

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

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Entergy Arkansas, Inc.

Docket No. ER10-879-000

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

(Issued August 6, 2010)

1. In this order, we accept for filing Entergy Arkansas Inc.'s (Entergy Arkansas) 2010 Wholesale Formula Rate Update (2010 Update) for Arkansas Electric Cooperative Corporation (AECC), and suspend it for a nominal period, to become effective March 1, 2010, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. On March 12, 2010, Entergy Services, Inc. (Entergy) filed the 2010 Update on behalf of Entergy Arkansas to redetermine the formula rate charges in accordance with the Power Coordination, Interchange and Transmission Service Agreements (PCITSA) between Entergy Arkansas and AECC, as well as settlements of prior updates (Agreements). In addition, Entergy states that the filing updates the monthly distribution demand rates for the cities of West Memphis and Prescott, Arkansas.

3. Entergy Arkansas requests that the redetermined charges become effective March 1, 2010, in accordance with the Agreements.

II. Notice of Filing and Responsive Pleadings

4. Notice of Entergy Arkansas's filing was published in the *Federal Register*, 75 Fed. Reg. 13,531 (2010), with interventions or protests due on or before April 2, 2010.¹ On April 2, 2010, AECC filed a motion to intervene and preliminary protest. On June 1, 2010, AECC filed a supplemental protest.

5. AECC contends that there are a number of questionable increases in Entergy Arkansas' costs from the 2009 Update to the 2010 Update and that Entergy Arkansas has not shown that its proposed redetermined rates are just and reasonable and not unduly discriminatory. Therefore, AECC argues that the proposed rates should be set for hearing.

6. AECC alleges that: (1) Entergy Arkansas' rates are unduly discriminatory; (2) Entergy Arkansas excludes Jonesboro's² transmission usage from the transmission rate divisor and credits a portion of the Jonesboro agreement revenue to the numerator violating the filed rate and failing to remedy the discriminatory effects of its rate; and (3) AECC has been unable to determine that Entergy Arkansas properly treated a number of items, such as particular increases in transmission costs, inclusion of certain accumulated deferred income taxes, inclusion of rate base-related prepaid taxes associated with state regulatory commission cost, increases in materials and supplies inventory, inclusion of "Regional Trans Market Ops" cost, administrative and general accounts, and other rate base items.

7. AECC further states that on May 3, 2010, it submitted informal discovery questions to Entergy, and Entergy has yet to respond. AECC argues that Entergy's non-responsiveness significantly undermined the review procedure provided for in the PCITSA and AECC's ability to conduct a meaningful analysis of Entergy's FERC Form No. 1 and evaluate the data and assumptions underlying Entergy's 2010 Update.

8. AECC also raises a number of other concerns including, but not limited to: (1) a swing of more than \$13 million in Entergy Arkansas' regulatory assets account from last year; (2) a 15.7 percent increase in Entergy Arkansas' accumulated pension benefit obligation; (3) whether the cost of some materials and supplies should be assigned to

¹ According to Entergy, the Agreements provide that, because Entergy Arkansas' FERC Form No. 1 annual report was to be filed by April 18, 2010, interested parties would have until June 1, 2010 to review the calculation of the rate redetermination and file comments.

² City Water and Light of the City of Jonesboro, Arkansas.

Construction Work In Progress and whether Entergy Arkansas should be allowed to include those costs in rate base; (4) certain Entergy-wide costs that have been allocated to Entergy Arkansas by various affiliates; and (5) a \$14 million increase due to the reinstatement of storm reserve accounting.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), AECC's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Hearing and Settlement Judge Procedures

10. Entergy Arkansas' 2010 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.

11. Our preliminary analysis indicates that Entergy Arkansas' proposed 2010 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 2010 Update for filing, suspend it for a nominal period, make it effective March 1, 2010, subject to refund, and set it for hearing and settlement judge procedures.

12. 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.³ 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.⁴ The settlement judge

³ 18 C.F.R. § 385.603 (2010).

⁴ 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 available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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 2010 Update is hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2010, 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 (2010)), a public hearing shall be held concerning Entergy Arkansas' proposed 2010 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 (2010), 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 power 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 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, NE, 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.