

139 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.	Docket Nos.	ER12-1384-000
		ER12-1385-000
		ER12-1386-000
		ER12-1387-000
		ER12-1388-000
		ER12-1390-000

Louisiana Public Service Commission

v.

EL11-57-000
(Consolidated)

Entergy Corporation,
Entergy Services, Inc.,
Entergy Louisiana, LLC,
Entergy Arkansas, Inc.,
Entergy Mississippi, Inc.,
Entergy New Orleans, Inc.,
Entergy Gulf States Louisiana, LLC, and
Entergy Texas, Inc.

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES, AND
CONSOLIDATING PROCEEDINGS

(Issued May 31, 2012)

1. On March 29, 2012, Entergy Services, Inc. (Entergy) filed proposed tariff amendments pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the

¹ 16 U.S.C. § 824d (2006).

Commission's regulations.² Entergy seeks to modify its rough production cost equalization bandwidth formula, which is set forth in Service Schedule MSS-3 to the Entergy System Agreement (System Agreement), to include costs associated with the cancelled Little Gypsy Repowering Project (Little Gypsy cancellation costs). In this order we accept and suspend the proposed revisions, effective June 1, 2012, as requested, subject to refund, and establish hearing and settlement judge procedures, as discussed further below. Additionally, we consolidate the instant proceedings with the ongoing proceeding in Docket No. EL11-57-000 for purposes of hearing and settlement procedures.³

I. Background

2. Entergy and the Entergy Operating Companies⁴ are currently parties to the Entergy System Agreement (System Agreement). The System Agreement is a rate schedule on file at the Commission that allows the Entergy Operating Companies to plan, construct, and operate their generation and transmission facilities as a single, integrated electric system (Entergy System).⁵ Entergy contends that after 2015 the Entergy System will include only four of the Entergy Operating Companies⁶ and states that Entergy Arkansas and Entergy Mississippi need to plan for stand-alone operations following their termination dates.⁷

² 18 C.F.R. Part 35 (2011).

³ The following docket numbers were assigned: Entergy Arkansas, Inc. (Entergy Arkansas): ER12-1384-000; Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana): ER12-1385-000; Entergy Louisiana, LLC (Entergy Louisiana): ER12-1386-000; Entergy Mississippi, Inc. (Entergy Mississippi): ER12-1387-000; Entergy New Orleans, Inc. (Entergy New Orleans): ER12-1388-000; and Entergy Texas, Inc. (Entergy Texas): ER12-1390-000.

⁴ The Entergy Operating Companies are: Entergy Arkansas, Entergy Gulf States Louisiana, Entergy Louisiana, Entergy Mississippi, Entergy Texas, and Entergy New Orleans.

⁵ Entergy March 29, 2012 Filing at 2.

⁶ Entergy Gulf States Louisiana, Entergy Louisiana, Entergy Texas, and Entergy New Orleans. *See Entergy Services, Inc.*, 129 FERC ¶ 61,143 (2009), *reh'g denied*, 134 FERC ¶ 61,075 (2011).

⁷ Entergy March 29, 2012 Filing at 2 n.3 (stating “[u]nder any long term resource

(continued...)

3. In Opinion No. 480, the Commission found that “rough production cost equalization on the Entergy system had been disrupted.”⁸ The Commission imposed a “bandwidth remedy” to help keep the Entergy system in rough production cost equalization.⁹ The Commission also required that annual bandwidth filings be made to determine any necessary payments among the Operating Companies. In its compliance filing implementing the directives of Opinion Nos. 480 and 480-A, Entergy included in Service Schedule MSS-3 the formulas for implementing the rough production cost equalization bandwidth remedy.¹⁰

4. Entergy states that it identified a repowering project at Little Gypsy Unit 3 (Little Gypsy), a three-unit, gas-fired plant located 30 miles from New Orleans, as part of the Strategic Supply Resource Plan (SSRP) for the Entergy System. Entergy states that the Little Gypsy Repowering Project was planned to diversify the Entergy System’s fuel requirements and to provide baseload capacity by converting a natural-gas fired unit to a solid-fuel unit. Entergy states that the Louisiana Public Service Commission (Louisiana Commission) approved Entergy Louisiana’s application for the Little Gypsy Repowering Project in March 2008;¹¹ however, in 2009 a substantial decline in natural gas prices reversed the economics of the project, and repowering the Little Gypsy unit no longer represented the lowest reasonable cost alternative. In October 2009, Entergy Louisiana filed an application with the Louisiana Commission seeking to cancel the project and to recover prudently-incurred abandoned project costs.

planning scenario, the Entergy Operating Companies need additional generating capacity to meet their current and future reliability requirement”).

⁸ *Louisiana Pub. Serv. Comm’n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh’g*, *Louisiana Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 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, sub nom. Louisiana Pub. Serv. Comm’n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁹ Opinion No. 480, 111 FERC ¶ 61,311 at P 44.

