

157 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.
and Entergy Services, Inc.

Docket No. ER17-89-000

ORDER ACCEPTING CORRECTED FORMULA RATE TEMPLATE

(Issued December 13, 2016)

1. On October 14, 2016, Midcontinent Independent System Operator, Inc. (MISO) and Entergy Services, Inc. (Entergy), on behalf of Entergy Texas, Inc. (Entergy Texas), filed a proposed modification of Entergy Texas's transmission formula rate template under Attachment O of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) to correct an error (October 14 Filing).¹ In this order, the Commission accepts the October 14 Filing, effective December 19, 2013, as requested.

I. The October 14 Filing

2. Entergy states that the currently-effective transmission formula rate templates of the Entergy Operating Companies² under Attachment O are in the form approved by the Commission in Docket No. ER13-948. Entergy states that the terms and conditions of the transmission formula rate template of each Entergy Operating Company are intended to be wholly consistent with the negotiated Offer of Partial Settlement that resolved all

¹ MISO joins the instant filing as the administrator of the MISO Tariff, but MISO takes no position on the substance of the filing and reserves the right to comment or protest.

² The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Texas, and Entergy New Orleans, Inc. Entergy is a service company affiliate of the Entergy Operating Companies and acts on their behalf with respect to the execution and administration of certain contracts and in proceedings at the Commission.

issues with respect to the Entergy Operating Companies' transmission formula rate templates in Docket No. ER13-948, and identical in all respects except for company-specific customizations.³ Entergy states that it has discovered that a provision of Entergy Texas's transmission formula rate template contains a deviation from the consistent terms and conditions of each other Entergy Operating Company transmission formula rate tariff. According to Entergy, the inadvertent deviation makes that provision of the Entergy Texas template inconsistent with the Offer of Partial Settlement. Entergy states that it submits the instant corrected template to fix the error.⁴

3. Entergy states that the error is related to the element of Entergy Texas's transmission formula rate template that addresses accumulated deferred income taxes (ADIT) and appears in workpaper "WP06 ADIT." Entergy states that, in the course of the recent annual update, information exchange, and challenge process for the Entergy Operating Companies, it came to Entergy's attention that the formula in that worksheet inadvertently and incorrectly functionalized amounts in Entergy Texas's FERC ADIT Accounts 190221 and 19222 (FAS 106 Other Retire Ben-Fed and FAS 106 Other Retire Ben-State, respectively) as "Labor" related expenses. Entergy states that, consistent with the Offer of Partial Settlement and the other Entergy Operating Companies' transmission formula rate templates, those amounts properly should be functionalized as "Other" expenses.⁵

4. Entergy states that it has corrected the error in Entergy Texas's transmission formula rate template Workpaper "WP06 ADIT" by indicating that amounts in Accounts 190221 and 19222 should be functionalized as "Other" expenses. The correction is memorialized by removing the placeholder for the account values from the "Labor" column and inserting it in the "Other" column. Entergy states that the correction makes Entergy Texas's transmission formula rate template consistent with the Offer of Partial Settlement and the other Entergy Operating Companies' transmission formula rate templates, each of which functionalizes amounts in Accounts 190221 and 19222 as "Other" expenses.⁶

³ October 14 Filing at 1-2 (citing *Entergy Servs., Inc.*, 156 FERC ¶ 61,127 (2016) (August 23 Order), *order on clarification*, 156 FERC ¶ 61,236 (2016) (September 28 Order)).

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

5. Entergy states that the effect of correcting the error in the Entergy Texas transmission formula rate for the 2014 calendar year is an increase in the annual Attachment O revenue requirement of approximately \$309,000. The MISO customers' share of the \$309,000 is estimated to be approximately 12.5 percent of that amount, or \$38,000. Similarly, Entergy states that for the 2015 calendar year the MISO customers' share is approximately 12.8 percent or \$39,000.⁷

