

152 FERC ¶ 61,169
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. ER13-948-007

ORDER GRANTING MOTION FOR EXTENSION OF WAIVER

(Issued August 31, 2015)

1. On August 7, 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 an extension of the temporary and limited waiver (Motion for Extension of Waiver) of their transmission formula rate implementation protocols that the Commission granted on May 20, 2015 (Initial Waiver)¹ and for permission to maintain their currently-effective transmission revenue requirements through October 31, 2015. The Entergy Operating Companies request that the effective date of the Initial Waiver be extended until October 31, 2015 (Extended Waiver). In this order, we grant the Entergy Operating Companies' Motion for Extension of Waiver.

I. Background

2. On February 15, 2013, in Docket No. ER13-948-000, Entergy filed templates and formula rate implementation protocols to establish formula rates for the Entergy Operating Companies' recovery of their transmission revenue requirements under Attachment O of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy, and Operating Reserve Markets Tariff (MISO Tariff).

¹ *Entergy Services, Inc.*, 151 FERC ¶ 61,165, at PP 11-12 (2015) (Initial Waiver Order). The Initial Waiver is 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.*

On June 20, 2013, the Commission accepted the templates and formula rate implementation protocols for filing effective December 19, 2013, subject to refund, and established hearing and settlement judge procedures.² In particular, in the Rates Order, the 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.³

3. In their motion for the Initial Waiver, filed on April 17, 2015, the Entergy Operating Companies stated that, following extensive settlement negotiations with the active parties and Commission Trial Staff, they reached an agreement in principle concerning their transmission formula rate templates. The Entergy Operating Companies asserted that the requested waiver would defer for approximately 90 days the annual rate recalculation process and the establishment of their 2015-16 transmission revenue requirements.⁴

4. In addition, the Entergy Operating Companies stated that in their February 15, 2013 filing, 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 stated that, in the context of the ongoing settlement negotiations in this proceeding, the Entergy Operating Companies proposed formula rate implementation protocols were intended to

² *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Rates Order), *order on reh'g*, 146 FERC ¶ 61,111 (2014) (Rates Rehearing Order), *order on reh'g*, 151 FERC ¶ 61,263 (2015). We refer to the ongoing hearing and settlement judge proceedings established in the Rates Order and Rates Rehearing Order as the MISO-Entergy Rates Proceeding.

³ *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) (MISO Protocols Rehearing Order). We refer to the ongoing compliance proceeding originating from the MISO Protocols Rehearing Order as the MISO Protocols Compliance Proceeding.

⁴ Entergy Operating Companies April 17, 2015 Motion for Waiver at 1-2.

be consistent with the protocols the Commission approved in the MISO Protocols Compliance Proceeding.⁵

5. The Entergy Operating Companies also stated at the time of their motion for Initial Waiver, that they anticipated a lengthy settlement process including finalizing the formula rate templates, and working 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.⁶ The Entergy Operating Companies stated that it was unlikely that they and other parties would 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, 2015.⁷ They explained that to do so would require them to divert significant resources and manpower that currently were being directed towards settlement, including the development of the Energy Operating Companies' updated transmission formula rate templates.⁸ To facilitate the conclusion of the settlement process and the filing of an offer of settlement, the Entergy Operating Companies requested 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.

6. On May 20, 2015, the Commission issued the Initial Waiver Order granting the Energy Operating Companies' motion for waiver effective through August 31, 2015.⁹ The Commission urged the Entergy Operating Companies to develop modified timelines and deadlines for their formula rate protocols to account for the later implementation of their annual update process.¹⁰

⁵ *Id.* at 2-3.

⁶ *Id.* at 4.

⁷ Entergy Operating Companies' currently effective formula rate implementation protocols require the annual rate recalculation for its formula rates by June 1 of each year.

⁸ Entergy Operating Companies April 17, 2015 Motion for Waiver at 4.

⁹ Initial Waiver Order, 151 FERC ¶ 61,165, at PP 11-12.

¹⁰ *Id.* P 12.

7. On July 31, 2015, the Entergy Operating Companies filed an Offer of Partial Settlement to dispose of non-Regional Through-and-Out Rate issues in the MISO-Entergy Rates Proceeding.¹¹ The Offer of Partial Settlement includes formula rates and formula rate protocols for the Entergy Operating Companies¹² but does not include modified timelines and deadlines for this year's annual update process to account for the Initial Waiver's extension of the formula rate implementation date in the MISO *pro forma* protocols. The Entergy Operating Companies made an errata filing to their Offer of Partial Settlement on August 19, 2015.