¹⁰ *Louisiana Pub. Serv. Comm’n. v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006), *order on reh’g*, 119 FERC ¶ 61,095 (2007).

¹¹ Entergy March 29, 2012 Filing at 2-3 (citing *In re: In the Matter or the Expansion of Utility Power Plant; Proposed Certification of New Plant by the LPSC*, Order No. U-30192 (March 18, 2008)).

5. In May 2010, the Louisiana Commission filed a section 206 complaint with the Commission seeking the inclusion of the Little Gypsy cancellation costs in the bandwidth formula, among other issues. The Commission dismissed the Louisiana Commission's complaint with regard to the Little Gypsy issue, ruling that the Little Gypsy issue was not ripe for consideration because the Louisiana Commission had not yet approved the cancellation of the Little Gypsy Repowering Project. The Commission further ruled that when the Louisiana Commission issued a final decision on the cancellation of the Little Gypsy Repowering Project, parties would be able to seek a Commission determination as to whether Little Gypsy cancellation costs should be included in the bandwidth formula.¹²

6. On May 17, 2011, the Louisiana Commission approved an uncontested settlement to cancel the Little Gypsy Repowering Project wherein it established the quantification of prudently-incurred and recoverable cancellation costs, the levels at which carrying costs may be accrued going-forward, the appropriate allocation of the recoverable cancellation costs among customer classes, and the framework for the securitization of the recoverable costs.¹³ In the Louisiana Commission Order, the Louisiana Commission approved an uncontested stipulation in which Entergy Louisiana, with the prior concurrence of the Entergy Operating Committee, committed to seek inclusion of the Little Gypsy cancellation costs as production costs in the bandwidth formula.

7. On August 4, 2011, as amended on September 16, 2011, in Docket No. EL11-57-000, the Louisiana Commission submitted an additional complaint (2011 Complaint) seeking to include Little Gypsy cancellation costs in the bandwidth formula. The Louisiana Commission also sought either to classify the Little Gypsy cancellation costs as fixed and permanently assign them to all Entergy Operating Companies regardless of whether they continued to participate in the System Agreement, or, alternatively, to amend the bandwidth formula in Service Schedule MSS-3 to allow inclusion of the Little Gypsy cancellation costs. The Commission issued an order on January 19, 2012, holding the 2011 Complaint in abeyance, and noting that Entergy planned to make an FPA

¹² *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,104 (2010).

¹³ *Docket No. U-30192, Phase III, Application of Entergy Louisiana, LLC for Approval to Repower Little Gypsy Unit 3 Electric Generation Facility and for Authority to Commence Construction and for Certain Cost Protection and Cost Recovery*, Order No. U-30192-E (May 17, 2011) (Louisiana Commission Order).

section 205 filing to include the Little Gypsy cancellation costs in the 2012 bandwidth formula calculation.¹⁴

II. The Filings

8. Entergy seeks approval to include in the bandwidth formula the amounts associated with securitizing the Little Gypsy cancellation costs. Entergy claims that the costs associated with the securitization were subject to a prudence investigation at the Louisiana Commission. Entergy states that the Little Gypsy cancellation costs were securitized on September 22, 2011, when Entergy Louisiana Investment Recovery Funding I, L.L.C. issued investment recovery bonds in the amount of \$207.156 million. The recovery of costs from Entergy Louisiana's ratepayers began in October 2011 and will continue for ten years.

9. Entergy argues that reflecting the Little Gypsy cancellation costs in the bandwidth formula is appropriate because the costs are production-related costs. Entergy asserts that, given the significant economic changes, the decision to cancel the Little Gypsy Repowering Project was prudent and provided the best outcome for the Entergy System. Entergy further asserts that the securitization of the Little Gypsy cancellation costs provides a lower cost recovery compared to alternative methods.¹⁵

10. Entergy states that it is revising section 30.12 of Service Schedule MSS-3 to include a new variable representing the Little Gypsy cancellation costs (Variable LGCC) that will allow the annual amount of cancellation costs to flow through the formula.¹⁶ Entergy further proposes to include the Variable LGCC input in the calculation effective for the 2011 test year and claims that its filing reflects the securitization authorized by the Louisiana Commission.

11. Entergy asserts that the annual cost to be reflected in Variable LGCC is comprised of two elements. Entergy states the first element is the return of and on the securitization bonds. Entergy states the second element consists of three components: (1) a credit equal to the return on the accumulated deferred income taxes associated with the allowed Little Gypsy cancellation costs; (2) an amount equal to the fees and administrative costs associated with servicing the outstanding securitization bonds; and (3) the amortization

¹⁴ *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 138 FERC ¶ 61,031, at P 28 (2012).