6. Entergy requests an effective date of December 19, 2013, for the proposed Entergy Texas corrected template, stating that the Commission has accepted the Entergy Operating Companies' transmission formula rate templates effective as of that date.⁸ Entergy states that, through the settlement process, the Entergy Operating Companies adopted transmission formula rate templates that are intended to be identical in all respects except for company-specific customizations. Entergy states that the proposed correction of the error in Entergy Texas's transmission formula rate template will conform Entergy Texas's template with those of the other Entergy Operating Companies, giving effect to the intent that they all be identical in substance. Further, Entergy states that the rate impact of approximately \$77,000 is a *de minimis* amount that will have a negligible effect on transmission service costs.⁹

7. In addition, Entergy states that, in the near future, Entergy and MISO will make separate, unrelated filings with the Commission with respect to the Entergy Operating Companies' transmission formula rate templates under MISO Tariff Attachment O. Entergy states that, not later than October 28, 2016, MISO will make a compliance filing to reflect in those templates the return on equity established by the Commission in Opinion No. 551.¹⁰ In addition, not later than November 28, 2016, consistent with the Commission's order approving the Offer of Partial Settlement that resolved all issues with respect to the Entergy Operating Companies' transmission formula rate templates,¹¹ Entergy and MISO will make a compliance filing to reflect December 19, 2013, as the effective date of those templates on file in MISO's eTariff database. Each of these filings

⁷ *Id.* at 3.

⁸ *Id.* (citing *ITC Holdings Corp., et al.*, 143 FERC ¶ 61,257 (2013); August 23 Order, 156 FERC ¶ 61,127; September 28 Order, 156 FERC ¶ 61,236).

⁹ *Id.*

¹⁰ *Id.* (citing *Association of Businesses Advocating Tariff Equity, et al., v. Midcontinent Independent System Operator, Inc.*, Opinion No. 551, 156 FERC ¶ 61,234 (2016)).

¹¹ *See supra* note 3.

will be independent of the others and the Commission's action on any one of the filings will not affect any other.¹²

II. Notice of Filing and Responsive Pleadings

8. Notice of the October 14 Filing was published in the *Federal Register*, 81 Fed. Reg. 72,584 (2016), with interventions and protests due on or before November 4, 2016. On November 2, 2016, NRG Power Marketing LLC and GenOn Energy Management, LLC (collectively, NRG Companies) filed a timely motion to intervene. On November 4, 2016, the Public Utility Commission of Texas (Texas Commission) filed a notice of intervention and limited protest. On November 18, 2016, Entergy filed a motion for leave to respond and response to the Texas Commission protest.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹³ the notice of intervention and the timely, unopposed motion to intervene serve to make the Texas Commission and the NRG Companies parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.¹⁴ We accept the response filed by Entergy because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. The Texas Commission's Limited Protest

11. The Texas Commission states that, while it does not object to the proposed modification to Entergy Texas's formula rate template on a prospective basis, it disputes Entergy Texas's request to apply the proposed modification retroactively to December 19, 2013.¹⁵ According to the Texas Commission, the filed rate doctrine "forbids a regulated entity to charge rates for its services other than those properly filed with the

¹² *Id.* at 3-4.

¹³ 18 C.F.R. § 385.214 (2016).

¹⁴ 18 C.F.R. § 385.213(a)(2) (2016).

¹⁵ Texas Commission Limited Protest at 1, 3.

appropriate federal regulatory authority.”¹⁶ Further, the Texas Commission explains that the corollary to the filed rate doctrine, the rule against retroactive ratemaking, “prohibits the Commission from adjusting current rates to make up for a utility’s over- or under-collection in prior periods.”¹⁷ The Texas Commission notes that, when evaluating whether the requested relief would violate either the filed rate doctrine or the rule against retroactive ratemaking, the Commission considers whether the ratepayers had sufficient notice that the approved rate was subject to change.¹⁸

12. The Texas Commission argues that the modification that Entergy requests to implement is not a mistake to an input value of the filed formula rate, but rather, it is a modification to the formula itself.¹⁹ The Texas Commission argues that this constitutes a modification to the filed rate for which notice, or waiver of notice, is required. According to the Texas Commission, Entergy states that it intended that all Entergy Operating Companies’ transmission formula rate templates would be substantively identical, except for company-specific customizations.²⁰ The Texas Commission explains that Entergy filed the Settlement Agreement in Docket No. ER13-948 on July 31, 2015, and included an Explanatory Statement in which the provisions of the Settlement Agreement were summarized. The Texas Commission further explains that the Settlement Agreement does not discuss the functionalization of ADIT Accounts 190221 and 19222, either as an item for which all Operating Companies would be consistent, or as a company-specific deviation. Thus, the Texas Commission argues that it is not clear whether the intent was for all Entergy Operating Companies to treat ADIT the same, or whether this was a company-specific deviation.

