

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. ER07-38-000

ORDER ACCEPTING PROPOSED SERVICE AGREEMENTS

(Issued December 12, 2006)

1. In this order, we will accept proposed service agreements that include non-power goods and services cost allocation methods, as requested by Entergy Services, Inc. (Entergy Services)¹ to be effective February 8, 2006, as requested.

Background

2. On October 13, 2006, Entergy Services filed, pursuant to section 1275(b) of the Public Utility Holding Company Act of 2005 (PUHCA 2005)² and section 205 of the Federal Power Act (FPA),³ five service agreements containing cost allocation methods to be effective February 8, 2006.⁴ Entergy Services asserts that the allocation methods set forth in the five agreements were previously accepted by the Securities and Exchange

¹ Entergy Services acted on behalf of itself, its associate company Entergy Operations, Inc. (Entergy Operations), and its affiliated public utilities Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc. and Entergy New Orleans, Inc. (collectively, Entergy Utilities).

² Public Utility Holding Company of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (PUHCA 2005).

³ 16 U.S.C. § 824d (2000).

⁴ Entergy Services provides one generic service agreement used between Entergy Services and Entergy Utilities, and four specific service agreements used between Entergy Operations and Entergy Utilities.

Commission (SEC) pursuant to regulations promulgated under the Public Utility Holding Act of 1935 (PUHCA 1935).⁵ Entergy Services notes that the Commission issued an order repealing PUHCA 1935 and implementing PUCHA 2005.⁶ Entergy Services states that with the repeal of PUHCA 1935, the Commission's authorization of the cost allocation methods will allow Entergy Services to continue to benefit from having a single federal forum for reviewing and approving service company cost allocation methods, thereby promoting certainty and consistency in the allocation of service charges among the Entergy Utilities and allowing the Entergy system to continue to maximize the efficiencies gained from the use of centralized service companies.

3. It explains that Entergy Services and Entergy Operations are direct, wholly-owned subsidiaries of the Entergy Corporation (Entergy). Entergy Services states that both Entergy Services and Entergy Operations were organized by Entergy, following approval by the SEC under PUHCA 1935, to act as centralized subsidiary services companies in order to obtain the benefits from the consolidation of administrative and support services and, in the case of Entergy Operations, nuclear plant operating, management, and other technical services. Entergy Services also notes that as subsidiary service companies of Entergy, which was formerly a registered holding company under PUHCA 1935, Entergy Services and Entergy Operations generally were required to charge "cost" for the services they provided to their associated companies. Further, Entergy Services notes that, pursuant to an SEC order, Entergy Services received approval for it and other regulated subsidiary companies, including the Entergy Utilities, to deviate from the "at cost" standards of PUCHA 1935 and to charge "at cost plus five percent" for services performed for Entergy's "non-regulated" subsidiaries, including Entergy Enterprises, Inc.

⁵ EPAct 2005, among other things, repealed the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 *et seq.* (2000), and enacted the Public Utility Holding Company Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.* 119 Stat. 594, 972-78 (2005).

⁶ *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 Fed. Reg. 75,592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *reh'g pending*.

4. Entergy Services explains that the PUHCA 2005 Regulations also include section 366.5, which duplicates the language of section 1275(b) of EPAct 2005, and adds that “[s]uch election to have the Commission review and authorize cost allocations shall remain in effect until further Commission order.”⁷

5. Entergy Services states that since 1963 Entergy Services has been authorized to conduct business as a service company for the Entergy system pursuant to orders issued by the SEC under PUHCA 1935. Entergy Services further states that Entergy Services provides centralized management, administrative, technical and other support services solely to its associate companies in the Entergy system. Entergy Services states that its costs associated with providing such services are allocated and charged to the Entergy Utilities using a project-based system and various allocation methods.

6. Entergy Services states that Entergy Operations is a nuclear management service company that has full operational responsibility for nuclear generating plants owned by certain Entergy Utilities. Entergy Services further states that it has formed Entergy Operations as a centralized subsidiary service company in order to generate savings and efficiencies from the consolidation of nuclear management functions across the Entergy utility system. Entergy Services explains that similar to itself, all of Entergy Operation’s costs of providing services that are not directly assignable to a particular plant owner are allocated and billed to plant owners based upon various allocation methods.