¹⁵ Entergy March 29, 2012 Filing at 5.

¹⁶ *Id.*

over three years of certain Louisiana Commission costs incurred by Entergy Louisiana incident to securitization.¹⁷

12. Entergy claims that, with its filing, the bandwidth formula “is revised to provide the exact relief originally requested by the Louisiana Commission in Docket No. EL11-57-000.”¹⁸ Entergy asserts that the 2011 Complaint is now unnecessary and should be dismissed.

III. Notice of Filing and Responsive Pleadings

13. Notice of Entergy’s filing was published in the *Federal Register*, 77 Fed. Reg. 20,814 (2012), with interventions and protests due on or before April 19, 2012. The Council of the City of New Orleans (New Orleans Council) filed a notice of intervention, a protest and a request for hearing. The Arkansas Public Service Commission (Arkansas Commission) filed a notice of intervention and a protest. The Louisiana Commission filed a notice of intervention, a protest, and comments. The Public Utility Commission of Texas and the Mississippi Public Service Commission filed motions to intervene out of time.

14. On May 4, 2012, the Arkansas Commission filed a motion to file an answer and an answer to the protest and comments of the Louisiana Commission. On May 4, 2012, Entergy filed a motion for leave to answer and answer to the protests filed in this proceeding. On May 9, 2012, the Louisiana Commission filed a motion for leave to answer and answer to the protests of the Arkansas Commission and New Orleans Council. On May 17, 2012, the Arkansas Commission filed an answer, and accompanying motion to file answer, in response to the answer filed by the Louisiana Commission on May 9, 2012.

Motions to Consolidate and Dismiss

15. On May 2, 2012, the Louisiana Commission filed a motion to consolidate this case with the 2011 Complaint. The Louisiana Commission requests that the Commission act expeditiously to consolidate the dockets and grant the complaint or set the proceedings for hearing. The Louisiana Commission states that the Commission issued an order in Docket No. EL11-57-000 on January 19, 2012, wherein it held the 2011 Complaint in abeyance pending receipt of Entergy’s FPA section 205 filing to include the Little Gypsy

¹⁷ *Id.*

¹⁸ *Id.* at 6.

cancellation costs in the bandwidth formula. Since Entergy has now made its section 205 filing, the Louisiana Commission requests that the Commission consolidate the dockets.¹⁹

16. On May 4, 2012, Entergy filed a motion to dismiss the 2011 Complaint as moot because Entergy's recent filing establishes inclusion of the Little Gypsy cancellation costs. Entergy states that the current filing aligns with Commission policy and asserts that allowing the Louisiana Commission to permanently allocate Little Gypsy cancellation costs would be inconsistent with Opinion Nos. 480 and 480-A.²⁰ In the alternative, Entergy asserts that the Commission should wait to address the issue of permanent allocation of Little Gypsy cancellation costs until the United States Court of Appeals for the District of Columbia Circuit (District of Columbia Circuit) issues an order on pending System Agreement matters.²¹ Entergy states that the appeal is relevant since it addresses continuing obligations for Entergy Operating Companies that leave the System Agreement.

17. On May 18, 2012, the Louisiana Commission filed an answer requesting that the Commission deny Entergy's motion to dismiss the 2011 Complaint.²² The Louisiana Commission states that the 2011 Complaint was filed earlier than Entergy's filing in this proceeding and therefore preserves potential rights.²³ The Louisiana Commission claims that the 2011 Complaint asserts the rights of itself and its consumers, and cannot be subsumed into the Entergy filing. The Louisiana Commission further claims that delaying the proceeding would frustrate the Commission's stated desire to institute settlement procedures and might prejudice the Louisiana Commission's rights.

18. The Louisiana Commission asserts that, to the extent that the 2011 Complaint seeks the same result as Entergy's filing, the appropriate action would be to consolidate it with Entergy's filing for decision.²⁴ The Louisiana Commission further asserts that

¹⁹ Louisiana Commission May 2, 2012 Motion to Consolidate at 1-2.

²⁰ Entergy May 4, 2012 Motion to Dismiss at 1.

²¹ *Id.* at 1-2 (citing *City of New Orleans, et al. v. FERC*, No. 11-1043 (D.C. Cir. filed Feb. 14, 2012)).

²² Louisiana Commission May 18, 2012 Answer to Motion to Dismiss (filed in Docket No. EL11-57-000).

²³ *Id.* at 2.

