

147 FERC ¶ 61,161
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.	Docket Nos. ER14-1645-000
Entergy Services, Inc.	ER13-948-000
Midcontinent Independent System Operator, Inc.	EL14-19-000 (consolidated)

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

(Issued May 29, 2014)

1. On April 1, 2014, Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies,¹ and the Midcontinent Independent System Operator, Inc. (MISO), submitted for filing Schedule 47 to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff),² which provides a mechanism for the Entergy Operating Companies' recovery of the operation and maintenance (O&M) costs that the Entergy Operating Companies incurred as part of their integration into MISO (hereafter referred to as Transition Costs). As discussed further below, we accept and suspend Entergy's filing, to become effective June 1, 2014, as requested, subject to refund, and establish hearing and settlement judge procedures. Additionally, we

¹ The Entergy Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC, Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Texas, Inc. (Entergy Texas).

² MISO explains that it joins the filing as the administrator of its Tariff, but takes no position on the substance of this filing. Thus, we will refer to this filing as Entergy's filing.

consolidate this proceeding with the other ongoing proceedings related to the Entergy Operating Companies' transmission rates as a transmission-owning member of MISO.³

I. Background

2. On December 19, 2013, the Entergy Operating Companies integrated into MISO as transmission-owning members. In anticipation of joining MISO, Entergy filed with the Commission a request for accounting authorization to defer for future recovery the Transition Costs and accrued carrying charges on those costs. The Commission accepted Entergy's request, and Entergy thereafter began recording the Transition Costs in Account 182.3 (Other Regulatory Assets) and the carrying charges in Account 421 (Miscellaneous Non-operating Income).⁴

II. Filing

3. Entergy explains that the purpose of this filing is to obtain Commission approval of the Transition Costs and mechanism used to recover those costs (i.e., Schedule 47). Entergy states that, in total, the Entergy Operating Companies incurred approximately \$138 million of costs in their efforts to join MISO, \$97 million of which are O&M expenses. Entergy explains that, pursuant to Schedule 47, the Entergy Operating Companies seek to recover \$6.3 million from their wholesale customers. Entergy states that the retail customers will pay the remaining amount of O&M expenses associated with the integration into MISO. Entergy further explains that it determined the wholesale customers' allocated share by using either the ratio of transmission labor to total labor (i.e., a labor ratio share) or the ratio of a transmission customers' transmission demand to total transmission demand (i.e., a load ratio share).

4. Entergy states that the cost support included in its filing identifies the actual deferred O&M expenses incurred by the Entergy Operating Companies, through December 2013, in their effort to join MISO. Entergy states that the Transition Costs to be recovered by each Entergy Operating Company are as follows:

³ The Commission set the Entergy Operating Companies' transmission formula rates for hearing in *ITC Holdings*, 143 FERC ¶ 61,257 (2013) (Rates Order Proceeding); *order on reh'g*, 146 FERC ¶ 61,111 (2014).

⁴ *Entergy Services, Inc.*, Docket No. AC11-130-000 (April 3, 2012) (delegated letter order). In authorizing the proposed accounting treatment, the letter order clarified that the deferral of MISO transition costs as a regulatory asset and accrual of carrying charges should not be construed as approving recovery in rates; rather, to recover the MISO transition costs, Entergy would need to seek authorization from the Commission under section 205 of the Federal Power Act.

Operating Company	Transition Costs	Interest	Total
Entergy Arkansas	\$3,961,854	\$126,104	\$4,087,958
Entergy Gulf States Louisiana	595,992	26,104	592,096
Entergy Louisiana	766,388	37,212	803,600
Entergy Mississippi	359,719	18,228	377,947
Entergy New Orleans	78,544	4,806	83,350
Entergy Texas	581,589	25,720	607,309
Total	\$6,314,087	\$238,174	\$6,552,261

