

156 FERC ¶ 61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Louisiana, LLC

Docket Nos. ER16-1251-000

Entergy Louisiana, LLC, Entergy Texas, Inc., and
Entergy New Orleans, Inc.

ER13-1508-000

ORDER ACCEPTING AMENDED POWER PURCHASE AGREEMENTS SUBJECT
TO CONDITION

(Issued August 31, 2016)

1. On March 21, 2016, in Docket No. ER16-1251-000, Entergy Services, Inc., (Entergy) on behalf of Entergy Louisiana, LLC (Entergy Louisiana), Entergy Texas, Inc. (Entergy Texas), and Entergy New Orleans, Inc. (Entergy New Orleans) submitted for filing, under section 205 of the Federal Power Act (FPA),¹ two amended power purchase agreements (PPAs), each of which had been previously filed with the Commission under section 205 of the FPA.² In addition, on that same day on behalf of Entergy Louisiana, Entergy Texas, and Entergy New Orleans, Entergy submitted four amended PPAs in Docket No. ER13-1508-000 for informational purposes.³ In this order, we accept the

¹ 16 U.S.C. § 824d (2012).

² These PPAs are Power Purchase Agreement by and between Entergy Louisiana (Seller) and Entergy Texas (Buyer) for River Bend 70 (River Bend 70 Amended PPA) and Power Purchase Agreement by and between Entergy Louisiana (Seller) and Entergy New Orleans (Buyer) for River Bend 30 (River Bend 30 Amended PPA).

³ These PPAs are Power Purchase Agreement by and between Entergy Louisiana (Seller) and Entergy Texas (Buyer) for the Perryville Generating Facility (Perryville Amended PPA); Power Purchase Agreement by and between Entergy Texas (Seller) and Entergy Louisiana (Buyer) for the Carville Energy Center (Carville Amended PPA); Power Purchase Agreement by and between Entergy Louisiana (Seller) and Entergy New Orleans (Buyer) for the Ninemile Point Electric Generating Station (Ninemile Amended

(continued ...)

Amended PPAs filed in Docket No. ER16-1251-000 for filing, subject to condition, to be effective September 1, 2016, as requested. We also accept Entergy's informational filing filed in Docket No. ER13-1508-000, subject to condition.

I. Background

2. The Amended PPAs are agreements that were previously entered into pursuant to Service Schedule MSS-4 of the Entergy System Agreement, which governs unit-specific power purchases between the Entergy Operating Companies that are participating in the Entergy System Agreement.⁴ Entergy states that the Commission requires it to file a notice with the Commission within 30 days of any Entergy Operating Company's entering into any long-term transaction, i.e., one year or more, pursuant to Service Schedule MSS-4.⁵ On August 31, 2016, the Entergy System Agreement will terminate pursuant to a Commission-approved settlement agreement.⁶ Entergy states that upon the termination of the Entergy System Agreement, Service Schedule MSS-4 will cease to exist, and PPAs that had been entered into pursuant to Service Schedule MSS-4 will be transferred to the Unit Power Sales and Designated Power Purchases Tariff (MSS-4 Replacement Tariff). Entergy states that the MSS-4 Replacement Tariff was designed to replace Service Schedule MSS-4 as the umbrella tariff for current Service Schedule MSS-4 PPAs that survive termination of the Entergy System Agreement.⁷ Entergy states

PPA); and Power Purchase Agreement by and between Entergy Louisiana (Seller) and Entergy New Orleans (Buyer) for the Algiers Transaction (Algiers Amended PPA). Collectively, we refer to all six of the amended PPAs as the Amended PPAs.

⁴ Entergy states that, for purposes of these filings, the participating Entergy Operating Companies are Entergy Louisiana, Entergy Texas, and Entergy New Orleans.

⁵ Entergy Transmittal Letter, Docket No. ER16-1251-000 at 2; Entergy Transmittal Letter, Docket No. ER13-1508-000 at 2 (citing *Entergy Servs., Inc.*, 111 FERC ¶ 61,035, at PP 1, 20 (2005)).

⁶ *Entergy Ark., Inc.*, 153 FERC ¶ 61,347 (2015) (approving a settlement agreement filed on Aug. 14, 2015 in Docket No. ER14-75-000, *et al.* terminating the Entergy System Agreement) (Settlement Agreement)).