²⁴ *Id.*

Commission precedent supports its position and demonstrates that Entergy's filing, by itself, is inadequate.²⁵ For example, the Louisiana Commission states that in *Middle South Energy*, the Commission determined that costs associated with the Grand Gulf nuclear plant could be permanently assigned among the Entergy Operating Companies, combined with the interaction of that assignment with the System Agreement cost allocation mechanisms, and would produce just and reasonable results.²⁶

19. The Louisiana Commission asserts that the rough equalization requirement adopted in Opinion Nos. 480 and 480-A rests on the authority of the Grand Gulf decisions and the opinions of the District of Columbia Circuit approving them. Thus, the Louisiana Commission argues that it is fully consistent with Commission precedent to allocate the uneconomic costs of a generating unit to the Entergy Operating Companies for which the unit was built on a permanent basis. The Louisiana Commission also claims that the Commission has previously determined that it is just and reasonable to share cancellation costs between companies in accordance with participation ratios.²⁷

20. The Louisiana Commission asserts that although Entergy Arkansas has been permitted to withdraw from System Agreement obligations, it has not been permitted to withdraw from other Entergy System obligations. The Louisiana Commission claims that Entergy Arkansas will still have its permanent allocation of Grand Gulf capacity, which was assigned based on the finding that the unit was built to serve all the then-existing operating companies.²⁸ The Louisiana Commission argues that the Grand Gulf unit was planned to meet the needs of the system and to diversify the system's energy mix and claims that Little Gypsy was similarly planned to meet Entergy System needs, and to diversify the Entergy System's fuel mix.²⁹ The Louisiana Commission also states that Entergy Arkansas will remain a party to numerous life-of-unit power sale and purchase

²⁵ *Id.* at 3 (citing *Middle South Energy, Inc.*, 31 FERC ¶ 61,305, *reh'g denied*, 32 FERC ¶ 61,425 (1985) (*Middle South Energy*) and *Mississippi Industries, Inc.*, 808 F.2d 1535 (1987), *reh'g granted*, 822 F.2d 1104 (1987), *on remand*, *System Energy Resources, Inc.*, 41 FERC ¶ 61,238 (1987) (collectively, Grand Gulf decisions)).

²⁶ *Id.* at 3-4 (citing *Middle South Energy*, 31 FERC at 61,305).

²⁷ *Id.* at 6 (citing *Northern States Power Co.*, 13 FERC ¶ 63,049, at 65,286 (1980), *aff'd*, 17 FERC ¶ 61,196, at 61,379 (1981), *reh'g denied*, 18 FERC ¶ 62,172 (1982), *aff'd sub nom. South Dakota Pub. Utils. Comm'n v. FERC*, 690 F.2d 674 (8th Cir. 1982)).

²⁸ *Id.* (citing *Middle South Energy*, 31 FERC at 61,305).

²⁹ *Id.*

agreements among the Entergy Operating Companies and asserts that Entergy Arkansas will continue to receive revenues from other companies for these permanent resource allocations.³⁰

21. Additionally, the Louisiana Commission states that Entergy Arkansas and Entergy Mississippi participated in the decisions to commence the Little Gypsy Repowering Project and to cancel it, as well as selecting its location and designating Entergy Louisiana as the company responsible to finance and construct the Little Gypsy Repowering Project. The Louisiana Commission therefore asserts that although Entergy Arkansas and Entergy Mississippi should not be responsible for bandwidth allocations following their withdrawal from the System Agreement, they should still be obligated to pay according to the principle of cost causation.³¹ The Louisiana Commission asserts that permanent allocation is appropriate because the Little Gypsy cancellation costs are sunk and provide no future payback.

22. The Louisiana Commission argues that these cases should be consolidated with the 2011 Complaint since both cases involve the same subject matter and an equitable determination may require the consolidation of the cases for decision, as it did in the Grand Gulf cases.³² The Louisiana Commission further asserts that Entergy does not explain how the District of Columbia Circuit's order on pending System Agreement matters will inform resolution of the 2011 Complaint and therefore claims that waiting on its resolution is unnecessary.³³ Finally, the Louisiana Commission claims that Entergy never followed up on its suggestion to commence dispute resolution procedures and states that continuing to delay a decision would only further delay resolution of the case.

Protest of the New Orleans Council

23. The New Orleans Council asserts that Entergy's filing, and the related 2011 Complaint, should be dismissed outright. In the alternative, the New Orleans Council requests that the Commission set this matter for hearing to determine whether and to what

³⁰ *Id.* at 7 (citing *Entergy Services, Inc. and EWO Marketing, L.P.*, 116 FERC ¶ 61,296, at P 13 (2006)).

³¹ *Id.* at 7.

³² *Id.* at 8 (citing *Middle South Energy*, 31 FERC at 61,305).