7. Entergy Services states that the Commission indicated in Order Nos. 667 and 667-A that “at cost” pricing of non-power goods and services provided by traditional, centralized service companies such as Entergy Services and Entergy Operations to associate public utilities is presumed to be reasonable.⁸ Moreover, Entergy Services states that it and Entergy Operations, consistent with the Commission’s Order No. 667, will continue to charge cost for services provided to the Entergy Utilities.

⁷ 18 C.F.R. § 366.5(a) (2006).

⁸ See Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, Order No. 667, 70 Fed. Reg. 75,592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 at P 14, 169 (2005), *order on reh’g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213 at P 38, *order on reh’g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *reh’g pending*.

8. Entergy Services states that its service companies utilize a project-based accounting system for capturing, tracking, and identifying the various costs incurred in rendering services to affiliates (Client Companies). Entergy Services states that to properly track and record costs, employees in each service company department maintain a record of the time spent rendering services to each Client Company or Companies. From there, the service company costs are recorded and billed to affiliates using “Project Codes” which is an alpha-numeric attribute assigned to service company costs at the time they are recorded in order to capture costs incurred in performing a particular service or task for affiliates.

9. At the time a new Project Code is created, according to Entergy Services, appropriate service company employees determine how the costs captured under the Project Code should be distributed, which is done by selecting a “billing method” that either directly bills a single Client Company for the costs recorded under a Project Code or distributes such costs to multiple Client Companies based on a formula. According to Entergy Services, each allocation formula, of which there are 45 formulae that are currently used by Entergy Services as the bases to allocate costs, is based on data relevant to the participating Client Companies. Entergy Services states that each Entergy Utility would pay the percentage of the total cost of service equal to its percentage share of the total energy sales for all Entergy Utilities.

10. Entergy Services asserts that the billing method chosen to allocate costs is based upon the “cost drivers” for the related service, using cost-causation principles. It also states that the allocation methods assign an appropriate percentage of costs for a particular service based upon a “matching” of the cost drivers for the service to the specific beneficiaries, or consumers, of the service. It adds that the costs for all services performed under a Project Code are allocated among all Client Companies receiving such services using the same billing method.

11. Entergy Services states that its billing system incorporates numerous controls to ensure that each Client Company receives a fair and equitable allocation of service company costs. Entergy Services notes that its internal audit organization periodically reviews these controls and performs tests of transactions and balances related to service company billings. According to Entergy Services, these internal audits typically examine the process for creating project codes, including the associated scope statements and billing methods chosen, as well as the automated billing process.

12. Entergy Services explains that prior to repeal of the PUCHA 1935, the SEC periodically performed “field audits” of all subsidiary service companies in registered holding company systems, in which it examined the books, records, accounts, billing procedures and methods of allocation used by the service companies. Entergy Services also explains that, in the case of itself, such SEC audits typically included an evaluation

of its overall accounting system (including the systems and procedures for capturing service costs described above), internal controls for monitoring services provided to Client Companies, the methods of allocating costs, and its compliance generally with the SEC's Uniform System of Accounts for Mutual and Subsidiary Service Companies.

13. Entergy Services asserts that under the terms of the SEC orders noted above, each of the methods used by Entergy Services and Entergy Operations for allocating the costs of services to the Entergy Utilities was required to be filed with, and approved by, the SEC. In addition, Entergy Services asserts that if it determined that another allocation formula for a service company cost would provide a better matching of cost drivers and service beneficiaries, it was required to seek prior SEC approval before implementing any change in allocation methods. Moreover, it states that such approval was secured through an informal "60-day letter" procedure, under which the proposed changes were submitted by Entergy Services to the SEC at least 60 days prior to their implementation.⁹

14. Following the repeal of PUHCA 1935, Entergy Services notes, Congress issued PUHCA 2005, which states in pertinent part:

In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission . . . shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company.¹⁰

⁹ Entergy Services states that the submission included documentation detailing the rationale for the new allocation method and the types of service costs that would be allocated on that basis. Entergy Services further states that upon completion of its review of the request, the SEC would issue a letter approving the new allocation method. It adds that the last such changes were made by Entergy Services in March 2004 and by Entergy Operations in March 2002, with one exception. That exception, Entergy Services notes, is that in the fall of 2005 it implemented a new allocation method on an emergency basis to capture and allocate storm-related costs resulting from Hurricanes Katrina and Rita. It explains that, because the SEC had previously advised that it would no longer review and approve any 60-day letters pending the repeal of PUHCA 1935, Entergy Services implemented the storm cost allocation method without submitting it to the SEC for prior review.

