

140 FERC ¶ 61,078  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Union Electric Company

Docket No. EL08-60-000

v.

Entergy Arkansas, Inc. and  
Entergy Services, Inc.

ORDER DISMISSING COMPLAINT

(Issued July 27, 2012)

1. On April 30, 2008, Union Electric Company (Union Electric) filed a complaint against Entergy Arkansas, Inc. (Entergy Arkansas) and Entergy Services, Inc. (Entergy Services) (collectively, Entergy) pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> alleging that Entergy is unlawfully recovering rough production cost equalization payments from Union Electric that are not provided for by its service agreement (Service Agreement) with Entergy Arkansas. As discussed below, we will dismiss the complaint as moot because the issues presented have been resolved in Docket No. ER07-956-000.

**I. Background**

2. Union Electric is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. that purchases capacity and energy from Entergy Arkansas, a subsidiary of Entergy Corporation, under the Service Agreement, a long-term power sales agreement. The Service Agreement calls for Entergy Arkansas to provide Union Electric with 165 MW of capacity and associated energy at the White Bluff Steam Electric Station 500 kV bus (White Bluff), or at another generation bus if capacity from White Bluff is not available. The Service Agreement establishes a fixed monthly charge

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<sup>1</sup> 16 U.S.C. § 824e (2006).

of \$11.25/kW-month for capacity and also establishes a formulaic Fuel and Purchased Energy Rate that includes only certain specified components.<sup>2</sup>

## II. Complaint and Answer

3. Union Electric states that, on July 5, 2007, Entergy Arkansas sent Union Electric an invoice for amounts it claimed were due under the Service Agreement for service provided during the month of June 2007. That invoice included amounts represented to be an allocation to Union Electric of certain rough production cost equalization payments made by Entergy Arkansas to the other Entergy Operating Companies.<sup>3</sup> Union Electric adds that Entergy Arkansas subsequently issued additional monthly invoices through January 2008 in which it sought to recover additional equalization payments. Union Electric contends that Entergy thus has billed Union Electric under the Fuel and Purchased Energy Rate component of the Service Agreement a total of approximately \$14.5 million in equalization payments.

4. Union Electric argues that no provision of the Service Agreement allows for the recovery of equalization payments, and that the charges therefore violate section 205 of the FPA<sup>4</sup> and the filed rate doctrine. It argues that recovery from Union Electric of any or all of the equalization payments is contrary to the Service Agreement's plain language

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<sup>2</sup> Union Electric April 30, 2008 Complaint at 3-4.

<sup>3</sup> In Opinion Nos. 480 and 480-A, the Commission found that rough production cost equalization had been disrupted on the Entergy system. The Commission concluded that if the addition of resources to the Entergy system did not maintain rough production cost equalization, then an annual bandwidth of +/- 11 percent would be utilized to keep the Entergy system in rough production cost equalization, i.e., only if total production costs of one or more Operating Companies deviate from the system average total production cost by more than +/- 11 percent would the bandwidth become applicable. The application of the bandwidth remedy would be the potential reallocation of costs from Operating Companies with low production costs to Operating Companies with high production costs. *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 136, *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*, *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047, *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011).

<sup>4</sup> 16 U.S.C. § 824d (2006).

because these costs are not a purchased energy expense, and do not represent an expense to Entergy Arkansas for any purchase of energy by Entergy Arkansas.<sup>5</sup>

5. Union Electric explains that Entergy has been charging Union Electric an allocated portion of the equalization payments under the purchased energy component of the Fuel and Purchased Energy Rate formula, even though the purchased energy component does not allow Entergy Arkansas to pass through or recover the equalization payments, and even though they do not represent a purchased energy expense.<sup>6</sup> Union Electric argues that the costs instead reflect payments Entergy Arkansas must provide to other Entergy Operating Companies merely because Entergy Arkansas's production costs were lower than the Entergy system average by more than the 11 percent bandwidth.

6. Union Electric argues that recovery of equalization payments through the Service Agreement is also contrary to the Service Agreement's intent. It contends that the Service Agreement is intended to provide Union Electric with energy prices typical of base load resources, and certainty and protection against any large energy-related price increases such as those associated with natural gas-fired peaking resources.<sup>7</sup>

7. Union Electric contends that its complaint raises issues similar to those raised by Union Electric in Docket No. ER07-956-000, and requests that its complaint be held in abeyance until the Commission issues an order on the merits in that proceeding. Alternatively, Union Electric requests that the Commission consolidate its complaint with Docket No. ER07-956-000 so that all issues regarding the equalization payments under the Service Agreement can be addressed in one proceeding.

8. In its answer, Entergy agrees with Union Electric that the same issues raised in the complaint are before the Commission in Docket No. ER07-956-000. Entergy requests that the Commission hold the complaint in abeyance, subject to the outcome of Docket No. ER07-956-000.

9. On July 29, 2008, the Commission issued an order holding the complaint in abeyance until the Commission issues an order on the merits in Docket No. ER07-956-000.<sup>8</sup>

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<sup>5</sup> Union Electric April 30, 2008 Complaint at 9.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.* at 13.

<sup>8</sup> *Union Electric Company v. Entergy Arkansas, Inc. and Entergy Services, Inc.*, 124 FERC ¶ 61,111 (2008).

### III. Commission Determination

10. On January 11, 2010, the Commission issued an order in Docket No. ER07-956-000 addressing, among other things, the issues stemming from Union Electric's Service Agreement with Entergy Arkansas.<sup>9</sup> In that order, Opinion No. 505, the Commission ruled that the Service Agreement did not allow Entergy Arkansas to collect an allocated portion of its bandwidth payments from Union Electric through the purchased energy variable in the rate formula set forth in the Service Agreement.<sup>10</sup> The Commission found that the bandwidth payments do not fall within the rate formula's definition of purchased energy as "purchased energy expense charged to Account 555," but instead are payments to roughly equalize production costs among the Operating Companies.<sup>11</sup> On May 7, 2012, the Commission issued Opinion No. 505-A, which denied Entergy's request for rehearing with regard to Union Electric's Service Agreement with Entergy Arkansas.<sup>12</sup> Because the Commission has addressed the issues raised in Union Electric's complaint, we find that the complaint is now moot. Accordingly, the instant complaint is dismissed.

#### The Commission orders:

Union Electric's complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>9</sup> *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010), *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

<sup>10</sup> Opinion No. 505, 130 FERC ¶ 61,023 at PP 100-104.

<sup>11</sup> *Id.* P 101.

<sup>12</sup> Opinion No. 505-A, 139 FERC ¶ 61,103 at PP 30-39.