

151 FERC ¶ 61,165
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark

Entergy Services, Inc.

Docket No. ER13-948-003

ORDER GRANTING MOTION FOR WAIVER

(Issued May 20, 2015)

1. On April 17, 2015, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc. (collectively, Entergy Operating Companies), filed a motion for a temporary and limited waiver (Motion for Waiver) of their transmission formula rate implementation protocols and permission to maintain their currently-effective transmission revenue requirements in effect through August 31, 2015, subject to refund and pending the resolution of the ongoing settlement process in Docket No. ER13-948-000, et al. In this order, we grant Entergy Operating Companies' Motion for Waiver.

I. Background

2. On February 15, 2013, in Docket No. ER13-948-000, Entergy filed Attachment O templates and formula rate implementation protocols to establish formula rates for the Entergy Operating Companies' recovery of their transmission revenue requirements under the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (MISO Tariff). On June 20, 2013, the Commission accepted the formula rate templates and implementation protocols for filing effective December 19, 2013, subject to refund, and established hearing and settlement judge proceedings.¹ In particular, in the Rates Order, the

¹ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Rates Order), *order on reh'g*, 146 FERC ¶ 61,111 (Rates Rehearing Order) (2014). Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and the Empire District Electric Company (collectively, Kansas-Missouri Companies) filed a request for rehearing of the Rates Rehearing Order, which is currently pending before the Commission.

Commission accepted the Entergy Operating Companies' formula rate implementation protocols, subject to modification to comply with the Commission's order in the MISO Protocols Investigation.²

II. Motion for Waiver

3. The Entergy Operating Companies state that, following extensive settlement negotiations with the active parties and Commission Trial Staff, they have reached an agreement in principle concerning their transmission formula rate templates. The Entergy Operating Companies plan to file an offer of settlement no later than July 1, 2015, which they state will include revised transmission formula rate templates that will supersede their currently-effective transmission formula rate templates, together with formula rate implementation protocols modeled on the MISO *pro forma* protocols.

4. The Entergy Operating Companies explain that their transmission formula rates are subject to an annual rate recalculation requirement. They assert that the requested waiver will defer for approximately 90 days the annual rate recalculation process and the establishment of their 2015-16 transmission revenue requirements.³

5. The Entergy Operating Companies state that in their filing in Docket No. ER13-948-000, et al., they committed to utilize MISO's *pro forma* formula rate implementation protocols to provide customers paying rates based on their transmission revenue requirements with specific procedures for notice, review, and challenges to the Entergy Operating Companies' annual updates. The Entergy Operating Companies state that in the context of the ongoing settlement negotiations in this proceeding, they have proposed formula rate implementation protocols that are intended to be consistent with the protocols the Commission approved in the MISO Protocols Compliance Proceeding.⁴

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Protocols Investigation). 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 (MISO Protocols Filing). The Commission accepted those revisions, subject to further compliance. *Midcontinent Indep. System Operator, Inc.*, 146 FERC ¶ 61,212 (2014) (accepting MISO's compliance filing and directing further compliance), *order on reh'g*, 150 FERC ¶ 61,024 (2015). We refer to the ongoing compliance proceeding originating from the MISO Protocols Compliance Order as the MISO Protocols Compliance Proceeding.

³ Motion for Waiver at 1-2.

⁴ *Id.* at 2-3.

6. The Entergy Operating Companies explain that while they have reached an agreement in principle on their transmission formula rate templates, they anticipate the need for a lengthy process to document the settlement, finalize the formula rate templates, and work with parties to verify the proper functioning of the formulas, and populating the formulas with 2014 cost information to establish transmission service revenue requirements for the 2015-16 rate year.⁵ The Entergy Operating Companies believe that it is unlikely that they and other parties will be able to accomplish those tasks in time for the Entergy Operating Companies to comply with the formula rate implementation procedures, which would require that such actions be completed by June 1, 2015.⁶ The Entergy Operating Companies state that in order to implement the Entergy Operating Companies' currently-effective transmission formula rate templates by June 1, 2015, the Entergy Operating Companies would have to divert to that effort significant resources and manpower that currently are being directed towards settlement, including the development of the Energy Operating Companies' updated transmission formula rate templates.⁷ To facilitate the conclusion of the settlement process and the filing of an offer of settlement, the Entergy Operating Companies request that they be granted a temporary and limited waiver of their transmission formula rate implementation protocols and permission to maintain their currently-effective transmission revenue requirements in effect through August 31, 2015.