II. Motion for Extension of Waiver

8. The Entergy Operating Companies state that the two-month Extended Waiver will facilitate the implementation of the Entergy Operating Companies' revised transmission formula rate templates, which they filed with the Commission as part of their Offer of Partial Settlement. They also state that contemporaneous with the Motion for Extension of Waiver, they filed a motion with the Chief Judge requesting that the Entergy Operating Companies' proposed settlement transmission formula rate templates be permitted to become effective as of November 1, 2015, subject to refund, on an interim basis pending Commission action on the Entergy Operating Companies' Offer of Partial Settlement.¹³

9. The Entergy Operating Companies state that the annual formula rate implementation process, which will be governed by the Offer of Partial Settlement, will commence once Entergy Services initially populates the Entergy Operating Companies' transmission formula rate templates. They explain that this process will require Entergy Services to expend significant time and resources to determine each Entergy Operating Company's actual net revenue requirement, annual true-up calculations and true-up adjustments; determine its projected transmission revenue requirement for the following

¹¹ Entergy Operating Companies Offer of Partial Settlement, Docket No. ER13-948-005.

¹² Entergy Operating Companies Offer of Partial Settlement Attachments A-N.

¹³ Entergy Operating Companies August 7, 2015 Motion for Extension of Waiver at 1-2. Entergy Operating Companies' motion for the Entergy Operating Companies' proposed settlement transmission formula rate templates to become effective November 1, 2015 was granted by the Chief Judge on August 18, 2015. *Entergy Services, Inc.*, 152 FERC ¶ 63,018 (2015).

rate year; and provide those determinations for each Entergy Operating Company supported by workpapers and other information to MISO and transmission service customers.¹⁴

10. The Entergy Operating Companies explain that without the Extended Waiver, the population process utilizing 2014 data must be concluded by August 31, 2015, and the formal implementation process under the transmission formula rate implementation protocols would begin on September 1, 2015. They state that the Extended Waiver and their request to the Chief Judge for interim rates will provide Entergy Services and interested parties additional time and opportunity, through October 31, 2015, to undertake the annual transmission formula rate population process. The Entergy Operating Companies state that the formal transmission formula rate implementation process will commence on November 1, 2015.¹⁵

11. The Entergy Operating Companies state that they are requesting the Extended Waiver subject to refund and that their annual transmission revenue requirements are subject to an annual true-up requirement. The Entergy Operating Companies state that, given these protections, the Commission's grant of the Extended Waiver will not cause a material impact on rates for transmission service nor cause harm to customers. They state that to avoid the incurrence of interest on any surcharges arising from the requested deferred implementation schedule, they have agreed that interest on such surcharges will begin to accrue on November 1, 2015. They further state that the Extended Waiver is in the public interest because it will facilitate implementation of the Entergy Operating Companies' transmission formula rate templates without a negative impact on customers.

12. The Entergy Operating Companies state that they are authorized to state that the active parties in this proceeding, the Joint Customers¹⁶ and MISO, support this motion.

III. Notice of Filing and Responsive Pleadings

13. Notice of the Motion for Extension of Waiver was published in the *Federal Register*, 80 Fed. Reg. 50,273 (2015), with responsive pleadings due on or before

¹⁴ Entergy Operating Companies August 7, 2015 Motion for Extension of Waiver at 2.

¹⁵ *Id.* at 3.

¹⁶ The Entergy Operating Companies state that the Joint Customers are: Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two member cities (Clarksdale Public Utilities Commission and Public Service Commission of Yazoo City); and South Mississippi Electric Power Association.

August 28, 2015. The deadline for filing responsive pleadings was subsequently shortened to August 17, 2015. None was filed.

IV. Discussion

14. For good cause shown we grant the Entergy Operating Companies' Motion for Extension of 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 October 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.¹⁷ We find that these conditions have been satisfied here, and we therefore grant the Entergy Operating Companies' Motion for Extension of Waiver. First, the Extended Waiver is limited in scope because it is temporary and only for a 60-day period. In addition, a concrete problem of completing the formula rate population process using 2014 data by August 31, 2015 will be avoided by granting the Extended Waiver. Further, the Extended 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-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 Motion for Extension of Waiver.

15. While we find good cause to grant the requested Extended 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 a timeline and deadlines 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

¹⁷ *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); *Cal. 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).

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.¹⁸ In the Initial Waiver Order, the Commission urged the Entergy Operating Companies to develop a modified timeline and deadlines as part of the settlement negotiations and file them with the settlement. The Offer of Partial Settlement appears to contain no such protocol modifications. Particularly given the further delay in formula rate implementation due to the waiver extension approved in this order, we again urge the Entergy Operating Companies to develop such modified timeline and deadlines. 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.¹⁹ Accordingly, we will grant the Motion for Extension of Waiver.

The Commission orders:

The Motion for Extension of 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.

¹⁸MISO Protocols Rehearing Order, 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).

¹⁹ Rates Order, 143 FERC ¶ 61,257 at PP 99-104.