

143 FERC ¶ 61,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Arkansas, Inc.

Docket Nos. ER11-2560-000
ER11-3156-000
(consolidated)

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 6, 2013)

1. In this order, the Commission approves an uncontested settlement (Settlement) filed by Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas) and Arkansas Electric Cooperative Corporation (AECC). The Settlement resolves all issues in the above-captioned proceedings related to Entergy Arkansas' proposed formula rate change to its Power Coordination, Interchange and Transmission Service Agreement (PCITSA) with AECC and the Entergy Arkansas 2011 annual wholesale formula rate update filing (2011 Update).

I. Background

2. On December 29, 2010, in Docket No. ER11-2560-000, Entergy filed proposed changes to the formula rate contained in the PCITSA. On February 28, 2011, the Commission issued an order accepting and suspending the proposed rate for a nominal period, to become effective March 1, 2011, subject to refund, and establishing hearing and settlement procedures.¹ On March 21, 2011, in Docket No. ER11-3156-000, Entergy filed Entergy Arkansas' proposed 2011 Update. The 2011 Update, which Entergy filed pursuant to the terms of the PCITSA, includes the proposed formula changes that the Commission accepted and suspended, subject to refund, in Docket No. ER11-2560-000. On August 23, 2011, the Commission issued an order accepting and suspending the 2011 Update for a nominal period, to become effective March 1, 2011, subject to refund. The

¹ *Entergy Arkansas, Inc.*, 134 FERC ¶ 61,143 (2011).

Commission also consolidated Docket No. ER11-3156-000 with the ongoing proceeding in Docket No. ER11-2560-000.²

3. On January 27, 2012, Entergy filed the Settlement in Docket Nos. ER11-3156-000 and ER11-2560-000. On February 16, 2012, Commission Trial Staff filed comments on the Settlement. AECC and Entergy filed responses to Trial Staff's comments. On March 12, 2012, the Settlement Judge issued a Report of Settlement Judge on Offer of Settlement,³ and the Chief Judge terminated the settlement judge procedures on March 14, 2012.

II. Settlement

4. The Settlement resolves all issues related to the PCITSA and the 2011 Update set for hearing in Docket Nos. ER11-2560-000 and ER11-3156-000.

5. The Settlement provides that the rate of return on common equity (ROE) will be a stated/fixed rate of 10.2 percent for the 2012 and 2013 rate years,⁴ but Entergy and AECC agree to several prospective formula changes, effective March 1, 2012. These changes include, but are not limited to, the following components of the formula: (1) Regional Transmission Market Operations accounts; (2) Administrative and General Expenses; (3) Transmission Operation and Maintenance Expenses; (4) Transmission Rate Base; and (5) Transmission, Distribution and General Plant Revenue Credits. These proposed changes clarify the definitions and source of inputs to the 2011 Update. Attachment A to the Explanatory Statement for the Settlement (Amended PCITSA) provides formula rate amendments reflecting the Settlement.⁵

6. The Settlement provides that “[t]he standard of review for any modifications to [the Settlement] that are not agreed to by all the Parties, including any modifications resulting from the Commission acting *sua sponte*, shall be the just and reasonable standard of review.”⁶ The Settlement states that AECC will withdraw from the

² *Entergy Arkansas, Inc.*, 136 FERC ¶ 61,121 (2011).

³ *Entergy Arkansas, Inc.*, 138 FERC ¶ 63,015 (2012) (Report on Offer of Settlement).

⁴ Entergy January 27, 2012 Settlement at 3 (stating that this will be effectuated by a footnote to the relevant provisions of the formula stating that the 10.2 percent ROE is effective through February 28, 2014).

⁵ Entergy January 27, 2012 Settlement, Explanatory Statement, Attachment A.

⁶ Entergy January 27, 2012 Settlement at 10.

proceedings in Docket Nos. EL11-64-000 and ER11-3657-000 if the Commission accepts the Settlement without condition or modification, unless agreed to by the parties.⁷

III. Discussion

A. Uncontested Settlement

7. In the Report on Offer of Settlement, the Settlement Judge explained that he did not certify the settlement as uncontested due to the adverse comments filed by Trial Staff, even though Trial Staff was not a party to the Settlement and was the only participant to file adverse comments.⁸ The Settlement Judge stated that out of caution he could not certify the Settlement because an issue of material fact might exist.⁹

Commission Determination

8. We find that the Settlement is uncontested, notwithstanding Trial Staff's adverse comments, because Trial Staff is not a party to these proceedings. The Commission's Rules of Practice and Procedure Rule state that contested offers of settlement are those where "any offer of settlement is contested in whole or in part, by any party."¹⁰ In these proceedings, Trial Staff is only a participant, not a party.¹¹ Because Trial Staff is not a party to these proceedings, the Settlement is uncontested among all the parties.

⁷ On May 27, 2011, in Docket No. ER11-3657-000, Entergy filed revised transmission rates and changes purportedly in accordance with the rate formula in its Open Access Transmission Tariff and with the partial settlement filed by Entergy on January 18, 1996 (2011 Rate Determination). On September 26, 2011, in Docket No. EL11-64-000, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, and South Mississippi Electric Power Association filed a complaint, alleging that the 2011 Rate Determination departs from the proper application of Entergy's formula rate. On January 19, 2012, the Commission issued an order establishing hearing and settlement judge procedures in Docket Nos. ER11-3657-000 and EL11-64-000. *Entergy Servs., Inc.*, 138 FERC ¶ 61,030 (2012).

⁸ Report on Offer of Settlement, 138 FERC ¶ 63,015 at P 70.

⁹ *Id.* P 71.

¹⁰ 18 C.F.R. § 385.602(h) (2012).

