

Services filed proposed Schedules 41, 42-A and 42-B for the Entergy Operating Companies.⁵

2. In this order, we accept for filing the revised Entergy Operating Companies MISO Attachment O (except for the proposed Annual Update, Information Exchange and Challenge Procedures) and proposed Schedules 41, 42-A and 42-B, suspend them, and make them effective on December 19, 2013, as requested, subject to refund. Additionally, we establish hearing and settlement judge procedures, and consolidate this proceeding with the ongoing proceeding concerning the Entergy Operating Companies MISO Attachment O formula rates, as discussed below. We also accept for filing the proposed Entergy Operating Companies' Annual Update, Information Exchange and Challenge Procedures, to become effective January 1, 2014, as requested, subject to the outcome of the proceeding on the Protocols Filing,⁶ as discussed below.

I. Background

3. On June 20, 2013, the Commission conditionally accepted certain proposed tariff revisions submitted under section 205 of the FPA and Part 35 of the Commission's regulations,⁷ and accepted and suspended certain proposed tariff revisions and established hearing and settlement judge procedures.⁸ The proposed tariff revisions included a filing in Docket No. ER13-948-000 filed by MISO and Entergy Services, on behalf of the Entergy Operating Companies, which included the Entergy Operating Companies MISO Attachment O formula rates.⁹ On March 22, 2013, certain MISO transmission owners

⁵ The revisions to Attachment O and the Proposed Schedules will be collectively referred to as the Tariff Filing.

⁶ In Docket No. ER13-2379-000, MISO and the MISO Transmission Owners filed revisions to the formula rate protocols in Attachment O of the MISO Tariff. Midcontinent Indep. Sys. Operator, Inc., Compliance Filing Revising Attachment O Formula Rate Protocols, Docket No. ER13-2379-000 (filed Sept. 13, 2013) (Protocols Filing).

⁷ 18 C.F.R. Part 35 (2013).

⁸ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Rates Order), *order on reh'g*, 146 FERC ¶ 61,111 (2014). The hearing and settlement judge proceeding established by the Rates Order will be referred to as the Rates Order Proceeding.

⁹ Entergy Services, Inc., Attachment O Templates to MISO Tariff, Docket No. ER13-948-000 (filed Feb. 11, 2013) (TPZ Filing). The TPZ Filing was made along with other section 205 filings in conjunction with the proposed transfer of the transmission

(continued...)

filed comments to the TPZ Filing, arguing that the storm securitization charges and accrued interest related to prepayments to independent power producers, and the credits for allowance for funds used during construction (AFUDC) related to such prepayments that the Entergy Operating Companies proposed to include in their proposed Attachment O templates, should not be recovered from customers paying MISO's through-and-out rates. On April 9, 2013, the Entergy Operating Companies filed an answer, agreeing that recovery of storm securitization charges and accrued interest related to prepayments to independent power producers should not be recovered in the through-and-out rates and committed to working with MISO to develop separate schedules to recover these charges. They also committed to amend the Attachment O templates on compliance to remove these references.

4. In the Rates Order, the Commission conditionally accepted in part and accepted and suspended in part the Entergy Operating Companies MISO Attachment O formula rates.¹⁰

assets of Entergy's six transmission owning operating utility subsidiaries (the Entergy Operating Companies) to newly-created indirect subsidiaries of ITC Holdings Corp. (Entergy-ITC Transaction) and to effectuate the integration of the Entergy Operating Companies' transmission facilities into MISO. Tariff revisions were also filed in Docket Nos. ER12-2681-000 and ER13-782-000. The filing in Docket No. ER12-2681-000 was a joint FPA section 203, 205, 305(a) application filed by Entergy Corporation and certain of its subsidiaries and ITC Holdings Corp. and certain of its subsidiaries. *See* Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of section 305(a) of the Federal Power Act, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (filed Sept. 24, 2012). The application filed in Docket No. ER13-782-000 was a section 205 filing made by the New ITC Operating Companies that proposed accounting and ratemaking treatment for certain pension and post-retirement welfare (OPEB) plan costs that related to the approximately 750 employees of Entergy that would have become ITC Holdings Corp. employees as part of the Entergy-ITC Transaction. New ITC Operating Companies, Accounting and Ratemaking Treatment for Pension and OPEB Costs, Docket No. ER13-782-000 (filed Jan. 18, 2013).