5. Entergy asserts that the Commission has previously permitted recovery of integration and startup costs associated with regional transmission organization (RTO) membership.⁵ Entergy also asserts that the rates developed under Schedule 47 have been developed consistent with such precedent. Entergy states that, under Schedule 47, charges will be assessed to all customers taking Network or Point-to-Point Transmission service within the four Entergy transmission pricing zones (Arkansas, Louisiana, Mississippi, and Texas). Entergy notes that charges under Schedule 47 will not apply to: (1) customers taking through-and-out transmission service; or (2) the Entergy Operating Companies when taking service to serve their retail customers. Entergy explains that it anticipates recovering the Transition Costs over a 24-month period and it will develop the rates on an annual basis. Entergy further explains that, if it has not fully recovered the Transition Costs within the 24-month period, the rate as of the 24th month will be in effect until the full balance of Transition Costs has been recovered.

6. Entergy provided, for informational purposes, a sample calculation for Entergy Arkansas to demonstrate how Schedule 47 will operate.⁶ Entergy asserts that it is well-settled precedent that “the formula itself is the rate, not the particular components of the formula.”⁷ Indeed, Entergy explains, the Commission has rejected a populated formula

⁵ Entergy Filing at 4 (citing *Virginia Elec. and Power Co.*, 125 FERC ¶ 61,391 (2008), *order denying reh’g*, 128 FERC ¶ 61,026 (2009); *New York Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,180 (2000); *Alliance Companies*, 99 FERC ¶ 61,105, at 61,442 (2002); *American Elec. Power Serv. Corp.*, 104 FERC ¶ 61,013, at PP 1, 25 (2003), *order on reh’g*, 105 FERC ¶ 61,081 (2004)).

⁶ Entergy estimates that the rate for Network and Point-to-Point Transmission Service within the Entergy Arkansas transmission pricing zone will be \$0.064 \$/kW/month. *Id.* at Exhibit C.

⁷ *Id.* at 6 (citing *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,545 (1994)).

rate template because, according to Entergy, “the formula itself is the rate, not the particular components of the rate.”⁸

7. Entergy requests that the Commission accept Schedule 47 effective June 1, 2014. Entergy explains that in doing so, the rates under Schedule 47 will become effective the same date as the annual update of the Entergy Operating Companies’ MISO Attachment O formula rates. Alternatively, if the Commission does not issue an order prior to June 1, 2014, Entergy requests that the Commission accept Schedule 47 effective as of the first day of the first month following the issuance of the Commission order in this proceeding.

III. Notice of Filing and Responsive Pleadings

8. Notice of Entergy’s filing was published in the *Federal Register*, 79 Fed. Reg. 19,899 (2014), with comments, protests, and interventions due on or before April 22, 2014. Timely motions to intervene were filed by South Mississippi Electric Power Association, Brazos Electric Power Cooperative, the East Texas Electric Cooperatives,⁹ Cleco Power, LLC, Ameren Services Company, and the Arkansas Electric Cooperative Corporation. Notices of intervention were filed by the Council of the City of New Orleans, Louisiana Public Service Commission, Missouri Public Service Commission, and the Public Utility Commission of Texas.

9. Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, and the Public Service Commission of Yazoo City (collectively, Joint Customers) filed separate timely motions to intervene and a joint motion to reject or, in the alternative, protest in response to Entergy’s filing. Joint Customers contend that Entergy has not provided sufficient documentation and support for the costs it seeks to recover and urges the Commission to reject the filing as deficient.¹⁰ According to Joint Customers, the filing is deficient because Entergy failed to: (1) explain how it derived \$97 million of deferred O&M expenses from the \$138 million of Transition Costs;¹¹ (2) disclose what, if any, of the deferred Transition Costs

⁸ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131, at P 45 (2011)).

⁹ The East Texas Cooperatives consist of the East Texas Electric Cooperative, Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

¹⁰ Joint Customers Protest at 2.