⁷ Entergy submitted the MSS-4 Replacement Tariff for approval in Docket No. ER13-1508-000, *et al.* On December 16, 2013, the Commission accepted and suspended the proposed MSS-4 Replacement Tariff and established hearing and settlement judge procedures. *Entergy Ark., Inc.*, 145 FERC ¶ 61,216 (2013). On September 8, 2014, the Commission approved a partial settlement resolving all issues concerning the MSS-4 Replacement Tariff except the issue of the appropriate input for

(continued ...)

that, through the instant filings, it is providing notice to all interested parties that the currently-effective PPAs under Service Schedule MSS-4 surviving the termination of the Entergy System Agreement will be transferred under the MSS-4 Replacement Tariff, effective September 1, 2016. Entergy adds that pursuant to the terms of the Settlement Agreement, the Settlement Agreement shall have no material effect on any surviving PPA. Entergy notes that the parties to the Settlement Agreement dispute the application of the ROE that will apply to the contracts under the MSS-4 Replacement Tariff and that nothing in its filing is intended to take a position on the pending ROE dispute in Docket No. ER13-1508-000, *et al.*

3. Entergy proposes to amend the current PPAs to replace references to the Entergy System Agreement with references to the MSS-4 Replacement Tariff, pursuant to the terms of the Settlement Agreement. In addition, Entergy notes that Entergy Louisiana is the current owner of the River Bend Station, a nuclear energy generating station that consists of a 70 percent regulated portion (River Bend 70) and a 30 percent unregulated portion (River Bend 30).⁸ A share of the output of River Bend 70 is currently sold to Entergy Texas pursuant to the River Bend 70 PPA under Service Schedule MSS-4 of the Entergy System Agreement, and a share of the output of River Bend 30 is currently sold to Entergy New Orleans pursuant to the River Bend 30 PPA under Service Schedule MSS-4 of the Entergy System Agreement.⁹ Entergy states that on December 29, 2010, it filed an amended version of the River Bend 70 PPA to add revisions requested by the United States Nuclear Regulatory Commission (NRC), and the amended version was accepted by unpublished letter order dated February 14, 2011 in Docket No. ER11-2562-000. Entergy proposes to add similar revisions to the River Bend 30 PPA.¹⁰ Entergy

return on equity (ROE) in the MSS-4 Replacement Tariff monthly capacity charge formula. *Entergy Ark., Inc.*, 148 FERC ¶ 61,178 (2014). On May 12, 2015, the presiding judge in the proceeding issued an initial decision on the appropriate ROE, which is pending Commission action. *Entergy Ark., Inc.*, 151 FERC ¶ 63,008 (2015).

⁸ Entergy Transmittal Letter, Docket No. ER16-1251-000 at 3.

⁹ Entergy states that the River Bend 30 PPA in its current form was accepted by the Commission in *Entergy Servs., Inc.*, 122 FERC ¶ 61,259 (2008). Entergy Transmittal Letter, Docket No. ER16-1251-000 at 4. The current version of the River Bend 70 PPA was accepted for filing on February 14, 2011. *Entergy Gulf States La., L.L.C.*, Docket No. ER11-2562-000 (Feb. 14, 2011) (delegated letter order).

¹⁰ Specifically, according to Entergy, the NRC believes the Service Schedule MSS-4 PPA should contain express language that (1) payments for River Bend Station decommissioning costs should be made notwithstanding the operational status of River

(continued ...)

states that, while it feels the changes are unnecessary, it is proposing to implement the changes for the River Bend 30 PPA out of an abundance of caution and in the interest of cooperating with the NRC.¹¹ Similarly, out of an abundance of caution and in the interest of cooperating with the NRC, Entergy revised the Algiers PPA, in Docket No. ER13-1508-000, to reflect the express language Entergy states that it believes the NRC requires.¹²

4. In its filing in Docket No. ER16-1251-000, Entergy requests that the Commission accept the River Bend 70 Amended PPA and the River Bend 30 Amended PPA effective as of September 1, 2016. In its filing in Docket No. ER13-1508-000, Entergy concludes that on behalf of Entergy Louisiana, Entergy Texas, and Entergy New Orleans, Entergy provides notice that the Perryville Amended PPA, the Carville Amended PPA, the Ninemile Amended PPA, and the Algiers Amended PPA will become effective as of September 1, 2016, immediately following the termination of the Entergy System Agreement.

II. Notice of Filing and Responsive Pleadings

5. Entergy submitted its filing in Docket No. ER13-1508-000 “for informational purposes.”¹³ The Public Utility Commission of Texas (Texas Commission) filed a notice of intervention, the Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention and a protest, and the Council of the City of New Orleans (New Orleans Council) filed a notice of intervention and a limited protest. In addition, Entergy filed a motion for leave to answer and an answer to which the New Orleans Council filed a motion for leave to answer and an answer.