¹⁰ In the Rates Order, the Commission also accepted and suspended and set for hearing and settlement judge procedures rate filings related to the Entergy-ITC Transaction. As noted above, the other related proceedings addressed in the Rates Order were filed in Docket Nos. ER12-2681-000 and ER13-782-000. On December 13, 2013, ITC Holdings Corp. and Entergy Corporation filed a Notice of Termination of

(continued...)

II. Tariff Filing

5. MISO and Entergy Services state that their filing implements the Entergy Operating Companies' commitment in response to comments in the proceeding on the TPZ Filing with respect to storm securitization charges, accrued interest related to independent power producer prepayments and AFUDC credits relating to independent power producer prepayments. In particular, MISO and Entergy Services propose to remove those items from the Entergy Operating Companies' Attachment O templates. Instead, Entergy Services has developed *pro forma* Schedules 41 (Charge to Recover Costs of Entergy Storm Securitization Charges from Entergy Operating Companies' Pricing Zones), 42-A (Charge to Recover Accrued and Paid Interest Associated with Prepayments from Entergy Operating Companies' Pricing Zones) and 42-B (Credit Associated with AFUDC from Entergy Operating Companies' Pricing Zones), which will apply only to customers taking transmission service in the Entergy Operating Companies' pricing zones and will not be applicable to customers taking MISO's through-and-out service.

MISO and Entergy Services also propose other additions and revisions to the Entergy Operating Companies MISO Attachment O formula rate template.¹¹ These additional revisions include: (1) a revision to the language describing the Attachment O divisor, adding the words "as adjusted for known load or service changes" to reflect that a number of Entergy's transmission customers have cancelled existing contracts or converted an existing contract to another type of service; (2) two footnotes, FF and GG, to clarify that costs that Entergy incurred regarding the MISO integration that were deferred pursuant to the Commission's April 3, 2012 order in Docket No. AC11-130-000,¹² and the Entergy-ITC Transaction costs pursuant to the Commission's June 20, 2013 order in Docket No. EC12-145-000, have been excluded in the development of the

Transaction in Docket No. EC12-145-000, notifying the Commission that the Entergy-ITC Transaction would not occur. On December 13, 2013 and December 19, 2013, the various applicants in Docket Nos. ER12-2681-000 and ER13-782-000 and other related proceedings filed motions to withdraw filings and terminate those proceedings, as well. On February 20, 2014, the Commission granted the motions to withdraw filings and notice of termination of proceedings. *ITC Holdings Corp.*, 146 FERC ¶ 61,111 (2014).

¹¹ Tariff Filing at 2.

¹² In Docket No. AC11-130-000, Entergy Services requested to defer for future recovery the operation and maintenance costs that the Entergy Operating Companies incurred in their efforts to join MISO. Entergy Services, Inc., Request to Defer Accounting, Docket No. AC11-130-000 (filed Aug. 15, 2011).

formula rates, to memorialize commitments and rulings in those dockets; and (3) Annual Update, Information Exchange, and Challenge procedure for each of the Entergy Operating Companies. Entergy states that the Annual Update, Information Exchange and Challenge Procedures will be revised to comply with the outcome of the proceeding on the Protocols Filing.¹³

6. MISO and Entergy Services request that the proposed Schedules 41, 42-A and 42-B and revised Attachment O, except for the proposed Annual Update, Information Exchange and Challenge Procedures, be made effective on December 19, 2013. They propose that the Annual Update, Information Exchange and Challenge Procedures be made effective on January 1, 2014.

