

134 FERC ¶ 61,143
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. ER11-2560-000

ORDER ACCEPTING AND SUSPENDING PROPOSED AGREEMENT AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 28, 2011)

1. On December 29, 2010, Entergy Services, Inc. (Entergy) filed as agent and on behalf of Entergy Arkansas, Inc. (Entergy Arkansas) an amended Power Coordination, Interchange, and Transmission Service Agreement (Agreement) between Entergy Arkansas and Arkansas Electric Cooperative Corporation (AECC). In this order, we accept Entergy's proposed revisions to the Agreement, suspend them for a nominal period, to become effective March 1, 2011, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Entergy Arkansas is an electric utility that generates, transmits and distributes electric power and energy to retail and wholesale customers primarily in the State of Arkansas. AECC is one such wholesale customer. The loads and resources of AECC and its members are located in the control areas operated by three entities: American Electric Power Company's Southwestern Electric Power Company, Entergy Arkansas, and the Southwestern Power Administration. AECC relies on the transmission system of each of these three entities to serve its member loads in that entity's control area, and thus is a transmission-dependent utility on the transmission systems of those entities.

3. Entergy Arkansas and AECC entered into the Agreement on June 27, 1977 and filed a restatement of that same Agreement, with certain amendments, on October 1, 2001. The Agreement provides for the operation and scheduling or dispatching of AECC's resources, including all of AECC's co-owned units. Under this agreement, AECC also takes transmission and distribution service from Entergy Arkansas. The rates for these services are calculated using cost-based formulas. On or about March 1st of every year, Entergy Arkansas redetermines the formula rate charges in accordance with the Agreement and provides the Commission and AECC with informational schedules showing the development of each rate. The Agreement provides

that the resulting charges will take effect as of March 1 of the year in which the informational schedules are submitted.

4. The currently effective provisions of the Agreement provide that each party may propose changes to the rate formulas only in 2011 or every third year thereafter. Accordingly, Entergy notified AECC of its intent to propose changes in 2011 to the rate formulas contained in the Agreement.

II. Filing

5. Entergy states that many of the proposed changes are non-substantive and are simply intended to add specificity to the existing definitions and descriptions of the formula inputs. Entergy proposes changes to the following: (1) cost of capital; (2) storm restoration costs; (3) removal of pre-payments for retail regulatory commission fees; (4) references in the formula to Regional Transmission Organization (RTO) accounts; (5) revisions to the transmission revenue credit (TFR) and transmission system peak demand (TKW) variables; and (6) revisions to the monthly distribution demand rate formula.

6. Entergy states that the first clarification to the rate formula concerns the derivation of the embedded cost of long-term debt used in the calculation of the overall cost of capital of Entergy Arkansas. Entergy states that pursuant to the current definition, the annual rate update submissions consistently have incorporated the embedded cost rate for long-term debt as of the end of the historical test year. To avoid any potential confusion and eliminate any other possible interpretations, Entergy states that it is proposing to clarify that Entergy Arkansas uses the embedded cost rate for long-term debt as of the end of the test year. Entergy further contends that this clarification does not result in a rate increase for AECC and is consistent with Entergy's Open Access Transmission Tariff (OATT) formula rate.¹

7. Second, Entergy notes that Entergy Arkansas incurred significant damage to its system caused by a severe ice storm in 2009. The Arkansas Public Service Commission (Arkansas Commission) authorized a retail recovery mechanism for the retail portion of the costs associated with the ice storm. Entergy further notes that, at the Arkansas Commission, plant costs and deferred operations and maintenance (O&M) costs associated with the 2009 ice storm were first allocated between retail and wholesale using functional revenue requirements. Entergy states that in order to recover correctly the wholesale portion of the 2009 ice storm costs under the Agreement, several changes to the rate formula under the Agreement are needed. First, Entergy proposes to remove the wholesale portion of the plant costs related to the ice storm from the inputs Transmission

¹ Entergy's Filing at 4 (citing *Entergy Services, Inc.*, 131 FERC ¶ 61,186 (2010); *Entergy Services, Inc.*, 133 FERC ¶ 61,189 (2010)).

Plant in Service and Distribution Plant in Service (along with associated depreciation expense, accumulated provision for depreciation and accumulated deferred income taxes). Next, Entergy states that it will assign those costs to Entergy Arkansas's wholesale customers, including AECC. Entergy states that it estimates the incremental effect on the 2011 rate to be approximately \$0.05/kw-month for transmission and \$0.14/kw-month for distribution. Entergy contends that the current Agreement provides for the recovery of the 2009 ice storm costs, but out of an abundance of caution it is proposing the amendments to explicitly clarify the rate treatment for such costs under the Agreement.