6. Entergy submitted its filing in Docket No. ER16-1251-000 under section 205 of the FPA. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 18,618 (2016), with protests and interventions due on or before April 11, 2016. A notice of intervention was filed by the New Orleans Council. A notice of intervention and protest

Bend Station; (2) payments for River Bend Station decommissioning costs should be made notwithstanding any force majeure provisions; and (3) proceeds from decommissioning collections should be deposited into the external sinking fund. Entergy Transmittal Letter, Docket No. ER16-1251-000 at 4.

¹¹ *Id.*

¹² Entergy Transmittal Letter, Docket No. ER13-1508-000 at 3-4.

¹³ *Id.* at 1.

was filed by the Louisiana Commission. The New Orleans Council filed comments out-of-time. The Texas Commission filed a motion to intervene and comments out-of-time. On April 26, 2016, Entergy filed a motion for leave to answer and answer. On May 6, 2016, the New Orleans Council filed a motion for leave to answer and answer.

7. The parties generally raise the same issues in response to both filings, as discussed below.

8. The Louisiana Commission opposes Entergy's filings to the extent that they would apply generically the ROE that is pending in Docket No. ER13-1508-000, *et al.* Rather, the Louisiana Commission states that the particular facts and circumstances of the Amended PPAs should be examined to determine whether the ROE Entergy proposes to use is appropriate under the particular financial and economic circumstances of each PPA.¹⁴

9. In its comments in Docket No. ER16-1251-000, the Texas Commission states that Entergy should be required to (1) demonstrate that its revisions will have no material effect on the two PPAs filed in that docket; (2) identify all differences between Service Schedule MSS-4 and the MSS-4 Replacement Tariff; and (3) provide an explanation of the differences, if any, in how costs are determined and how charges are assessed. The Texas Commission also states that Entergy should clarify the following statement in section 3 of the Amended PPAs: "[t]he pricing of the capacity and energy to be sold and purchased pursuant to paragraph 2 above shall be as specified in the [MSS-4 Replacement Tariff], as clarified in the accompanying transmittal letter dated March 11, 2016."¹⁵ The Texas Commission states that it is unclear what is meant by the reference to a March 11, 2016 transmittal letter, which the Texas Commission states does not correspond to any letter in this or any other docket. With respect to the Louisiana Commission's protest, the Texas Commission states that the PPAs filed in Docket No. ER16-1251-000 are existing agreements already on file and accepted by the Commission and that, to the extent the Louisiana Commission is protesting previously approved costs and charges under Service Schedule MSS-4, such protests are beyond the scope of the proceeding.¹⁶

¹⁴ Louisiana Commission Protest, Docket No. ER13-1508-000 at 2; Louisiana Commission Protest, Docket No. ER16-1251-000 at 2.

¹⁵ Texas Commission Comments, Docket No. ER16-1251-000 at 3-4.

¹⁶ *Id.* at 3.

10. In its limited protest in Docket No. ER13-1508-000 and comments in Docket No. ER16-1251-000, the New Orleans Council states that Entergy's revisions to section 3 of the Algiers Amended PPA and the River Bend 30 Amended PPA are unnecessary and that certain terms are ambiguous and undefined. The New Orleans Council also states that the River Bend 30 Amended PPA and the Algiers Amended PPA contain an "entire agreement" provision, which conflicts with the reference in section 3 of the PPAs to a March 11, 2016 transmittal letter. Additionally, the New Orleans Council argues that the language in section 3 of the Algiers Amended PPA and the River Bend 30 Amended PPA is a substantive change that has a direct impact on the rates under its jurisdiction. The New Orleans Council requests a technical conference so that Entergy and the New Orleans Council can meet to craft language that is clear and unambiguous, and to ensure there is no unjust, unreasonable, or unduly discriminatory impact on New Orleans ratepayers.¹⁷

11. In its answers in Docket Nos. ER13-1508-000 and ER16-1251-000, Entergy states that the proposed revisions do not alter any existing rates and that the filings take no position on the ROE that will apply to the Amended PPAs. Entergy states that, in the interest of administrative efficiency, it included in these filings proposed NRC-requested language in section 3 of the Algiers Amended PPA and the River Bend 30 Amended PPA. Entergy states that the proposed section 3 language is substantially similar to language previously accepted by the Commission¹⁸ and does not alter any of the inputs or variables for purposes of calculating the monthly charge to a buyer under the MSS-4 Replacement Tariff. In the event that Entergy Louisiana requires additional funding for nuclear decommissioning to satisfy NRC requirements and chooses to modify the decommissioning amount currently collected in the Algiers Amended PPA and the River Bend 30 Amended PPA, Entergy states it would need to file with the Commission a request to update that component of the rate formula. Entergy states that upon such a filing the New Orleans Council would have a full opportunity to review and comment on how such an update might impact New Orleans consumer rates. Consequently, Entergy asserts there is no need for a technical conference.

