges that section II of the OATT (regarding return-in-kind provisions) are designed to prevent. AC requests that the Commission determine that section II.C. of Schedule 4 should not be applicable to imbalances within the +/- 1.5 percent deviation band. City of Prescott alternatively asks that the Commission waive section II.C.

10. In response to AC's EIS concerns, Entergy states that the issues AC is concerned about are outside the scope of this proceeding. Entergy states that it does not propose any modifications to its existing Schedule 4 (Energy Imbalance) in this proceeding, and the rate structure in Schedule 4 is unaffected by the 2006 Rate Redetermination Filing.

11. With regard to the IPP prepayment credits issue, Entergy states that AC's concerns arise from a misunderstanding of the different reporting under Form 1 and the instant

³ Joint Intervenors state that the issues set forth in their protest should not be considered exhaustive, but merely include those issues that they have been able to identify at this time.

filing. It states that the Form 1 reports all remaining deferred credits, which includes project costs that are eligible for refund through service credits, prepaid amounts that were collected for construction and tax gross-up amounts that have not yet been spent or refunded, and the amount placed in deferred credits through a bankruptcy settlement agreement. In contrast, Entergy states that Exhibit D.16.2.1 reports only deferred credits for projects that have been placed in service and that will be refunded to the IPP through transmission service credits. Entergy thus asserts that it has appropriately accounted for the IPP credits and that AC's concerns should be ignored.

12. Additionally, regarding the remaining issues raised by the intervenors, including hurricane-related cost issues, Entergy states that it has provided adequate analysis for their determination, but will respond to appropriate data requests. Finally, Entergy urges setting this proceeding for settlement judge procedures.

Discussion

A. Procedural Matters

13. 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.

14. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer because it has provided information that assisted us in our decision-making process.

B. Proposed Annual Rate Redetermination

16. With one exception, Entergy's 2006 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. However, with regard to the EIS issues raised by AC, Entergy has proposed no changes to this provision. We will therefore decline to address this issue because it is beyond the scope of this proceeding. The appropriate course of action is for AC to file a complaint in a separate proceeding to raise this issue.⁴ This procedure provides all interested parties notice that a complaint or request for waiver has been filed, and provides them an opportunity to respond.

17. Our preliminary analysis indicates that the proposed 2006 Rate Redetermination has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly

⁴ *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040 at 61,062 (1990).

discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the 2006 Rate Redetermination for filing, suspend it for a nominal period, to become effective June 1, 2006,⁵ subject to refund and set it for hearing and settlement judge procedures.

18. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ 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.⁷ 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's 2006 Rate Redetermination is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2006, subject to refund and the outcome of the hearing and settlement judge procedures established herein.

(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 the justness and reasonableness of Entergy's proposed 2006 Rate Redetermination. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

⁵ See *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁶ 18 C.F.R. ¶ 385.603 (2006).

⁷ 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. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(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 in writing or by telephone 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 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 conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such 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.