¹⁰ PUHCA 2005, 16 U.S.C. § 1275(b).

15. Entergy Services seeks Commission authorization pursuant to section 1275(b) of the specific allocation methods set forth in Attachments A and B of its filing and a Commission finding that the allocation methods are just and reasonable under section 205 of the FPA. It adds that the Commission will have the opportunity to monitor the allocation and billing of costs through its review of the Form 60 annual reports filed by Entergy Services and Entergy Operations. It requests that the Commission accept the five service agreements and the allocation methods included in those agreements effective February 8, 2006, the effective date of repeal of PUHCA 1935.

Notice of Filing and Responsive Pleadings

16. Notice of Entergy Services's filing was published in the *Federal Register*, 71 Fed Reg. 62,255 (Oct. 24, 2006) with comments, interventions, or protests due on or before November 3, 2006. The deadline was subsequently extended to November 9, 2006. The Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention and comments. In addition, the Arkansas Public Service Commission (Arkansas Commission) and the Mississippi Public Service Commission (Mississippi Commission) filed notices of intervention and subsequently filed joint comments. Finally, the Council of the City of New Orleans (New Orleans) filed a notice of intervention and subsequent comments.

17. The Louisiana Commission supports Entergy Services's pricing treatment, arguing that the treatment complies with a settlement agreement intended to protect against cross-subsidization by requiring an additional five percent charge for services rendered to non-regulated affiliates. However, the Louisiana Commission states, the filing should not result in the preemption of state or local authority or jurisdiction to review the prudence, justness and reasonableness of affiliate transactions by Entergy Services or Entergy Operations in any retail proceeding. The Louisiana Commission maintains that the agreements filed by Entergy Services only place on file with the Commission the methodologies that may be used by Entergy Services and Entergy Operations to allocate costs. It argues that, by accepting this filing, the Commission is merely accepting a menu of methods as potentially appropriate for cost allocations, but that disputes with Entergy Services over whether a particular set of costs have been appropriately allocated remain within the Louisiana Commission's jurisdiction. New Orleans, the Arkansas Commission and the Mississippi Commission filed similar comments arguing that the Commission's acceptance of the instant agreements would not preempt state and local jurisdiction.

Entergy Services's Answer

18. Entergy Services states that it agrees with intervenors that the authorization it seeks should not preclude retail regulators from either reviewing the cost allocation

methods or examining the reasonableness of the costs allocated thereby to those Entergy Utilities over which a particular retail regulator has ratemaking jurisdiction. However, Entergy Services disagrees with intervenors' suggestion that Entergy is seeking approval for the "menu" of possible methods, of which any might be appropriate. It states that, on the contrary, the methodology for allocating costs is described in detail, as implemented through each of the Service Agreements. Entergy Services contends that the appropriate billing method is chosen after a rigorous internal review process to closely match the cost drivers of a particular service or function to the beneficiaries thereof. Entergy Services notes that it does not include specific assigned billing methods because such information was never subject to SEC's prior review. Instead, the specific application of the various allocation methods (which Entergy emphasizes was approved in advance by the SEC in precisely the form provided in the Service Agreements) was subject to review by the SEC as part of periodic audits of service company cost allocations. Entergy Services further notes that had the SEC determined that a different allocation method could result in a more appropriate allocation of costs, the SEC would have required a prospective change. Entergy Services expects the Commission to exercise this same authority under EAct 2005 (PUHCA 2005) and the FPA.

19. Entergy Services explains that when retail regulators have disagreed with the specific allocation methods (under PUHCA 1935), Entergy Utilities have been able to resolve these issues without altering any allocation methodologies, thereby avoiding the need for SEC approval. Entergy Services states that it is not aware of any prior instance in which a retail regulator unilaterally devised and imposed a new allocation method on either Entergy Services or Entergy Operations. Further, Entergy Services notes that such changes could not have been made under the prior law without SEC approval, and that with the repeal of PUHCA 1935, Congress intended for the Commission to step into the SEC's role in regulating, reviewing, and authorizing the allocation of costs.