¹¹ *See* 18 C.F.R. § 385.102(b) (defining "participant" to include "[a]ny employee of the Commission assigned to present the position of the Commission staff in a proceeding before the Commission"), (c) (defining "party" as a person filing any

(continued)

B. PCITSA Formula Rate**Comments**

9. Trial Staff conditions its support for the Settlement on the Commission rejecting the methodology for determining the ROE set forth in the PCITSA. Trial Staff argues that the Commission should not approve the Settlement because the PCITSA requires that the ROE reflect the Arkansas Public Service Commission's determination of the ROE. Trial Staff claims that this requirement violates the Commission's long-standing policy prohibiting the use of automatic adjustment clauses for ROE and the use of a state-determined ROE in a Commission-approved wholesale rate.¹² Trial Staff acknowledges that the Settlement stipulates that the ROE will remain fixed for the period of the Settlement (i.e., 2012 and 2013), rather than follow the relevant provisions of the PCITSA. Trial Staff is concerned that, once the two-year period covered by the Settlement expires, the use of the state-determined ROE will resume.¹³ Trial Staff asks the Commission to require Entergy Arkansas to amend the PCITSA to indicate that a Commission-approved ROE will be used in the PCITSA formula rate.¹⁴ Trial Staff also supports the deletion of paragraph 3 of Exhibit C,¹⁵ which describes Commission staff's right to investigate and protest the formula rate.¹⁶

10. AECC argues that Trial Staff's concerns are a challenge to the PCITSA formula rate and not a challenge to the Settlement itself.¹⁷ AECC contends that the only question before the Commission at this time is whether the Settlement should be accepted.

application, petition, tariff or rate filing, complaint or protest under section 19a(i) of the Interstate Commerce Act; any respondent to a proceeding; or any person whose intervention in a proceeding is effective under Rule 214). *See also* 18 C.F.R. § 385.211(a)(2) (stating that a protestant must intervene under Rule 214 to become a party).

¹² Trial Staff February 16, 2012 Comments at 10.

¹³ *Id.* at 12.

¹⁴ *Id.* at 14.

¹⁵ Exhibit C of the PCITSA is entitled "Rate Formula."

¹⁶ Trial Staff February 16, 2012 Comments at 13.

¹⁷ AECC February 27, 2012 Comments at 2 (AECC Comments).

11. Entergy and AECC assert that Trial Staff's concerns are premature because, if the Settlement is accepted, the ROE will remain fixed for two years.¹⁸ Entergy claims that, due to the possible changes in Entergy Arkansas' participation in the Entergy system and the proposed Midwest Independent Transmission System Operator, Inc. integration, it is likely that the parties will revisit the ROE issue before the fixed ROE expires.¹⁹ Entergy adds that, if the Commission accepts Trial Staff's proposal, it would severely disadvantage Entergy Arkansas by locking in the ROE to the 3-year update period.²⁰

12. AECC explains that the PCITSA definition of ROE pre-dates the Commission's policy against automatic equity adjustment clauses.²¹ AECC contends that the Commission has never required AECC and Entergy to eliminate the definition of ROE in the PCITSA.²²

13. Entergy and AECC state that the Commission has approved numerous settlement agreements between AECC and Entergy Arkansas that were filed in connection with the PCITSA without requiring revisions to the definition of ROE.²³ AECC notes that AECC and Trial Staff can review all aspects of the PCITSA rate and request a hearing to determine the reasonableness of the transmission charges produced by the formula and that no rate may go into effect under the PCITSA without a filing by Entergy Arkansas and the Commission's subsequent acceptance.²⁴

14. Entergy claims that the Commission's policy on automatic ROE adjustments can only be upheld in cases where the Commission recognizes the formula rate

¹⁸ *Id.*; Entergy February 27, 2012 Comments at 2 (Entergy Comments).

¹⁹ Entergy Comments at 3.

²⁰ *Id.*

²¹ AECC Comments at 5-6 (citing *New England Power Co.*, 31 FERC ¶ 61,378 (1985)).

²² *Id.*

²³ *Id.* at 2-3 (citing *Entergy Arkansas, Inc.*, 136 FERC ¶ 61,111 (2011); *Entergy Arkansas, Inc.*, 130 FERC ¶ 61,238 (2010); *Entergy Services, Inc.*, 127 FERC ¶ 61,100 (2009); *Entergy Services, Inc.*, 122 FERC ¶ 61,109 (2008)); Entergy Comments at 4.

²⁴ AECC Comments at 7 (distinguishing *Green Mountain Power Corp.*, 46 FERC ¶ 61,164 (1989) (holding that an automatic change in the ROE without Commission scrutiny is impermissible)).

redeterminations as informational filings.²⁵ Entergy argues that that policy does not apply here because the Commission has consistently treated the annual formula rate updates, regardless of whether the ROE component was changed, as a change in rate filed pursuant to FPA section 205 rather than an annual informational filing.²⁶ If the Commission agrees with Trial Staff, Entergy asks the Commission to treat the annual rate redeterminations as informational filings because there are no changes to the formula rate.²⁷

Commission Determination

15. We find that Trial Staff challenges existing provisions of the PCITSA formula rate that are unchanged by the Settlement. Accordingly, we deny Trial Staff's requests because they are outside the scope of these proceedings. The Settlement resolves all issues in dispute in these proceedings. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the FPA, 16 U.S.C. § 824(e).

16. This order terminates Docket Nos. ER11-2560-000 and ER11-3156-000.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

Kimberly D. Bose,
Secretary.

²⁵ Entergy Comments at 4.

²⁶ *Id.*

²⁷ *Id.* (citing *Arkansas Power and Light Co.*, 39 FERC ¶ 61,360 (1987)).