III. Notice of Filing and Responsive Pleadings

7. Notice of the Tariff Filing was published in the *Federal Register*, 78 Fed. Reg. 78,349 (2013) with interventions and protests due on or before January 7, 2014. Motions to intervene were filed by South Mississippi Electric Power Association; NRG Companies¹⁴; Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, and the Public Service Commission of Yazoo City, of the City of Yazoo City, Mississippi; Missouri Joint Municipal Electric Utility Commission; Arkansas Electric Cooperative Corporation; and MISO Transmission Owners.¹⁵ A late motion to intervene was filed by East Texas Cooperatives.¹⁶ Joint

¹³ Tariff Filing at n.8. On September 13, 2013, in Docket Nos. ER13-948-000 and ER13-2379-000, Entergy Services committed to comply with the outcome of the proceeding on the Protocols Filing and incorporate the protocols into the Entergy Operating Companies MISO Attachment O formula rates. Entergy Services did so in the Tariff Filing. As noted above, MISO and the MISO Transmission Owners filed the Protocols Filing, which the Commission acted on in an order issued on March 20, 2014. *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014).

¹⁴ NRG Companies state that for purposes of this filing, they consist of: Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, Louisiana Generating LLC, NRG Power Marketing LLC, NRG Sterlington Power LLC, NRG Wholesale Generation LP, and GenOn Energy Management, LLC.

¹⁵ MISO Transmission Owners state that for purposes of this filing, they consist of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier

(continued...)

Customers¹⁷ filed a Motion to Consolidate and Protest in Docket Nos. ER14-649-000 and ER13-948-000. On January 22, 2014, Entergy Services filed an answer to Joint Customers' Motion to Consolidate and Protest.

8. Joint Customers argue that the instant filing and the TPZ Filing present indisputably overlapping and closely intertwined common issues of law and fact and that the Tariff Filing consists entirely of proposed changes to the TPZ Filing, which is still subject to ongoing settlement judge procedures. Joint Customers assert that consolidation will permit parties to address the various issues in a single proceeding and allow for more efficient disposition of the issues.¹⁸

9. Joint Customers argue that the proposed rates would be excessive and therefore unjust and unreasonable, and raise issues regarding: the credit provisions in section 30.9 of the MISO Tariff; the Annual Update, Information Exchange and Challenge Procedures; recovery of MISO transition costs; seams issues; Schedule 41; Schedule 42-B; and minor drafting errors. They assert that the credit provisions in section 30.9 are unduly restrictive and could result in network integration transmission service customers failing to receive the credits to which they are entitled under that provision. Joint

Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

¹⁶ East Texas Cooperatives consist of: East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

¹⁷ For purposes of this filing, Joint Customers are: Arkansas Electric Cooperative Corporation, South Mississippi Electric Power Association, and Mississippi Delta Energy Agency and its two members, the Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City.

¹⁸ Joint Customers, Motion to Consolidate and Protest, Docket Nos. ER14-649-000 and ER13-948-000, at 2 (filed Jan. 7, 2014).

Customers point to specific sections of 30.9, including provisions 1a, 1e, 2, 3 and the filing and review procedures, and identify issues with each provision.¹⁹

10. Joint Customers also assert that the Annual Update, Information Exchange and Challenge Procedures should be conformed to the outcome of the proceeding on the Protocols Filing because the procedures appear to be substantively identical to the compliance filing made in that proceeding. They further maintain that the Commission should confirm that MISO transition costs that were deferred under the Commission's April 3, 2013 order in Docket No. AC11-130-000, and the Entergy-ITC Transaction costs under the Commission's June 20, 2013 order in Docket No. EC12-145-000, may not be recovered unless a filing is made under section 205 of the FPA.²⁰

11. Additionally, Joint Customers contend that MISO and Entergy Services fail to address the larger problem of the rate increase that will result from the application of the MISO regional through-and-out rates to existing Entergy transmission service, through establishment of a separate regional through and out rate for MISO South (which includes the Entergy region). Joint Customers also argue that the Tariff Filing fails to address the issue of rate pancaking between MISO South and Southwest Power Pool, Inc. (SPP). They assert that the Commission did not permit that barrier to trade between MISO and PJM Interconnection, L.L.C, and should not permit it between MISO and SPP.²¹