8. Third, Entergy proposes, pursuant to a settlement in Docket No. ER10-879-000 between Entergy Arkansas and AECC, to remove certain retail-related costs from the input for two formulas. Specifically, Entergy notes, the definition of formula input PPT (Prepaid Taxes and Insurance) for the calculation of the Transmission and Distribution rates is amended to exclude prepayments related to retail regulatory commission fees and expenses. Entergy states that the proposed change, although minor, results in a rate decrease to AECC.

9. Fourth, Entergy states that Entergy Arkansas is currently evaluating the possibility of joining an RTO. Entergy notes that the Agreement has been amended in anticipation of that possibility by including revised accounting requirements for public utilities specified under Order No. 668.² Entergy notes that the Commission has previously allowed utilities to include these accounts in formula rates in Docket Nos. ER08-739-000³ and ER08-1000-000.⁴

10. Fifth, Entergy proposes a change in response to an issue raised by AECC. Specifically, AECC has taken issue with the fact that the City Water and Light Plant of the City of Jonesboro, Arkansas (Jonesboro) was charged an incremental rate that, while higher than the then-current rolled-in rate, is now lower than the current rolled-in rate. As a result, Entergy notes that AECC alleges a subsidization problem and argues that to remedy the issue Jonesboro's revenues should be removed from formula input TFR (transmission-related revenue not received under an Entergy Arkansas tariff) and Jonesboro's loads should be included in formula input TKW (Entergy Arkansas's firm scheduled transmission demand at time of net area peak).

² *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199 (2005).

³ Appalachian Power Co., Docket No. ER08-739-000 (May 15, 2008) (delegated letter order).

⁴ Maine Public Service Co., Docket No. ER08-1000-000 (July 8, 2008) (delegated letter order).

11. Entergy states that in order to address this concern, and to protect AECC from similar problems in the future, it proposes to modify the revenue credit component to the Agreement to include a rate floor such that the revenue credit for any OATT service that is priced at an incremental rate will never be less than the then current OATT rolled-in rate for similar service.

12. Entergy also states that the definition of formula input TKW is clarified to note that it does not include service provided under the Entergy OATT. This clarification is intended to avoid a double counting in the rate formula for OATT service. Entergy explains that because the Agreement includes a transmission revenue credit for Entergy Arkansas's receipt of its share of revenues collected under the Entergy OATT, it is not appropriate to also include loads for this same service in the development of the Entergy Arkansas peak demand.

13. Finally, Entergy proposes a change to the monthly distribution demand rate under the Agreement. Entergy explains that it uses the same formula for AECC that it does for two other customers, the City of Prescott, Arkansas and the City of West Memphis, Arkansas. Entergy further explains that although these rate formulas use the same name for certain variables, the amounts for the formula inputs CDAD (distribution plant), DADEPR (distribution plant accumulated depreciation) and DKW (maximum one-hour simultaneous demand for all delivery points combined, as adjusted for contract losses), reflect each distribution customer's directly assigned values. Accordingly, Entergy states that it proposes to clarify that each of those formula inputs reflects a customer-specific amount.

14. Entergy adds that it is submitting in this filing via the Commission's eTariff requirements, as part of its compliance with Order No. 714,⁵ the Agreement in section-based format with the formatting elements previously required by Order No. 614 eliminated. Entergy requests that the Commission accept the Agreement for filing without hearing or suspension, and grant an effective date of March 1, 2011.

III. Notice of Filing and Responsive Pleadings

15. Notice of Entergy's filing was published in the Federal Register, 76 Fed. Reg. 14,025 (2011), with interventions or protests due on or before January 19, 2011. A motion to intervene and protest was filed by AECC. On February 3, 2011, Entergy filed an answer to AECC's protest.

16. AECC argues that Entergy's filing is patently deficient because it fails to satisfy the requirements for Federal Power Act section 205 rate change filings set forth in Part 35 of the Commission's regulations. AECC adds that the descriptions in the

⁵ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

transmittal letter do not provide the information required by the Commission's regulations.