³³ *Id.* (referencing *City of New Orleans, et al. v. FERC*, No. 11-1043 (D.C. Cir. filed Feb. 14, 2012)).

extent it may be just and reasonable to include a portion of the Little Gypsy cancellation costs in the bandwidth formula.³⁴

24. The New Orleans Council states that it has three concerns with Entergy's filing. First, the New Orleans Council states that Entergy fails to show why inclusion of the Little Gypsy cancellation costs in the bandwidth formula would be just and reasonable. The New Orleans Council asserts that the bandwidth formula does not include all production costs and has never included costs associated with cancelled plants. Second, the New Orleans Council argues that the proposed recovery amount and amortization period conflict with the Commission policy on recovery of cancelled plant costs.³⁵ Finally, the New Orleans Council claims that the repowering and cancellation of the Little Gypsy Repowering Project were decisions made on behalf of the entire Entergy System, and Entergy Arkansas and Entergy Mississippi should therefore bear their fair share of costs.

Protest of the Arkansas Commission

25. The Arkansas Commission claims that Service Schedule MSS-3 has never provided for the recognition of cancellation costs in the bandwidth formula and requests that the Commission reject Entergy's filings. The Arkansas Commission argues that, because the Little Gypsy Repowering Project was planned by Entergy starting in 2006, it could not have been planned to meet Entergy Arkansas' needs or to benefit customers in Arkansas subsequent to Entergy Arkansas' withdrawal in 2013 from the System Agreement.³⁶

26. The Arkansas Commission argues that neither Service Schedule MSS-3 nor Exhibit ETR-26, the foundation of the bandwidth remedy, includes any production costs related to an abandoned plant. The Arkansas Commission asserts that the Commission found that "[f]uture production cost comparisons among the [Entergy] Operating

³⁴ New Orleans Council April 12, 2012 Protest at 2.

³⁵ *Id.* at 6 (citing *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,081-83 (1988), *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988), *reh'g denied*, 44 FERC ¶ 61,092 (1988) (stating that costs must be divided between shareholders and ratepayers on a 50/50 basis and must be amortized over the life of the plant)).

³⁶ Arkansas Commission April 19, 2012 Protest at 5, 9 (stating that notice of Entergy Arkansas' withdrawal occurred *before* the repowering project was planned and proposed by Entergy Louisiana).

Companies should follow the methodology in Exhibit ETR-26”³⁷ and argues that Entergy has offered no justification for deviating from this approach.

27. The Arkansas Commission states that to include a cost in the bandwidth formula, it must not only be production-related, but it must also be found includable for bandwidth purposes.³⁸ The Arkansas Commission states that:

[d]ifferent treatment of [the] Little Gypsy [Repowering Project]... would result in unduly preferential treatment by, in effect, allowing its abandonment costs to be spread by virtue of the bandwidth formula’s re-allocation of production costs among all Entergy Operating Companies rather than being borne by the affected individual Entergy Operating Company, as has been the case for all other cancelled [Entergy] System projects.³⁹

28. Finally, the Arkansas Commission states that if the Commission determines that Variable LGCC amounts may be included in the bandwidth formula, an explicit adjustment should be made to the proposed Service Schedule MSS-3 revision so that Entergy Arkansas will not experience any increase in the bandwidth payments it is obligated to pay prior to withdrawing from the System Agreement.

Protest of the Louisiana Commission

29. The Louisiana Commission supports the allocation of Little Gypsy cancellation costs to all of the Entergy Operating Companies for which the plant was planned. However, the Louisiana Commission protests the filing because it claims Entergy does not provide any remedy to permanently allocate the Little Gypsy cancellation costs on a fixed basis to all of the Entergy Operating Companies.

³⁷ *Id.* at 6 (citing Opinion No. 480, 111 FERC ¶ 61,311, at P 33).

³⁸ *Id.* (stating that section 30.12 of Service Schedule MSS-3 lists five separate instances of Entergy Operating Company-incurred production costs that are excluded from the bandwidth calculation).

³⁹ *Id.* at 7-8 (stating that it is Commission policy to limit ratepayer liability to 50 percent of cancellation costs, amortized over the expected life of the plant had it gone into service).

30. The Louisiana Commission asserts that the planning process for Little Gypsy Repowering Project makes clear that it was intended to serve the needs of the entire Entergy System, including Entergy Arkansas and Entergy Mississippi. The Louisiana Commission further states that Little Gypsy would have replaced an existing unit that was planned for the Entergy System and that is approaching the end of its useful life.