7. The Entergy Operating Companies argue that the requested deferral will not cause a material impact on rates for transmission service nor cause harm to customers because the Entergy Operating Companies' transmission revenue requirements are subject to a true-up requirement under their implementation protocols, and will remain subject to refund pursuant to the Rates Order. Additionally, they state that to avoid the incurrence of interest on surcharges arising from the requested deferred implementation schedule, the Entergy Operating Companies have agreed that interest on surcharges will begin to accrue on September 1, 2015. The Entergy Operating Companies contend that the requested temporary and limited waiver will facilitate settlement without a negative impact on customers and therefore is in the public interest.⁸

8. The Entergy Operating Companies state that their currently-effective transmission revenue requirements are based on 2013 transmission cost data and that as part of their filing of an offer of settlement, they will also file a motion to permit interim

⁵ *Id.* at 4.

⁶ Entergy Operating Companies' currently effective formula rate implementation protocols require the annual rate recalculation for its formula rates by June 1 of each year.

⁷ *Id.* at 4.

⁸ *Id.* at 5.

implementation of their settlement rates pending Commission action on their settlement filing. The Entergy Operating Companies state that subsequently, by September 1, 2015, they will implement their settled transmission formula rates in a manner consistent with their proposed settlement formula rate implementation protocols using 2014 transmission cost data.

9. The Entergy Operating Companies add that they are authorized to state that the active parties in this proceeding, the Joint Customers⁹ and MISO, support this motion. They also state that Commission Trial Staff does not oppose the motion.

III. Notice of Filing and Responsive Pleadings

10. Notice of the Motion for Waiver was published in the *Federal Register*, 80 Fed. Reg. 23,266 (2015), with responsive pleadings due on or before May 8, 2015. None was filed.

IV. Discussion

11. For good cause shown we grant the Entergy Operating Companies' request for limited waiver of the MISO formula rate protocols for the Entergy Operating Companies as well as permission to maintain their currently-effective transmission revenue requirements through August 31, 2015, subject to refund. The Commission typically grants waivers when the requesting party has shown that the waiver: (1) is of limited scope; (2) remedies a concrete problem; and (3) will not have undesirable consequences, such as harming third parties.¹⁰ We find that these conditions have been satisfied here, and we therefore grant the Entergy Operating Companies' request for a limited one-time waiver. First, the waiver is limited in scope because it is temporary and only for a 90-day period. In addition, a concrete problem of diverting resources from the settlement negotiations will be avoided by granting the waiver. Further, the waiver will not have undesirable consequences such as harming customers by having a material impact on transmission service rates. The Entergy Operating Companies will continue to operate under the transmission formula rate and associated protocols and maintain their currently-

⁹ The Joint Customers are Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two member Cities, the Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City; and South Mississippi Electric Power Association.

¹⁰ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,067 (2015). See also, e.g., *New York Indep. System Operator, Inc.*, 148 FERC ¶ 61,098 (2014); *California Indep. System Operator Corp.*, 132 FERC ¶ 61,004 (2010); *ISO New England Inc. - EnerNOC, Inc.*, 122 FERC ¶ 61,297 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 (2007).

effective transmission revenue requirements that the Commission conditionally accepted in the Rates Order, subject to refund and to the outcome of hearing and settlement judge procedures and the outcome of the MISO Protocols Proceeding. As the Entergy Operating Companies explain, their transmission revenue requirements are subject to a true-up requirement under their implementation protocols and will remain subject to refund pursuant to the Rates Order. Accordingly, we grant the requested waiver.

12. While we find good cause to grant the requested waiver, we note that the MISO *pro forma* formula rate protocols, in addition to containing a June 1 deadline for publishing the annual formula rate update, also provide for the following to ensure transparency in the annual update process: (1) holding meetings on annual updates; (2) holding meetings on regional cost-sharing projects; (3) opportunity for interested parties to submit information requests; (4) transmission owners to respond to information requests; (5) opportunity for interested parties to submit informal challenges; (6) transmission owners to respond to informal challenges; (7) submission of informational filings at the Commission; and (8) opportunity for interested parties to file formal challenges at the Commission. Because the deadline for publication of the annual formula rate update will be delayed for the 2015-16 rate year, the Entergy Operating Companies will need to propose a modified timeline and deadlines for the review and challenge procedures under the implementation protocols for the 2015-16 rate year.¹¹ We urge the Entergy Operating Companies to develop such modified timeline and deadlines as part of the settlement negotiations and file them with the settlement. We further note that the Entergy Operating Companies' formula rate protocols are subject to modification to comply with the MISO Protocols Compliance Proceeding, as directed in the Rates Order.¹² Accordingly, we will grant the Motion for Waiver.

¹¹ *Midcontinent Independent System Operator, Inc.*, 150 FERC ¶ 61,024 at P 16 (“The newly joining transmission owner, or the transmission owner proposing to adopt a new formula rate, should propose a plan to apply the protocols to the calculation of its initial rates when MISO makes a filing revising the Tariff to reflect the inclusion of the new transmission owner's facilities or to include a new formula rate for an existing MISO transmission owner in the MISO Tariff.”) (footnote omitted).

¹² Rates Order, 143 FERC ¶ 61,257 at PP 99-104.

The Commission orders:

The Motion for Waiver is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.