17. AECC argues that the modifications that Entergy proposes to the TFR and TKW variables are unjust, unreasonable and unduly discriminatory. While purporting to address AECC's concern that AECC is subsidizing the specially-priced contract between Entergy and Jonesboro, AECC argues that Entergy's proposed revisions would, in fact, contractually obligate AECC to continue subsidizing the specially-priced Jonesboro contract and, accordingly, pay more than its load ratio share of the Entergy Arkansas transmission system. AECC argues that the mismatch between the reduction in the TKW rate divisor of the embedded cost rate determination and the increase in the revenue credits of the numerator has the effect of increasing the embedded cost rate in a manner unrelated to changes in costs incurred to serve embedded cost customers or any variation in their uses of the system. AECC argues that this would overcharge AECC (based on data from the 2010 Wholesale Formula Rate Update) by approximately \$0.0376/kW/month or approximately \$800,000 annually.⁶

18. AECC states that it raised its concerns regarding the Jonesboro contract in each of the subsequent annual wholesale formula rate updates that Entergy filed pursuant to the Agreement. Each year, AECC notes, it explained how Entergy's failure to include the Jonesboro load in the denominator of the Agreement formula rate resulted in AECC's subsidization of the Jonesboro contract. Ultimately, AECC notes, the annual rate update proceedings were settled on a black-box basis and thus explicitly preserved the issue of the proper treatment of Jonesboro's load.⁷

19. AECC argues that Entergy's proposal to modify the variable TKW by providing that it shall exclude demands served under the OATT is unreasonable and discriminatory, especially when applied to the specially-priced, pre-paid Jonesboro contract. AECC asserts that Jonesboro is not the same as other loads served under the OATT because it is not paying a load ratio share of the Entergy transmission system as a whole. Instead, Jonesboro is paying an ostensibly incremental rate that turns out to be lower than the embedded cost rate (and has been for most of the duration of the contract).⁸ AECC states that as it has stressed in previous pleadings addressing this issue, AECC has no wish to deprive Jonesboro of the substantial benefit it obtained from its special deal with Entergy. However, AECC states that it does object strongly to paying more than its load ratio share of the cost of the Entergy Arkansas transmission system in order to bail Entergy out of a deal that has turned out to its disadvantage. AECC maintains that, as it has explained

⁶ AECC Protest at 12-13.

⁷ *Id.* at 8-9.

⁸ *Id.* at 11.

previously, the Jonesboro load must be included in the TKW rate divisor of all of Entergy's embedded-cost transmission rates to assure that customers paying those rates will not be obligated to make up any shortfall between revenues Entergy obtains from Jonesboro and Jonesboro's load ratio share of Entergy's revenue requirement.

20. AECC maintains that the problem with Entergy Arkansas's revenue crediting proposal to variable TFR is that Entergy Arkansas does not have two separate transmission systems, one covered by the Entergy OATT and one not. Customers taking service under the OATT use the transmission facilities of Entergy Arkansas along with the transmission facilities of the other Entergy Operating Companies. AECC states that it uses the same transmission facilities that Jonesboro uses. The difference, AECC argues, is that AECC pays for service under the Agreement, while Jonesboro, an OATT customer, pays the special rate of \$1.00 for transmission service.⁹ AECC explains that, as Entergy states in its transmittal letter, AECC has consistently argued that this issue should be corrected by removing Jonesboro's revenues from the formula input variable TFR (transmission-related revenue not received under an Entergy Arkansas transmission Tariff), and by including the Jonesboro load in the formula input variable TKW (Entergy Arkansas's firm scheduled transmission demand at time of net area peak). Otherwise, the result will be that the rate that AECC pays is unduly discriminatory.

21. Also, AECC contends that Entergy's proposal to modify the variable TFR to exclude any production-related ancillary services revenues, on its face, appears discriminatory. AECC argues that the proposed changes must be viewed in the context of AECC's existing formula rate. And in the existing rate, Entergy Arkansas has been including production-related ancillary services costs in the transmission revenue requirement. AECC argues that it appears that Entergy Arkansas would recover production-related ancillary services costs from AECC, but would fail to provide AECC with any corresponding revenue credits.¹⁰

22. In addition, AECC argues that Entergy Arkansas's proposal to include RTO related costs in the Agreement is unjust and unreasonable. AECC argues that Entergy fails to offer any meaningful description of the types of costs that would be included in these accounts and provides no demonstration that those expenses are related to the provision of transmission and distribution service to AECC. AECC also argues that at a minimum, the inclusion of the RTO-related accounts is premature. Even if, AECC contends, Entergy Arkansas joins an RTO, permitting Entergy to charge AECC for costs booked to the RTO-related accounts could have unjust and unreasonable results because those accounts encompass broad categories of costs that are not currently related, and may never be related, to Entergy Arkansas's provision of transmission and distribution

⁹ *Id.* at 13.