31. According to the Louisiana Commission, the Commission has a clear policy permitting the recognition of cancelled plant costs in Commission-jurisdictional rates. It notes that, in Opinion No. 295, the Commission permitted recovery by shareholders of one-half the full amount of cancelled plant plus all conventional financing costs. The Louisiana Commission states that, more recently, the Commission has indicated a willingness to permit all prudent cancelled plant costs in rates, finding that requiring a sharing of costs may not be appropriate when it will not provide an incentive to the utility to carefully plan new investments.⁴⁰

32. The Louisiana Commission claims that unlike typical transactions under the System Agreement, which allocate costs associated with ongoing power and energy transactions, these costs are fixed and definite. The Louisiana Commission claims that the cancellation determination transformed the Little Gypsy cancellation costs into sunk costs, and argues that they should be separately and permanently assigned to each Entergy Operating Company for which the plant was built.⁴¹

Arkansas Commission's Answer

33. The Arkansas Commission argues that the Commission should summarily dismiss the permanent assignment urged by the Louisiana Commission “as an impermissible attack” on other orders issued by the Commission that have rejected similar arguments.⁴² The Arkansas Commission states that the Louisiana Commission does not allege any violation of the terms of the System Agreement, nor does it advance any specific revisions. The Arkansas Commission asserts that the Louisiana Commission has not provided any provision or term of the System Agreement that permits a permanent allocation of cancellation costs. The Arkansas Commission further argues that the

⁴⁰ Louisiana Commission April 19, 2012 Protest at 13-14 (citing Opinion No. 295 and *Southern Calif. Edison Co.*, 112 FERC ¶ 61,014, at P 61 (2005)).

⁴¹ *Id.* at 11-12.

⁴² Arkansas Commission May 4, 2012 Answer at 2-3 (referencing Docket No. ER09-636 and *Entergy Services, Inc.*, 129 FERC ¶ 61,143, at P 62 (2009), *reh'g denied*, 134 FERC ¶ 61,075 (2011)).

Commission has previously ruled that the System Agreement provisions apply to withdrawing companies for only as long as they remain parties to the System Agreement.⁴³

34. The Arkansas Commission again argues that, since the Little Gypsy Repowering Project was planned in 2006 and Entergy Arkansas gave notice of its withdrawal in 2006, the project could not have been planned to meet the needs of Entergy Arkansas. The Arkansas Commission asserts that permanent assignment of the Little Gypsy cancellation costs qualifies as such “compensation or continuing obligation requirements” that are impermissible to impose on Entergy Arkansas following its withdrawal.

35. Additionally, the Arkansas Commission asserts that permanent assignment of 100 percent of the Little Gypsy cancellation costs is “patently contrary to Commission policy of equal risk/cost sharing ... which limits ratepayer liability to no more than 50 percent of any such costs, amortized over the expected life of the ... [p]roject had it gone into service.”⁴⁴ The Arkansas Commission further asserts that the United States Court of Appeals for the District of Columbia Circuit has already held that full production equalization is “too dramatic a departure from the [Entergy System’s] historical operations, individual company autonomy and allocation methodologies and an unwarranted disruption of the states’ settled authority interests, and expectations.”⁴⁵

36. Finally, the Arkansas Commission argues that the Little Gypsy cancellation costs would not have been allocated to other Entergy Operating Companies under the terms of the System Agreement if the endeavor had been completed. The Arkansas Commission states that the Louisiana Commission approved construction and cancellation of the Little Gypsy Repowering Project, as well as the securitization of the Little Gypsy cancellation costs. The Arkansas Commission argues that the Louisiana Commission has not provided any explanation of how retail ratepayers in Arkansas and Mississippi could be held liable for payment of the securitization bonds.

Entergy’s Answer

37. Entergy requests that the Commission dismiss the protests as unfounded and beyond the scope of this proceeding. Entergy states that the Little Gypsy cancellation costs are production related, have been determined to be prudently incurred by the retail

⁴³ *Id.* at 5 (referencing *Entergy Services, Inc.*, 129 FERC ¶ 61,143, at P 62 (2009)).

⁴⁴ *Id.* at 6 (citing Opinion No. 295, 42 FERC ¶ 61,016).

⁴⁵ *Id.* at 7 (citing Opinion No. 480, 111 FERC ¶ 61,111).

regulator of the Entergy Operating Company that incurred these costs, and both the project and the cancellation costs were approved by the Entergy Operating Committee, as required by the System Agreement.⁴⁶ Entergy states that although the Arkansas Commission argues that Entergy Arkansas could not benefit from the Little Gypsy Repowering Project and should therefore not be subject to any of the costs, the Arkansas Commission ignores the fact that this project received approval by the Operating Committee, and the overall costs of cancelling the project were deemed to be prudently incurred as economic changes had materially altered the need and benefit of the project.⁴⁷

38. Entergy notes that while the Arkansas Commission states that other similar cancellation costs have not flowed through the bandwidth formula, the Arkansas Commission has not identified any such project and Entergy is not aware of any other cancellation costs, or securitized costs of this type, that have occurred while the bandwidth formula has been in Service Schedule MSS-3.⁴⁸ Therefore, Entergy states that there are no previous examples that are comparable to the request to include the Little Gypsy cancellation costs in the bandwidth formula.