12. With respect to Schedule 41, Joint Customers assert that there is no mechanism to terminate the application of deferred and amortized storm damage costs upon recovery of the target amounts, to prevent over recovery. Joint Customers also assert that Schedule 41 is structured to follow zonal recovery and therefore should be subject to the outcome on rehearing of the issue in Rates Order Proceeding. They further take issue with the exemption for transmission reservations made by the Entergy Operating Companies taking service in the Entergy Operating Companies' pricing zones, arguing that this exclusion is discriminatory.²²

13. Joint Customers also take issue with Schedule 42-B, which proposes to isolate and bill separately credits associated with AFUDC. They argue that the formula rate includes

¹⁹*Id.* at 3-4.

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6.

²²*Id.* at 7.

a return on equity (ROE) of 12.38 percent in the capital structure, but the credit proposes to use an 11.0 percent ROE. Joint Customers assert that this mismatch would undervalue the AFUDC credits for the associated investments, failing to offset the inclusion of the AFUDC in the rate base. Therefore, Joint Customers contend that the ROE in the capital structure in Schedule 42-B should be the same as in the underlying formula rate template, and consistent with the rate base determined in the Rates Order Proceeding.²³

14. Joint Customers further point out minor drafting errors that require correction in Schedules 41, 41-A and 42-B.²⁴

15. In response, Entergy Services argues that the motion to consolidate should be rejected because there are no issues of material fact related to the Tariff Filing that warrant a trial-type hearing. It contends that consolidation of this proceeding with the Rates Order Proceeding would not result in greater efficiency in either proceeding and could result in confusion.²⁵

16. Entergy Services further responds that it agrees with a number of clarifications proposed by Joint Customers, but disagrees with other arguments they raised. Entergy Services explains that, while it does not agree with Joint Customers' arguments regarding section 30.9, it will not respond to those issues on the merits because that section remains unchanged and those issues are therefore beyond the scope of this proceeding. Entergy Services asserts that Joint Customers – none of whom receive credits pursuant to section 30 – had an opportunity to address the section 30.9 procedure in their protest in the ongoing Rates Order Proceeding.²⁶

17. With respect to Schedule 41, Entergy Services explains that Joint Customers incorrectly assert that there is no provision in Schedule 41 that terminates the charge for storm damage costs when such costs have been fully recovered. Entergy Services states that the specific securitization charges that will be recovered under Schedule 41 for each June 1 through May 31 period are identified in Appendix I to Schedule 41. Entergy Services further states that, thus, there is no need to change Schedule 41 to protect against over-recovery of these costs and that, absent an amendment to that Schedule to recover

²³*Id.* at 7-8.

²⁴*Id.* at 8.

²⁵ Entergy Services Answer at 3.

²⁶*Id.* at 4.

additional storm costs, charges will discontinue after the period June 1, 2023 through May 31, 2024.²⁷

18. Entergy Services states that it agrees with Joint Customers that Schedule 41 should be subject to the outcome on rehearing of the Rates Order Proceeding. Entergy Services also agrees with Joint Customers that Schedule 41 should be amended to clarify that the only exemption to Schedule 41 will relate to the Entergy Operating Companies' use of transmission service to serve its retail loads. It agrees to make a compliance filing with those changes to Schedule 41.²⁸

19. With respect to Schedule 42, Entergy Services disagrees with Joint Customers that a mismatch exists between the ROE used to calculate the costs associated with AFUDC recovered under Schedule 42-A and the ROE used to offset such AFUDC costs through a credit under Schedule 42-B. Entergy Services asserts that, contrary to Joint Customers' argument, the charge and credit associated with AFUDC under Schedules 42-A and 42-B, respectively, are based on the same ROE – namely, 11.0 percent – which is consistent with prior settlement agreements. Entergy Services asserts that Joint Customers' arguments thus should be rejected.²⁹