13. The Texas Commission also argues that applying the correction effective December 19, 2013, after the current template has already been approved and implemented as the result of the settlement in Docket No. ER13-948, would increase rates, even if only modestly, for service that has already been provided.²¹ According to the Texas Commission, this is contrary to the filed rate doctrine and the rule against retroactive ratemaking, and cannot be granted absent a waiver by the Commission.

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4.

²⁰ *Id.* (citing October 14 Filing at 3).

²¹ *Id.* (citing October 14 Filing at 3).

The Texas Commission explains that Entergy did not submit a request for waiver of notice with its request for retroactive relief, and, even if Entergy requested a waiver, the situation would likely not meet the “extraordinary circumstances” standard for granting such a waiver.²² The Texas Commission states that it does not object to the modification on a prospective basis, but requests that the Commission reject the proposed retroactive effective date of December 19, 2013.²³

2. Entergy’s Response

14. Entergy replies that the Texas Commission is incorrect in its assertion that Entergy’s filing is a change to the Entergy Texas formula rate. Entergy argues that its filing “merely corrects an inadvertent mistake in the Entergy Texas transmission formula rate template.”²⁴ Entergy states that, unless specified in the Commission-approved Offer of Partial Settlement in Docket No. ER13-948, the transmission formula rate templates for all of the Entergy Operating Companies were designed to be the same. Entergy states that in this case there is a minor mistake in the Entergy Texas template that should be corrected effective as of December 19, 2013, the effective date for the Entergy Texas transmission formula rate template.²⁵

15. Entergy states that the beneficiaries of the proposed correction of Entergy Texas’s transmission formula rate template will be Entergy Texas’s retail customers, and not Entergy Texas. Entergy explains that correcting the inadvertent error effective as of December 19, 2013 will generate a modest amount of additional revenue (approximately \$77,000 over two years) that will be credited to Entergy Texas’s retail customers. In contrast, Entergy points out, accepting the correction only prospectively would deprive Entergy Texas’s retail customers of the revenue credits that would be generated by the December 19, 2013 effective date.²⁶

16. Entergy states that the Texas Commission is incorrect in arguing that the proposed correction to the Entergy Texas transmission formula rate template is a modification to

²² *Id.* (citing October 14 Filing at 3 (showing that the proposed change to the Entergy Texas tariff would change the rate for service provided by Entergy Texas in 2014 and 2015)).

²³ *Id.* at 5.

²⁴ Entergy Response at 1.

²⁵ *Id.*

²⁶ *Id.* at 2-3.

the Entergy Texas formula rate and an attempt to reverse a company-specific customization to the standard transmission formula rate embodied in each of the Entergy Operating Companies' transmission formula rate templates. Entergy argues that the intent of the proposed correction is to fix an inadvertent error and conform the Entergy Texas transmission formula rate template with the templates of the other Entergy Operating Companies and thus with the Commission-approved Offer of Partial Settlement in Docket No. ER13-948.²⁷

17. Entergy argues that its proposed correction of an inadvertent error is not inconsistent with the filed rate doctrine or rule against retroactive ratemaking. Entergy states that the Offer of Partial Settlement developed standard terms and conditions of the Entergy Operating Companies' transmission formula rate templates that were intended to be identical in all respects except for company-specific customizations. Entergy states that any company-specific customizations are noted in the templates of the specific companies and described in the Offer of Partial Settlement. Entergy argues that Workpaper "WP06 ADIT" was intended to be the same for each Entergy Operating Company and that the Offer of Partial Settlement contains no company-specific customizations for Workpaper WP06 ADIT.²⁸

18. Entergy points out that Entergy Texas will not benefit from the requested effective date of December 19, 2013 because Entergy Texas will credit to retail customers the additional revenues it will receive. Entergy argues that the requested effective date of December 19, 2013 will give effect to the Commission-approved Offer of Partial Settlement in Docket No. ER13-948 which established standard terms and conditions for the Entergy Operating Companies' transmission formula rate templates effective as of December 19, 2013.²⁹

3. Commission Determination

19. We will accept Entergy's proposed modification to Entergy Texas's Workpaper WP06 ADIT. We will also deny the Texas Commission's protest and grant the requested effective date of December 19, 2013.