39. Entergy requests that the Commission reject the permanent allocation issue raised by the Louisiana Commission as outside the scope of this proceeding. Entergy explains that the permanent allocation would require a remedy outside of the bandwidth formula and therefore could not be addressed in the context of this proceeding.⁴⁹

40. Additionally, Entergy requests that the Commission not consolidate these dockets with the 2011 Complaint. Entergy explains that the consolidation of these two proceedings would complicate the determination of the refund effective date and the burden of proof for disposition of these issues, which would create uncertainty regarding the bandwidth formula calculation.⁵⁰

41. Moreover, Entergy states that it agrees with the Louisiana Commission's arguments that the case law on including 50 percent of cancellation costs can be

⁴⁶ Entergy May 4, 2012 Answer at 3.

⁴⁷ *Id.* at 3-4 (citing Louisiana Commission Order).

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 6.

⁵⁰ *Id.*

distinguished from the facts at hand.⁵¹ Entergy states that, as noted by the Louisiana Commission, inclusion of all prudently incurred cancelled plant costs in rates has been permitted by the Commission in certain instances, and can provide an incentive to carefully plan new investments. Entergy explains that the cancellation of the project was the lower cost option once the financial landscape for the project changed in 2009. Entergy further explains that by including the Little Gypsy cancellation costs in the bandwidth calculation, the costs are not actually recovered from customers but rather reflected as costs eligible for determining and comparing the production costs for rough production cost equalization purposes. Therefore, Entergy requests that the Commission permit 100 percent inclusion of the Little Gypsy cancellation costs.⁵²

Louisiana Commission's Answer

42. The Louisiana Commission states that at most, the protests raise issues of material fact.⁵³ The Louisiana Commission explains that Entergy planned the Little Gypsy Repowering Project before Entergy Arkansas announced its intention to withdraw from the System Agreement. The Louisiana Commission asserts that the project was planned for, and aimed in large part to benefit, Entergy Arkansas.⁵⁴ The Louisiana Commission notes that the planning process that led to the Little Gypsy Repowering Project was commenced in 2002, when the project was conceived to diversify the Entergy System's fuel requirements and provide needed base load capacity. The Louisiana Commission also notes that regardless of Entergy Arkansas's plan to withdraw, Entergy was required to plan for all Entergy Operating Companies while the System Agreement was still in effect.⁵⁵

43. The Louisiana Commission explains that Entergy has not incurred any other abandonment costs for production plant since the 1980s, which means that during the term of the bandwidth formula, there have been no other plant abandonments.⁵⁶

⁵¹ *Id.* at 7.

⁵² *Id.*

⁵³ Louisiana Commission May 9, 2012 Answer at 2.

⁵⁴ *Id.* at 3.

⁵⁵ *Id.* at 4 (citing *AECC v. Entergy*, 126 FERC ¶ 61,051, at PP 37-38 (2009) and *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 138 FERC ¶ 61,029, at P 44 (2012)).

⁵⁶ *Id.* at 2.

Therefore, the Louisiana Commission states it is insignificant that the bandwidth formula did not previously contain a provision for including abandoned plants. The Louisiana Commission asserts that Entergy's proposal attempts to remedy the unjust, unreasonable, and unduly discriminatory circumstances resulting from the unexpected need to abandon Little Gypsy.⁵⁷

44. The Louisiana Commission states that the Commission has a policy of including the costs of an abandoned plant and typically requires a 50-50 sharing of the costs between investors and consumers. The Louisiana Commission argues that the Little Gypsy Repowering Project is unique, however, because the cancellation costs were securitized.⁵⁸ The Louisiana Commission explains that because the cancellation costs were securitized, the investors are denied any return on investment during the amortization period. The Louisiana Commission states that the Commission should first assign the Little Gypsy cancellation costs to all the Entergy Operating Companies based on their responsibility ratios, and then include the costs in each Operating Company's production costs in the bandwidth formula.⁵⁹

Arkansas Commission's Answer to the Louisiana Commission's Answer

45. The Arkansas Commission claims that the Louisiana Commission's allegations are in error. The Arkansas Commission asserts that the Little Gypsy Repowering Project was not planned to meet Entergy Arkansas' needs as part of the Entergy System planning function or to provide any benefit to Entergy Arkansas' ratepayers.⁶⁰ The Arkansas Commission further asserts that the Entergy Operating Committee did not approve the planning recommendation to proceed with the Little Gypsy Repowering Project until approximately one year and seven months after the Entergy Arkansas exit notice date. The Arkansas Commission argues that the question is not whether the Little Gypsy Repowering Project was planned on an Entergy System basis, but rather whether Entergy Arkansas' needs were included in Entergy System planning despite all parties knowing that Entergy Arkansas will exit the System Agreement before 2014.⁶¹

⁵⁷ *Id.* at 2-3.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.*

⁶⁰ Arkansas Commission May 17, 2012 Answer at 2-3.

⁶¹ *Id.* at 3.

