

132 FERC ¶ 61,252
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 Services, Inc.

Docket No. ER10-2001-000

ORDER ACCEPTING AND SUSPENDING REVISED DEPRECIATION RATES,
SUBJECT TO REFUND, AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued September 22, 2010)

1. On July 27, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ Entergy Services, Inc. (Entergy) filed revised depreciation rates (Depreciation Rates) on behalf of Energy Arkansas, Inc. (Energy Arkansas) for use in its formula rates. In this order, we accept Entergy's revised Depreciation Rates, suspend them for a nominal period, to become effective September 27, 2010, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. On June 23, 2010, Entergy states, the Arkansas Public Service Commission (Arkansas Commission) approved a settlement resulting from a base rate filing Entergy Arkansas made at the Arkansas Commission. The settlement included new depreciation rates for Entergy Arkansas' production, distribution, and transmission assets, based on a new comprehensive depreciation study arising from that proceeding and sponsored by the Arkansas Commission. Entergy states that one of the principal changes recommended in the new study was a shift from using the Equal Life Group procedure for calculating depreciation rates to the Average Life Group procedure, as well as incorporating the

¹ 16 U.S.C. § 824d (2006).

longer nuclear facility licenses approved by the Nuclear Regulatory Commission for Entergy Arkansas' nuclear units.

3. Entergy states that the revised Depreciation Rates will affect the formula rate calculation under Service Schedules MSS-1, MSS-2, MSS-3, and MSS-4 of the Entergy System Agreement, as well as Entergy's joint Open Access Transmission Tariff (OATT)² rates and the annual rate redetermination for Entergy Arkansas' wholesale formula rate customers.³ Therefore, Entergy states that it submits this filing on behalf of Entergy Arkansas to permit its revised Depreciation Rates that will be used for accounting purposes to *also* be used in the formula rates that incorporate Entergy Arkansas' depreciation recorded expense.

4. Entergy states that Service Schedule MSS-3 contains two separate and distinct formula rates, one for pricing energy exchange among the operating companies and the other for calculating the annual bandwidth remedy payments required pursuant to Opinion Nos. 480 and 480-A.⁴ Entergy states that the revised Depreciation Rates relate only to the latter formula contained in Service Schedule MSS-3. Entergy further explains that the relevant provisions of the bandwidth formula contained in Service Schedule MSS-3 regarding depreciation expense require Entergy to use the depreciation expense recorded in specified accounts in the Entergy Operating Companies' Form 1 filings "as approved by retail regulators."⁵ That is, "unless the jurisdiction for determining the depreciation and/or decommissioning rate is vested in the [Commission]," or "unless the [Commission] determines otherwise."⁶ Entergy notes that the Commission to date has

² Entergy acknowledges that the revised Depreciation Rates affect the joint OATT as it applies to all of the Entergy Operating Companies, including Entergy Arkansas.

³ Entergy Arkansas' most recent formula rate update for service to Arkansas Electric Cooperative Corporation and the cities of West Memphis and Prescott, Arkansas is currently in hearing and settlement procedures at the Commission in Docket No. ER10-879-000.

⁴ *Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁵ Entergy's July 27, 2010 Filing at 6 (citing Service Schedule MSS-3, section 30.12).

⁶ *Id.*

declined to require Entergy to deviate from the depreciation expense recorded in the applicable accounts in the Form 1 filings as approved by the Entergy Operating Companies' retail regulators. As a result, Entergy states that in each of its annual bandwidth filings it has used the actual depreciation expense recorded in the Form 1 filings, which primarily reflects the depreciation expense used to set retail rates. In this filing, Entergy proposes to use the revised Depreciation Rates accepted by the Arkansas Commission on June 23, 2010.

5. Entergy states that the Arkansas Commission authorized the revised Depreciation Rates to go into effect in the first billing cycle of July 2010. However, according to Entergy, the bills for service rendered in June also will reflect some depreciation expense based on the new revised Depreciation Rates and a portion of depreciation expense based on the previous depreciation rates. Entergy explains that since bills issued in July 2010 include services rendered in June 2010, it plans to start recording depreciation expense on its books using the revised Depreciation Rates in June 2010. Entergy requests that the Commission waive its prior notice⁷ provisions and allow a June 1, 2010 effective date⁸ only to the extent that the depreciation expense recorded on Entergy Arkansas' books is based on the revised Depreciation Rates it submits here. It explains that it would like the revised Depreciation Rates to become effective in tandem with the July 1, 2010 effective date established by the Arkansas Commission's approval of its settlement agreement for retail rate purposes. Entergy states that this approach would allow Entergy Arkansas' depreciation costs used for formula rate purposes to continue to be based on the actual depreciation costs recorded in Entergy Arkansas' Form 1 accounts.