20. We find persuasive Entergy's argument that the difference in the Entergy Texas transmission formula rate template was an inadvertent error and was not intended to be a company-specific customization. The Offer of Partial Settlement is structured to set out

²⁷ *Id.* at 3.

²⁸ *Id.* at 4.

²⁹ *Id.* at 4-5.

the common provision that is to be included in the formula rates of each Entergy Operating Company and then to list any company-specific customizations. For example, with respect to post-retirement benefits other than pensions (PBOP), the Offer of Partial Settlement provides that each Entergy Operating Company's transmission formula rate template includes Worksheet WP12 PBOP, specifying the PBOP amount to be recovered in the annual transmission revenue requirement for each test year. The Offer of Partial Settlement then discusses the waiver to this provision granted by the Commission to two of the Operating Companies, Entergy Gulf States Louisiana and Entergy Louisiana.³⁰ Similarly, the Offer of Partial Settlement provides that the Entergy Operating Companies' transmission formula rate templates will not include any regulatory assets in rate base or any amortization expenses associated with such assets, unless accepted by the Commission pursuant to a filing under section 205 of the Federal Power Act,³¹ except as otherwise provided in the Offer of Partial Settlement. The Offer of Partial Settlement then discusses several company-specific customizations.³²

21. The Texas Commission states that, the Offer of Partial Settlement does not discuss the functionalization of ADIT Accounts 190221 and 19222, either as an item for which all Operating Companies would be consistent, or as a company-specific deviation.³³ The Texas Commission concludes that it is not clear whether the intent was for all Entergy Operating Companies to treat ADIT the same, or whether the settlement intended a company-specific deviation. However, we believe, given the structure of the Offer of Partial Settlement discussed above in which the provisions to be included in the formula rate templates of all of the Entergy Operating Companies are described and then exceptions are noted, that the absence of a discussion of a company-specific customization for ADIT means that the parties to the settlement did not intend for that to be a company-specific customization.³⁴ Thus, we are persuaded that the deviation found on this Workpaper for Entergy Texas was an inadvertent error.

³⁰ Offer of Partial Settlement, Docket No. ER13-948, July 31, 2015, at 18-19.

³¹ 16 U.S.C. § 824d (2016).

³² Offer of Partial Settlement, Docket No. ER13-948, July 31, 2015, at 21-22; Errata to Offer of Partial Settlement, Docket No. ER13-948, Aug. 19, 2015, at 21-22.

³³ Offer of Partial Settlement, Docket No. ER13-948, July 31, 2015, at 12.

³⁴ *Id.* The Offer of Partial Settlement notes common language relating to contributions in aid of construction and then states that "...each Entergy Operating Company's transmission formula rate template includes Worksheet WP06 ADIT which sets forth the allocation of all current accumulated deferred income taxes as of 2012."

22. In addition, the requested effective date is the date approved by the Commission for the templates in the Offer of Partial Settlement.³⁵ We believe it is reasonable to grant the same effective date for the Entergy Texas transmission formula rate template that is part of the Offer of Partial Settlement. Additionally, we note that the benefits will accrue to Entergy Texas' retail customers. Although Entergy does not affirmatively request waiver in either the October 14 Filing or its response, we will nonetheless grant waiver of notice to give effect to the Offer of Partial Settlement approved by the Commission.

The Commission orders:

Entergy's proposed modification to Entergy Texas's Workpaper WP06 is hereby accepted, effective December 19, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁵ See, e.g., September 28 Order, 156 FERC ¶ 61,236 (clarifying Dec. 19, 2013 as effective date for Attachment O templates in the Offer of Partial Settlement and requiring filing of eTariff sheets within 60 days).