

147 FERC ¶ 61,257
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER13-1195-000

ORDER ACCEPTING AND SUSPENDING PROPOSED FORMULA RATE UPDATE
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 27, 2014)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) proposed 2013 Wholesale Formula Rate Update (2013 Rate Update),¹ suspend it for a nominal period, to become effective March 1, 2013, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. On March 29, 2013, Entergy submitted for filing Entergy Arkansas' 2013 Rate Update for Arkansas Cities.² Entergy states that the instant filing updates the distribution rates or monthly substation charges for these customers under their respective NITSAs.

¹ The 2013 Rate Update was submitted to the Commission on Entergy Arkansas' behalf by Entergy Services, Inc. (Entergy).

² The Cities of West Memphis, Prescott, North Little Rock and Osceola (Arkansas Cities) state that they are political subdivisions of the State of Arkansas that individually own and operate electric utility systems receiving transmission and distribution service from the Entergy transmission system administered under contract by the Midcontinent Independent System Operator, Inc. (MISO) as the Entergy Independent Coordinator of Transmission. Arkansas Cities state that they have Network Integration Transmission Service Agreements (NITSAs) with Entergy, which have been filed with the Commission and approved in various Commission proceedings. Arkansas Cities state that, at the time of their comments, they took service under the Entergy Open Access Transmission Tariff (OATT). Arkansas Cities Initial Comments at 1-2.

Entergy requests that the redetermined distribution charges become effective March 1, 2013, subject to refund, in accordance with the provisions of the individual NITSAs.³

II. Notice of Filing and Responsive Pleadings

3. Notice of Entergy's filing was published in the *Federal Register*, 78 Fed. Reg. 20,908 (2013), with interventions or comments due on or before April 19, 2013. An errata notice extending the comment date to May 31, 2013 was issued on April 9, 2013. On June 3, 2013, Arkansas Cities, including the City of Benton, Arkansas, filed a motion to intervene out-of-time and comments (together, Arkansas Cities Protesters).

4. On January 31, 2014, Arkansas Cities Protesters filed supplemental comments.⁴

5. Arkansas Cities Protesters state that there are terms in the NITSAs that may differ in some material aspects with distribution service required by the OATT, including how those rates are calculated. They also allege that Entergy has not provided for a rate base credit for accruals to its operating reserves. Arkansas Cities Protesters contend that they are paying for various expense accruals that are recorded in Entergy's Administrative & General (A&G) expense accounts that may also be recorded in various reserve accounts. They request more data to determine the extent and exact amounts that are involved.

6. Arkansas Cities Protesters state that Entergy's A&G expense may be excessive based upon the increases and Arkansas Cities Protesters request more information to determine the justification of those increases. They argue that Entergy's treatment of certain Accumulated Deferred Income Taxes (ADIT) is unexplained and may not be just and reasonable. Therefore, Arkansas Cities Protesters are unable to determine certain assignments of ADIT and request more explanation and data in this area. Arkansas Cities Protesters state that the expenses associated with the deferral of Regional Transmission Operator and MISO-costs should not be included in distribution rates and that Entergy's costs should not be recovered prior to its integration into MISO. Any related A&G expenses should be proposed for recovery at that time.

³ We note that Entergy's Transmittal at page 1 references a March 1, 2012 effective date. However, Entergy's 2012 Wholesale Formula Rate Update was accepted with a March 1, 2012 effective date. *See Entergy Services, Inc.*, Docket No. ER12-1304-000 (May 7, 2013) (unpublished letter order). We assume that this is administrative error and that Entergy intended to specify a March 1, 2013 effective date for this filing.

⁴ West Memphis and Prescott joined the initial comments but did not join the supplemental comments.

7. Arkansas Cities Protesters argue that they should not be charged for Entergy's advertising costs and according to Arkansas Cities Protesters, removal of this cost would reduce the rates by \$0.00001/kW. Arkansas Cities Protesters also argue that industry association dues should not be charged to Arkansas Cities and Retail Regulatory Commission expenses related prepayment should be removed from the total rate base prepayments. In addition, Arkansas Cities Protesters contend that Entergy has not reduced its Regulatory Commission expense of \$3.6 million by the amount of any Retail Regulatory Commission expense.

8. Arkansas Cities Protesters' supplemental comments reiterate that: (1) work papers and key inputs are missing regarding costs, their allocation and billing determinants; (2) facilities that were allocated are not identified; (3) costs may be based on gross undepreciated plant rather than net depreciated plant in service contrary to Commission rules; (4) identification or support for any load data used to allocate costs is lacking; (5) identification of the installed costs of facilities is lacking; (6) support or documentation for annual revenue requirements associated with identified facilities to be assigned to customers is not provided; and (7) data regarding coincident peak demand is insufficient.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant Arkansas Cities Protesters' late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Hearing and Settlement Judge Procedures

10. Entergy Arkansas' proposed 2013 Rate Update raises 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 judge procedures ordered below.

11. Our preliminary analysis indicates that Entergy Arkansas' proposed 2013 Rate Update has 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 Arkansas' proposed 2013 Rate Update for filing, suspend it for a nominal period, make it effective March 1, 2013, subject to refund, and set it for hearing and settlement judge procedures.

12. 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.⁵ 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.⁶ 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 continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Entergy Arkansas' proposed 2013 Rate Update is hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2013, 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, 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 public hearing shall be held concerning Entergy Arkansas' proposed 2013 Rate Update. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(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 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.

(D) 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

⁵ 18 C.F.R. § 385.603 (2013).

⁶ 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>).

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.

(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 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, N.E., 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)

Kimberly D. Bose,
Secretary.