20. Entergy Services states that a fundamental purpose of section 1275(b) is to continue to vest authority over service company cost allocations in a federal regulator in order to avoid disparate treatment of cost allocations among regulators, and that multi-state holding companies and their customers must be able to rely on consistent regulatory treatment of service company cost allocations across jurisdictions. It contends that Congress must have intended the Commission to resolve disputes between utilities and their state regulators as to the choice of appropriate allocation methods; to find otherwise would render section 1275(b) virtually meaningless. Entergy Services states that retail regulators, in the proper exercise of their ratemaking authority, continue to have the ability to review the allocation of service company costs. Nevertheless, retail regulators never had, nor should they have in light of the adoption of section 1275(b), the power unilaterally to impose change to cost allocations previously approved by federal regulators and implemented by applicants. Moreover, Entergy Services states that by

permitting state commissions to seek federal review of cost allocations, the express language of section 1275(b) clearly indicates Congress' intent that state commissions should pursue challenges to allegedly questionable cost allocation practices at the Commission.

Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) 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 Services's answer because it has provided information that assisted us in our decision-making process.

B. Analysis

22. Section 1275(b) of EPAct 2005 provides that:

In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a state commission having jurisdiction over the public utility, the Commission, after the effective date of this subtitle, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company.

23. In its final rules implementing PUHCA 2005, the Commission concluded that while it has discretion under section 205(c) of the FPA to require service company cost allocation agreements to be filed as contracts affecting jurisdictional rates, it interprets PUHCA section 1275(b) to require the Commission to make a cost-allocation determination if one is sought by the holding company system or the state commission.¹¹ Here, Entergy Services has asked the Commission to make a cost allocation determination under section 1275(b) of PUHCA 2005 and has also filed the allocation agreements as contracts affecting rates pursuant to FPA section 205.

¹¹ Order No. 667 at P 87, n. 77

24. The Commission also stated in its rulemaking implementing PUHCA 2005 that in instances where a traditional, centralized service company previously regulated by the SEC seeks to file its cost allocation methods with the Commission pursuant to section 1275(b), the Commission would not require such company currently using the SEC's "at cost" standard to comply with the Commission's market standard for sales of non-fuel, non-power goods and services to regulated affiliates. Instead, the Commission stated that it would apply a rebuttable presumption that costs incurred under "at cost" pricing of such services are reasonable.¹² Here, Entergy proposes to use the "at cost" standard for services provided to associate companies, and "at cost plus five percent" for services provided to "non-regulated" subsidiaries.

25. The proposed service agreements are the result of a long-standing settlement between the parties and the allocation methods have been previously reviewed and accepted by the SEC as "fair and equitable."¹³ Furthermore, no entity in this proceeding opposes the acceptance of the proposed service agreements or allocation methodologies. Accordingly, we will accept Entergy Service's service agreements and proposed methods of cost allocation to be effective February 8, 2006, as requested.

26. With respect to possible preemption issues raised by the Louisiana Commission, Mississippi Commission, Arkansas Commission and New Orleans, as a general matter we agree with Entergy that section 1275(b) of PUHCA 2005 was intended to vest authority in a federal regulator to help avoid disparate regulatory treatments with respect to service company cost allocations. However, we recognize the role of states in reviewing cost allocations when they set retail rates and we cannot address preemption issues in a vacuum. Resolution of preemption issues arising under new section 1275(b) of PUHCA or under the FPA involves analysis of the specific facts and circumstances surrounding a specific conflict. Since there is currently no conflict between the requirements of a state or local regulatory body and the Commission's determination in this proceeding, we do not believe it is appropriate to opine on possible preemption issues.

¹² The Commission stated that parties could file complaints that "at cost" pricing for such services exceeds the market price, but the complainant would have the burden of proving its case. The Commission further stated that it could disallow any expenditures that it finds to be imprudent. Order No. 667 at P 169-70.

¹³ While the storm-related cost allocation method (based on estimated gross storm recovery costs for Hurricanes Katrina and Rita) was not reviewed and approved by the SEC, we find the unopposed method reasonable and will accept it to be effective February 8, 2006, as requested.

27. We note that section 1275(b) of PUHCA 2005 does not contain any procedures for changing cost allocation authorizations made by the Commission. However, because such authorizations are also being granted pursuant to section 205 as contracts and practices affecting jurisdictional rates, section 205 and 206 rate changing procedures will apply to any future modifications to the service agreements being accepted herein.

The Commission orders:

Entergy Services's proposed service agreements are hereby accepted for filing, effective February 8, 2006, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.