¹¹ *Id.* at 4.

were associated with functions other than transmission;¹² (3) provide a detailed accounting presentation of the categories of deferred costs it seeks to recover;¹³ (4) address the contents of the deferred O&M expenses related to Account 928 Regulatory Commission Expenses;¹⁴ (5) explain the definitions or contents of the categories of costs allocated to each Entergy Operating Company;¹⁵ and (6) provide any meaningful explanation of the allocation process, why it was chosen, or how it is just and reasonable.¹⁶ If the Commission does not reject the filing, Joint Customers request that the matter be set for hearing and settlement judge procedures in order to determine the justness and reasonableness of the Transition Costs, the allocation of such costs, and the appropriate amortization period.¹⁷

10. Entergy filed a motion for leave to answer and answer on May 7, 2014. Entergy responds that it submitted sufficient information for Joint Customers to evaluate the Transition Costs and urges that the Commission deny Joint Customers' motion to reject the April 1 filing and their alternative protest. Entergy maintains that its filing included dozens of pages of detailed workpapers that identify the Transition Costs and demonstrate the calculations underlying the proposed Schedule 47 charges. Entergy states that, upon the request of the Joint Customers, it provided Joint Customers with additional information in the form of an Excel workbook containing workpapers and working versions of the rate calculations, including the month-by-month amounts by account and sub-account that were the source of the information provided in the April 1, 2014 filing.¹⁸ Entergy contends that Joint Customers have not demonstrated that the filing, as supplemented informally with this additional information, is deficient and subject to rejection.

11. Entergy states that Joint Customers misunderstand the amount of Transition Costs that Entergy is seeking to recover. Entergy clarifies that it is seeking recovery of only \$6.3 million instead of the \$97 million in deferred expenses referenced by Joint

¹² *Id.* at 5.

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 7.

¹⁶ *Id.*

¹⁷ *Id.* at 10.

¹⁸ Entergy Answer at 3.

Customers.¹⁹ Entergy also notes that the \$6.3 million of O&M costs attributable to wholesale customers represents only 5 percent of the total costs incurred by the Entergy Operating Companies to join MISO. Entergy states that these costs were prudently incurred and recoverable under Commission precedent.²⁰

12. Entergy maintains that the cost support included in its filing is sufficiently detailed because it: (1) identified the actual deferred O&M costs incurred by the Entergy Operating Companies through December 31, 2013, which constitute the Transition Costs that will be recovered under Schedule 47; (2) broke down the Transition Costs by Entergy Operating Company and showed each Entergy Operating Company's Transition Costs on a monthly basis, including both the interest and principal components; and (3) provided a summary sheet aggregating the amounts for all of the Entergy Operating Companies.²¹

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²² the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority.²³ We accept the answer filed by Entergy because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

15. Entergy's filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement procedures ordered below. Our preliminary analysis indicates that the Transition Costs and, by extension, Schedule 47 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

²¹ *Id.* at 4-5.

²² 18 C.F.R. § 385.214 (2013).

²³ 18 C.F.R. § 385.213(a)(2) (2013).

Therefore, we will accept Schedule 47 for filing, suspend it for a nominal period to become effective June 1, 2014, subject to refund, and establish hearing and settlement judge procedures. In light of the common issues of law and fact presented in Docket Nos. ER14-1645-000, ER13-948-000 and EL14-19-000, we will consolidate these proceedings for purposes of settlement, hearing and decision.

16. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.²⁴ 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.²⁵

17. The Settlement Judge shall report to the Chief Judge and the Commission within 30 days of the date of this order 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 filing is hereby accepted for filing and suspended for a nominal period to become effective June 1, 2014, 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 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 filing, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

²⁴ 18 C.F.R. § 385.603 (2013).

²⁵ 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 and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 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 days of the date of this order.

(D) Within 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 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 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.

(F) Docket Nos. ER14-1645-000, ER13-948-000, and EL14-19-000 are hereby consolidated for the purposes of settlement, hearing, and decision.

(G) The settlement judge or presiding judge, as appropriate, designated in the Rates Order Proceeding shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.