12. Entergy further states that the instant filing is consistent with and required by the Settlement Agreement. Additionally, Entergy notes that the reference to a March 11, 2016 transmittal letter in the revised section 3 language is incorrect and commits to

¹⁷ New Orleans Council Protest, Docket No. ER13-1508-000 at 3-5; New Orleans Council Comments, Docket No. ER16-1251-000 at 3-5.

¹⁸ Entergy Answer, Docket No. ER13-1508-000 at 4; Entergy Answer, Docket No. ER16-1251-000 at 4; *see also Entergy Gulf States La., L.L.C.*, Docket No. ER11-2562-000 (Feb. 14, 2011) (delegated letter order).

correcting the error and, in Docket No. ER16-1251-000, submit a compliance filing referencing the March 21, 2016 transmittal letter instead.¹⁹ With respect to the Texas Commission's question concerning the differences between Service Schedule MSS-4 and the MSS-4 Replacement Tariff in Docket No. ER16-1251-000, Entergy states that the two are the same with the exception of the pass-through of Midcontinent Independent System Operator, Inc. (MISO) administrative charges. Entergy states that administrative charges associated with the generating unit subject to the PPA are currently combined with all MISO administrative charges and allocated among the Entergy Operating Companies participating in the Entergy System Agreement using Entergy System Agreement Service Schedule MSS-8. Entergy states that upon termination of the Entergy System Agreement, Service Schedule MSS-8 will no longer apply and administrative charges will be directly invoiced by MISO to the generating unit's owner. Entergy does not believe this represents a material change. Entergy states that the pass-through of MISO administrative charges associated with the generating units subject to the PPA is a component of the MSS-4 Replacement Tariff proceeding and partial settlement in Docket No. ER13-1508-000, *et al.*²⁰

13. In its answer, the New Orleans Council states that Entergy has failed to address its concern that pursuant to the "entire agreement" provisions of the River Bend 30 Amended PPA and the Algiers Amended PPA, a referenced transmittal letter cannot be part of the PPA. The New Orleans Council also asserts that Entergy has not provided clarification for certain undefined terms and phrases that the New Orleans Council identified. Further, the New Orleans Council states that Entergy has not provided any information or opportunity that would assist in examining the impact of the proposed amendments on Entergy New Orleans customers' rates. Specifically, the New Orleans Council expresses concern about language in section 3 of the River Bend 30 Amended PPA and the Algiers Amended PPA that states that if decommissioning funds are found to be insufficient then Entergy New Orleans will "promptly" pay the deficit.²¹

¹⁹ Entergy Answer, Docket No. ER13-1508-000 at 3-5; Entergy Answer, Docket No. ER16-1251-000 at 2-5.

²⁰ Entergy Answer, Docket No. ER16-1251-000 at 5-6.

²¹ New Orleans Council Answer, Docket No. ER13-1508-000 at 4-6; New Orleans Council Answer, Docket No. ER16-1251-000 at 2-4.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the notices of intervention serve to make the entities that filed them parties to the proceedings in which they were filed. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), the Commission will grant the Texas Commission's late-filed motion to intervene in Docket No. ER16-1251-000 given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. We also accept the Texas Commission's and the New Orleans Council's late-filed comments.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Entergy's and New Orleans Council's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Issues

16. We find that Entergy has justified the revisions to the Amended PPAs submitted under section 205 of the FPA in Docket No. ER16-1251-000 and accept them to take effect September 1, 2016, subject to condition, as discussed below.²² In addition, we find that Entergy has justified the revisions to the Amended PPAs submitted in Docket No. ER13-1508-000, and we accept that informational filing, subject to condition, as discussed below.