¹⁰ *Id.* at 20.

service to AECC. Accordingly, AECC states that even if Entergy Arkansas eventually joins an RTO, the costs included in such an account may never be appropriately recovered from AECC under the Agreement because, as a grandfathered, non-network transmission service customer, such services are not available to AECC.

23. AECC also takes issue with Entergy's proposed changes to the General Notes section of the Agreement. First, AECC contends that in new General Note 2,¹¹ the term "where available" is unclear and leads to concerns that Entergy Arkansas inputs may come from sources other than the FERC Form 1. Also, AECC states that experience in implementation of the formula rate over the years has taught AECC that it is critical that Entergy Arkansas may only recover costs from AECC that are consistent with the Commission's transmission ratemaking policies and precedent. Without modification, new General Note 2 could become *carte blanche* for Entergy Arkansas's flowing through into AECC's formula rate items that are plainly inconsistent with transmission ratemaking.

24. Second, AECC takes issue with new General Note 9.¹² To begin with, AECC states, the terms in the note are not defined. AECC further states that it is concerned about the potential over-recovery of costs in its rates based upon the interpretation of other formulas' variables. AECC contends that the language in Note 9 could be subject to varying interpretations and subject to potentially inappropriate charges based upon the use of other entities' formula rate variables in the determination of AECC's transmission and distribution rates.

¹¹ As proposed, General Note 2 reads: "Where available, all inputs shall use FERC Form 1 data unless otherwise specified. If an input comes from a source other than FERC Form 1 data, [Entergy Arkansas] will specify the source and provide accompanying workpapers."

¹² As proposed, General Note 9 reads:

In the event that a customer does not purchase all of the following services from [Entergy Arkansas]: (a) Production Demand; (b) Transmission Demand; and (c) Distribution Demand, then any variables contained in the Common Parameters that are not defined in the rate formulas applicable to that customer shall be determined consistent with the rate formulas applicable to those current or former [Entergy Arkansas] customers who purchased the other service(s). For example, if a customer purchased only Distribution Demand service from [Entergy Arkansas], then variables such as PPLT would be determined consistent with the Monthly Production Demand Rate.

25. Moreover, AECC objects to the addition of the phrase “as adjusted for refinancing activities” in the definition of the present long-term debt variable “D” of the cost of capital calculation. AECC states that this language is not explained, nor is it supported by Entergy’s filing.

26. As it relates to the recovery of ice storm amounts, AECC argues that Entergy has not supported the determination of its 2009 ice storm retail-related transmission and distribution allocation percentages used to recover the storm costs. AECC asserts that Entergy’s filing provides insufficient support for these allocation factors. Also, AECC contends that the description of the actual proposed treatment of the costs is confusing at best, and despite being labeled as “amortization,” Entergy appears to be attempting to recover 100 percent of the total transmission (\$547,103) and the total distribution (\$405, 609) deferred expenses on a one-time basis during the 2010 test year. AECC further argues that Entergy’s proposed one-time ratemaking recovery of costs, in the 2010 ratemaking period, of costs incurred in 2009 should be rejected.

27. Furthermore, AECC disagrees with Entergy’s proposed revisions of the definitions of Transmission O&M Expense (TOM) and Distribution O&M Expense (DOM) to provide that the total expense includes “any costs” booked in the O&M expense functional group accounts. AECC states that unless Entergy’s proposed language is revised to state that the costs are those costs recorded in the specific accounts noted in the FERC Form 1, this change should be rejected.

IV. Discussion

A. Procedural Matters

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

29. 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 are not persuaded to accept Entergy’s answer and will, therefore, reject it.

B. Substantive Matters

30. Entergy’s proposed revisions to the Agreement 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.

31. Our preliminary analysis indicates that Entergy’s proposed revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory

or preferential, or otherwise unlawful.¹³ Therefore, we will accept Entergy's proposed revisions to the Agreement for filing, suspend them for a nominal period, make them effective on March 1, 2011, as requested, subject to refund, and set them for hearing and settlement judge procedures.

32. 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.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 proposed revisions to the Agreement are hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2011, 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's proposed revisions. However, the

¹³ Our review indicates that Entergy's submittal meets the Commission's minimum threshold filing requirements. AECC's arguments do not warrant rejection of Entergy's filing (although the justness and reasonableness of Entergy's proposed revisions may be pursued at the hearing ordered herein).

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>).

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.