6. Entergy contends that waiver is appropriate here because it could not have filed Entergy Arkansas' revised Depreciation Rates 60 days before the June 1, 2010 requested effective date because the Arkansas Commission approved the settlement that adopted the revised Depreciation Rates on June 23, 2010. Entergy states that its intent is for the formula rates to reflect exactly the depreciation expense recorded on Entergy Arkansas' books for the month of June 2010 and all subsequent months. Entergy cites to *Duke Entergy Carolinas, LLC*⁹ to support its request for waiver of prior notice in the context of

⁷ 18 C.F.R. § 35.3 (2010).

⁸ Entergy notes that the July bills will include some depreciation expense calculated under the revised Depreciation Rates and some depreciation expense calculated under the previous depreciation rates. Therefore, Entergy requests waiver of prior notice to the extent that the depreciation expense recorded on Entergy Arkansas' books in June is based on the revised Depreciation Rates.

⁹ 130 FERC ¶ 61,079, at P 19 (2010).

a change in depreciation rates and to further its argument that waiver should be granted to give effect to the intent that the approved formula rate match the costs as recorded in the applicable accounts. Entergy states that it will reflect the revised Depreciation Rates in the next formula rate redetermination that requires the use of actual recorded depreciation cost data for any rate period that includes cost data from June 1, 2010 and thereafter.

II. Notice of Filing and Responsive Pleadings

7. Notice of Entergy Arkansas's filing was published in the *Federal Register*, 75 Fed. Reg. 47,292 (2010), with interventions or protests due on or before August 17, 2010. Notices of intervention were filed by the Arkansas Commission, the Council of the City of New Orleans, Louisiana and the Louisiana Public Service Commission (Louisiana Commission). Timely motions to intervene were filed by Arkansas Electric Cooperative Corporation, Arkansas Electric Energy Consumers, Inc., L-M Municipals,¹⁰ and Occidental Chemical Corporation. The Louisiana Commission also filed a protest. On August 20, 2010, the Mississippi Public Service Commission filed a motion to intervene out-of-time.

8. Entergy filed an answer to the Louisiana Commission's protest.

A. Louisiana Commission's Protest

9. The Louisiana Commission states that the revised Depreciation Rates submitted by Entergy are based on a depreciation study that contains improper cost inputs. Specifically, the Louisiana Commission states that Entergy's application: (1) uses incorrect assumptions regarding retirement dates for certain gas-fired generating units; (2) uses incorrect assumptions regarding life spans for certain combined cycle gas-fired generating units; (3) fails to normalize interim retirement dates for Entergy Arkansas' ANO 1 and 2 nuclear generating units; and (4) uses incorrect methodology to incorporate inflation in the terminal salvage (decommissioning) costs for Entergy Arkansas' coal-fired generating units.

10. The Louisiana Commission also states that the forecast life spans of the recently installed combined cycle gas turbine/steam plants are set at 25 to 30 years, which the Louisiana Commission states are unreasonably short given the retirement experience of steam and gas turbine plants nationally and violate Commission policy and sections 205

¹⁰ L-M Municipals are, collectively: Louisiana Energy and Power Authority, Lafayette Utilities System, and Municipal Energy Agency of Mississippi. L-M Municipals move to intervene in this proceeding on behalf of themselves and their members.

and 206¹¹ of the FPA. The Louisiana Commission also states that the retirement dates of a number of the older generating units are unsubstantiated and appear to be artificially advanced in violation of Commission policy and sections 205 and 206 of the FPA.

11. In addition, the Louisiana Commission states that the interim retirement dates for Account 322 (Reactor Plant Equipment) for Entergy Arkansas reflect the retirements of steam generators at both units of the ANO 1 plant, which the Louisiana Commission states are not typical interim requirements and result in unreasonably short lives for this account, in violation of Commission policy and sections 205 and 206 of the FPA. The Louisiana Commission states that these retirements are non-recurring, unusual events that cannot reasonably be expected to affect future interim retirements.

12. Finally, the Louisiana Commission states that the adjusted production plant depreciation rates are required to ensure just and reasonable rates. The Louisiana Commission states that the service lives of the new combined cycle and combustion turbine units should be set at 45 years, which is the historical average life span of gas turbine and combustion turbine units. The Louisiana Commission states that the terminal retirement dates of the steam plants forecast to be retired in 2010 should be set at the mid-point of the coming decade. The Louisiana Commission states that the interim retirement date for Entergy Arkansas' Account 322 should be recalculated using historical data that excludes the retirements of the steam generators in 2000 and 2005 to ensure just and reasonable rates.