17. The Louisiana Commission argues that the particular facts and circumstances of the Amended PPAs should be examined to determine the ROE that will apply to the Amended PPAs and that a generic ROE should not apply to the Amended PPAs.²³ We find the Louisiana Commission's concerns to be outside the scope of this proceeding. As

²² The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

²³ Louisiana Commission Protest, Docket No. ER13-1508-000 at 2; Louisiana Commission Protest, Docket No. ER16-1251-000 at 2.

the parties acknowledge, issues concerning the application of ROEs under the MSS-4 Replacement Tariff are pending in Docket No. ER13-1508-001, *et al.*

18. With regard to the Texas Commission's concerns,²⁴ we find that Entergy has explained sufficiently the differences in how costs are determined and how charges are assessed between Service Schedule MSS-4 and the MSS-4 Replacement Tariff. Specifically, Entergy explains that there are no differences in the methodology for calculating the costs associated with the River Bend 70 Amended PPA and the River Bend 30 Amended PPA except for the pass-through of MISO administrative charges, which will now be directly invoiced by MISO to the generating unit's owner rather than assessed and allocated among the participating Entergy Operating Companies pursuant to Entergy System Agreement Service Schedule MSS-8.²⁵

19. In addition, we find that the revised language in section 3 of the Algiers Amended PPA and the River Bend 30 Amended PPA, which Entergy included to address compliance with NRC regulatory requirements,²⁶ is similar to language Entergy previously filed under section 205 of the FPA to be included in the River Bend 70 PPA and which was accepted for filing on February 14, 2011.²⁷ We find that the revisions to section 3 are reasonable in light of the NRC's request to Entergy regarding NRC regulatory requirements, and as Entergy acknowledges in its answers,²⁸ if it seeks to modify the decommissioning amount currently collected, it will have to file a request with the Commission. Accordingly, we accept the proposed modifications to section 3 of the Algiers Amended PPA and the River Bend 30 Amended PPA. If Entergy seeks to modify the decommissioning amount currently collected under the MSS-4 Replacement Tariff, it must submit a filing under section 205 of the FPA to change those rates.

²⁴ Texas Commission Comments, Docket No. ER16-1251-000 at 3.

²⁵ Entergy Answer, Docket No. ER16-1251-000 at 5-6.

²⁶ New Orleans Council Protest, Docket No. ER13-1508-000 at 3-5; New Orleans Council Answer, ER13-1508-000 at 3-6; New Orleans Council Comments, Docket No. ER16-1251-000 at 3-5; New Orleans Council Answer, Docket No. ER16-1251-000 at 3-4.

²⁷ *Entergy Gulf States La., L.L.C.*, Docket No. ER11-2562-000 (Feb. 14, 2011) (delegated letter order).

²⁸ Entergy Answer, Docket No. ER13-1508-000 at 4; Entergy Answer, Docket No. ER16-1251-000 at 4.

20. Finally, we find the language included in the Amended PPAs stating that “[t]he pricing of the capacity and energy to be sold and purchased pursuant to paragraph 2 above shall be as specified in the [MSS-4 Replacement Tariff], as clarified in the accompanying transmittal letter dated March 11, 2016” to be unclear. In its answers, Entergy states that the March 11, 2016 date was an error and that it intended to reference the March 21, 2016 transmittal letters in these proceedings.²⁹ However, Entergy does not explain what specific language in the March 21, 2016 transmittal letters clarifies the pricing of the capacity and energy to be sold and purchased nor does it explain why that language should not be included in the Amended PPAs.³⁰ Therefore, for the reasons discussed, we will accept the Amended PPAs, on the condition that Entergy make a compliance filing to amend section 3 of the Amended PPAs to include the language that Entergy states clarifies the pricing of the capacity and energy to be sold and purchased.

The Commission orders:

(A) Entergy’s filing in Docket No. ER16-1251-000 is hereby accepted, effective September 1, 2016, subject to condition, as discussed in the body of this order.

(B) Entergy’s informational filing in Docket No. ER13-1508-000 is hereby accepted, subject to condition, as discussed in the body of this order.

(C) Entergy is required to make a compliance filing within 30 days, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁹ Entergy Answer, Docket No. ER16-1251-000 at 4; Entergy Answer, Docket No. ER13-1508-000 at 5 n.14.

³⁰ The Commission requires public utilities to post full and complete rate schedules and tariffs, rather than incorporating rates by reference. *W. Sys. Power Pool*, 124 FERC ¶ 61,056, at P 10 (2008); *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282, at P 186 (2006); *see also* 18 C.F.R. § 35.1(a) (2016) (“Every public utility shall file . . . full and complete rate schedules and tariffs . . .”).