20. Entergy Services also notes that Joint Customers request that Schedule 42-B be subject to the outcome of the proceeding on the TPZ Filing related to (1) the use of end-of-year values or a 13 month average to calculate capital investment and capital structure and (2) other changes to capital structure and capital costs raised by Joint Customers in that proceeding. Entergy Services states that it agrees to make a compliance filing to amend Schedule 42-B as necessary to comply with a Commission order in that docket.³⁰

21. Finally, Entergy Services states that it agrees with Joint Customers on three points: (1) that the Annual Update, Information Exchange, and Challenge Procedures included with the Tariff Filing should be subject to the outcome of the proceeding on the Protocols Filing; (2) that the Entergy Operating Companies should not be permitted to recover deferred MISO transition costs or ITC Transaction costs absent a filing under section 205

²⁷*Id.* at 5.

²⁸*Id.* at 6.

²⁹*Id.*

³⁰*Id.*

of the FPA seeking recovery; and (3) that Schedules 41, 42-A, and 42-B should be amended to remove the reference to network transmission service reservations.³¹

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³² timely 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,³³ we will grant East Texas Cooperatives' late-filed motion to intervene given their interest in the proceeding, the early stages of the proceeding, and the absence of undue prejudice or delay.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁴ prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Entergy Services' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

24. We find that the Tariff Filing, except for proposed Annual Update, Information Exchange and Challenge Procedures in the Entergy Operating Companies Attachment O, 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 judge procedures ordered below.

25. Our preliminary analysis indicates that the Entergy Operating Companies' proposed Attachment O revisions have not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept for filing the proposed Schedules 41, 42-A and 42-B and revised Attachment O (except for the proposed Annual Update, Information Exchange and Challenge Procedures), suspend them, and make them effective on December 19, 2013,

³¹*Id.* at 7.

³² 18 C.F.R. § 385.214 (2013).

³³ 18 C.F.R. § 385.214(d) (2013).

³⁴ 18 C.F.R. § 385.213(a)(2) (2013).

as requested, subject to refund, and set them for hearing and settlement judge procedures, as ordered below.

26. We also find that there are common issues of law and fact in this proceeding and in the Rates Order Proceeding. Therefore, we will consolidate this proceeding with the ongoing Rates Order Proceeding, for purposes of settlement, hearing, and decision.

27. 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 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.³⁵ 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.³⁶ 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.

28. We also accept for filing the proposed Entergy Operating Companies' Annual Update, Information Exchange and Challenge Procedures, to become effective January 1, 2014, as requested, subject to the outcome of the proceeding on the Protocols Filing. Finally, we find that other issues raised, those of which are not relevant to this proceeding, such as arguments regarding the crediting provisions under section 30.9, are beyond the scope of this proceeding. The scope of this proceeding pertains to the tariff provisions proposed by MISO and Entergy Services in this filing (i.e., the proposed schedules and the limited revisions to the Entergy Operating Companies MISO Attachment O formula rate templates).

³⁵ 18 C.F.R. § 385.603 (2013).

³⁶ 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>).

The Commission orders:

(A) MISO's and Entergy Services' proposed Schedules 41, 42-A and 42-B and revised Attachment O (except for the proposed Annual Update, Information Exchange and Challenge Procedures) are hereby accepted for filing, suspended, and set for hearing, to made effective on December 19, 2013, as requested, subject to refund, as discussed above.

(B) The proposed revisions to Entergy Operating Companies' Annual Update, Information Exchange and Challenge Procedures are hereby accepted for filing, and made effective January 1, 2014, as requested, subject to the outcome of the proceeding on the Protocols Filing, as discussed above.

(C) 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 FPA, 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 hearing shall be held concerning the proposed revisions to Schedules 41, 42-A and 42-B and Attachment O (except for the proposed Annual Update, Information Exchange and Challenge Procedures), as described above, filed by MISO and Entergy Services. 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) This proceeding is hereby consolidated with the ongoing Rates Order Proceeding for the purpose of settlement, hearing, and decision.

(E) 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.