46. The Arkansas Commission claims that just because the SSRP was developed by Entergy in 2005 for prospective application does not mean that all SSRP projects contemplated by Entergy after Entergy Arkansas' notice date of December 19, 2005 should be planned partially for the benefit of Entergy Arkansas. The Arkansas Commission states that the Louisiana Commission approved the cancellation by Entergy Louisiana based on the conclusion that its Louisiana ratepayers fare better financially under cancellation versus continued Little Gypsy Repowering Project suspension long-term. The Arkansas Commission argues that under the long-term suspension option, however, Entergy Arkansas would not have been subject to any of the Little Gypsy Repowering Project's costs since the commercial operation date would have occurred long after Entergy Arkansas' December 2013 exit from the Entergy System.⁶²

47. The Arkansas Commission asserts that Entergy Arkansas already had significant coal resources when the Little Gypsy Repowering Project was first undertaken in 2007 and it was the other Operating Companies that were in need of additional base load capacity.⁶³ Additionally, the Arkansas Commission asserts that including 100 percent of the Little Gypsy Repowering Project cancellation costs – not 50 percent – and amortizing those costs over ten years – rather than the expected project life of 40 years – violates the Commission policy established in Opinion No. 295. The Arkansas Commission asserts that applying the Commission policy would reduce Entergy Louisiana's average annual amortization principal on cancellation costs by nearly 90 percent.⁶⁴ The Arkansas Commission adds that the Louisiana Commission expressed its favor of the 50-50 sharing plan in the Opinion No. 295 proceeding but makes no mention of that fact in this proceeding.⁶⁵

IV. Discussion

A. Procedural Matters

48. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and 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.

⁶² *Id.* at 4.

⁶³ *Id.* at 5.

⁶⁴ *Id.* at 5-6 (citing Opinion No. 295, 42 FERC ¶ 61,016 at 61,079).

⁶⁵ *Id.* at 6.

§ 385.214(d) (2011), the Commission will grant the Public Utility Commission of Texas and the Mississippi Public Service Commission's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

49. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

50. We find that Entergy's proposed revisions to Service Schedule MSS-3 of the System 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 procedures ordered below. Also, we will consolidate Docket Nos. ER12-1384-000, ER12-1385-000, ER12-1386-000, ER12-1387-000, ER12-1388-000, ER12-1390-000, and EL11-57-000 for the purposes of the hearing and settlement judge procedures ordered below because the proceedings present common issues of law and fact.⁶⁶

51. 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.⁶⁷ 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.⁶⁸ 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

⁶⁶ The Commission's policy is to consolidate proceedings where the issues are closely intertwined with each other. *Missouri River Energy Services*, 124 FERC ¶ 61,309, at P 39 (2008).

⁶⁷ 18 C.F.R. § 385.603 (2011).

⁶⁸ 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 (5) days of this order. The Commission's website contains a list of Commission judges and a summary of their backgrounds and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

52. With regard to Entergy's proposed revisions to Service Schedule MSS-3 of the System Agreement, our preliminary analysis indicates that the revisions 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 proposed revisions for filing, suspend them for a nominal period, make them effective June 1, 2012, subject to refund, and set them for hearing and settlement judge procedures.

53. Additionally, we reject the Louisiana Commission's request to provide a permanent allocation of the Little Gypsy cancellation costs on a fixed basis to all of the Entergy Operating Companies regardless of their continued participation in the System Agreement. The System Agreement places no further conditions on an Operating Company's ability to withdraw beyond giving 96 months' notice.⁶⁹ The Commission stated that once Entergy Arkansas and Entergy Mississippi withdraw from the Entergy system, they would no longer be considered affiliates of the other Entergy Operating Companies for the purposes of the bandwidth formula.⁷⁰ The Commission has also clarified that there is no basis to suggest that bandwidth payments should continue indefinitely if an Operating Company is no longer a member of the Entergy System Agreement. Accordingly, we find that once an Operating Company withdraws from the System Agreement, there is no basis for it to continue to be allocated costs of another Operating Company's cancelled production projects for the rough production cost equalization purposes of the System Agreement.

The Commission orders:

(A) Entergy's proposed tariff revisions are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2012, as requested, subject to refund, as discussed in the body of this order.

(B) Docket Nos. ER12-1384-000, ER12-1385-000, ER12-1386-000, ER12-1387-000, ER12-1388-000, and ER12-1390-000 are hereby consolidated with Docket No. EL11-57-000 for purposes of hearing and settlement judge procedures, as discussed in the body of this order.

⁶⁹ *Entergy Services, Inc.*, 129 FERC ¶ 61,143, at P 59 (2009).

⁷⁰ *Entergy Services, Inc.*, 134 FERC ¶ 61,075 (2011).

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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 within five (5) days of the date of this order.

(E) 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.

(F) 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.