B. Entergy's Answer

13. Entergy urges the Commission to reject the Louisiana Commission's protest and to accept Entergy Arkansas' revised Depreciation Rates without a hearing. Entergy states that the Louisiana Commission's protest is limited solely to the use of the revised Depreciation Rates in the bandwidth formula for Service Schedule MSS-3. Entergy argues that the portions of its filing pertaining to Entergy's OATT, Entergy Arkansas' wholesale formula rates and Service Schedules MSS-1, MSS-2, and MSS-4 are uncontested, and therefore, should be accepted for filing.¹² In addition, Entergy states that the Louisiana Commission's protest with respect to Service Schedule MSS-3 is based on an incorrect assumption that the revised Depreciation Rates were based on a depreciation study sponsored by Entergy Arkansas. Entergy states that while Entergy Arkansas did submit a depreciation study in its initial retail rate filing with the Arkansas Commission, the revised Depreciation Rates Entergy submits here are based on a

¹¹ 16 U.S.C. §§ 824d, 824e (2006).

¹² Entergy's Answer at 3.

separate depreciation study sponsored by a witness for the Arkansas Commission in the retail rate proceeding. Entergy states that the Louisiana Commission asserts throughout its protest that the revised Depreciation Rates are unjust and unreasonable because they are based on the Entergy Arkansas study. Entergy states that the Louisiana Commission's protest is irrelevant as it pertains to Service Schedule MSS-3 and asks that the Commission reject it.

14. Lastly, Entergy states that the proceeding in Docket No. EL10-55-000 contains the exact same issues presented here. According to Entergy, instead of conducting duplicative litigation, the Commission should accept Entergy Arkansas' filing in this proceeding, and allow the Louisiana Commission to raise any issues that it may have with respect to the application of Entergy Arkansas' revised Depreciation Rates to the annual bandwidth formula filings made pursuant to Service Schedule MSS-3 in the proceeding under Docket No. EL10-55-000.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant Mississippi Public Service Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Section 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), 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. Hearing and Settlement Judge Procedures

17. The revised Depreciation Rates filed by Entergy raise 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.

18. Our preliminary analysis indicates that Entergy's revised Depreciation Rates have 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's revised Depreciation Rates for filing, suspend them for a nominal period, to become effective on September 27, 2010 (after 60 days notice),¹³ subject to refund, and set them for hearing and settlement judge procedures.

19. We disagree with Entergy's argument that the proceeding in Docket No. EL10-55-000 contains the exact same issues here. The hearing and settlement procedures in the complaint proceeding in Docket No. EL10-55-000 concern the depreciation rates included in the bandwidth formula under Service Schedule MSS-3. On the other hand, this section 205 proceeding involves depreciation rates only for Entergy Arkansas as reflected in Service Schedules MSS-1, MSS-2, MSS-3, and MSS-4, Entergy's OATT rates and the annual rate redetermination for Entergy Arkansas' wholesale formula rate customers. To the extent that there are any overlapping issues in these two proceedings, the Administrative Law Judges should take any necessary action to coordinate litigation in the proceedings.

20. 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

¹³ We deny Entergy's request for waiver of our prior notice requirement. Entergy has provided no justification for its request. Its reliance on *Duke Energy Carolinas, LLC*, 130 FERC ¶ 61,079 at P 19, is unavailing. In that case, the Commission granted waiver of the prior notice requirement for good cause shown where the effective date of depreciation rates that Duke used for accounting purposes was prescribed by contract. The mere fact that the System Agreement references depreciation rates approved by retail regulators and reflected on the Operating Companies' books does not prescribe an effective date for changes in depreciation rates. As noted by Entergy, the reference to depreciation rates approved by retail regulators is qualified to reflect that any changes in depreciation rates under the formula are subject to the Commission's exclusive jurisdiction. *See Arkansas Pub. Serv. Comm'n.*, 128 FERC ¶ 61,020, at P 25 (2009). Moreover, the Commission has held that, while utilities do not require the Commission's approval to change the depreciation rates used and recorded in their Form 1 accounts *for accounting purposes*, "[t]o change prices charged for power sales or transmission services (whether determined by stated rates *or formula rates*) to reflect a change in depreciation, a utility would first have to make a filing with us, pursuant to [s]ections 205 or 206, 16 U.S.C. §824d [sic], 824e, as appropriate, to that effect." *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 n.25 (2000) (emphasis added). *See also Wisconsin Pub. Svc. Corp.*, 110 FERC ¶ 61,192 (2005) (denying waiver of the prior notice requirement where the party delayed filing depreciation rates with the Commission while seeking state commission approval of retail rates and where no contractual commitment prescribed the effective date).

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.¹⁴ 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.¹⁵ The settlement judge 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's revised Depreciation Rates are hereby accepted for filing for all applicable rate schedules and suspended for a nominal period, to become effective September 27, 2010, 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' revised Depreciation Rates. 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.

¹⁴ 18 C.F.R. § 385.603 (2010).

¹⁵ 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>).

(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.