119 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Entergy Services, Inc. Docket No. ER07-727-000

ORDER ACCEPTING PROPOSED SYSTEM AGREEMENT AMENDMENTS

(Issued May 25, 2007)

1. On April 6, 2007, Entergy Services, Inc. (Entergy), on behalf of Entergy Operating Companies,[1] submitted for filing amendments to the Entergy System Agreement (System Agreement). As discussed below, the Commission accepts Entergy's proposed amendments to its System Agreement to become effective May 30, 2007.

## I. Background

2. On June 14, 2001, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint pursuant to section 206 of the Federal Power Act (FPA).[2] The Louisiana Commission alleged that the System Agreement, a rate schedule that includes various service schedules governing, among other things, the allocation of certain costs associated with the integrated operations of the Entergy system, no longer operated to produce rough production cost equalization.

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[1] The Entergy Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), and Entergy New Orleans, Inc.

[2] 16 U.S.C. § 824e (2000).

3. In Opinion No. 480,[3] the Commission found that rough production cost equalization had been disrupted on the Entergy system. Opinion Nos. 480 and 480-A approved a numerical bandwith of +/- 11 percent of the Entergy system average production cost in order to maintain the rough equalization of production costs among the Entergy Operating Companies and required annual filings beginning in June 2007. The Commission stated that the bandwith would be implemented prospectively and would be effective for calendar year 2006, and that any equalization payments would be made in 2007 after a full calendar year of data became available.

4. On April 10, 2006, Entergy submitted a compliance filing to implement the directives of Opinion Nos. 480 and 480-A. The compliance filing included proposed revisions to Service Schedule MSS-3, that had not been ordered by the Commission in Opinion Nos. 480 and 480-A. In its order accepting the compliance filing,[4] the Commission rejected these non-compliant amendments and denied, as beyond the scope of the compliance filing, Entergy's request to make adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28. The Commission explained that Entergy must comply with the requirements of Opinion Nos. 480 and 480-A, including the requirement to follow the methodology set forth in Exhibits ETR-26 and ETR-28. The Commission also stated that Entergy should make a section 205 filing if it desired to make any changes to the methodology in Exhibits ETR-26 and ETR-28.

## II. Entergy's Filing

5. Entergy states that it previously added, in compliance with Opinion No. 480, section 30.12 to Service Schedule MSS-3 of its System Agreement to provide the formula for determining each Entergy Operating Company's actual production costs. According to Entergy, production costs are determined by adding the company's actual variable production costs and actual fixed production costs. Variable production costs, Entergy explains, are calculated as the sum of each company's variable production rate base times the average weighted cost of capital and each company's variable production expenses. Entergy adds that the variable production costs include nuclear production plant in service.

6. Entergy now proposes three amendments to section 30.12 of Service Schedule MSS-3. Entergy explains that the need for the proposed changes was just discovered and

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[3] *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *aff'd, Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005).

[4] *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006) (November 2006 Compliance Order).

identified. The first amendment reflects an accounting reclassification related to Property Under Capital Lease. Entergy explains that Exhibits ETR-26 and ETR-28 reflect the total production plant, including Property Under Capital Lease. Entergy states that Property Under Capital Lease is recorded under FERC Account 101.1, but the current definition of nuclear production plant in service does not include a reference to FERC Account 101.1. Therefore, Entergy proposes to amend the definition of nuclear production plant in service to include "and FERC Account 101.1." Also, Entergy proposes to add the same language to the definitions of production plant in service and production plant in service excluding nuclear plant. Additionally, Entergy proposes to reflect the accumulated amortization association with Property Under Capital Lease by modifying the definitions of Nuclear Accumulated Provision for Depreciation and Accumulated Provision for Depreciation associated with non-nuclear production plant in service and coal mining equipment to include Amortization of Other Utility Plant recorded in Account 111.

7. Entergy states that Exhibits ETR-26 and ETR-28 reflect the inclusion of total depreciation expense, which historically had been recorded in FERC Account 403, Depreciation Expense. (Exhibits ETR-26 and ETR-28 were prepared in 2002). Entergy states that in 2003, it began recording nuclear amortization on the portion of Entergy Louisiana's Waterford 3 nuclear plant subject to sale/leaseback in FERC Account 404, Amortization of Limited Term Electric Plant, rather than Account 403. Entergy proposes to amend the definition of Nuclear Depreciation Expense in section 30.12 to include amounts recorded in Account 403. With this change, Entergy states that the section 30.12 formula for determining actual production costs will continue to capture the total nuclear depreciation expense. Therefore, Entergy proposes to add FERC Account 404 to the definitions of: (1) total nuclear depreciation expense; and (2) depreciation expense associated with plant investment in production plant in service excluding nuclear plant.

8. The second amendment clarifies the retail return on common equity rates used in the formula. The proposed amendment provides that the retail return on equity rates are to be those in effect as of the same date for the other cost of capital components used in that section, which is December 31 of the previous year.

9. The third amendment clarifies the definition of a few variables. Entergy proposes to amend the definitions of Electric Plant in Service and General Plant in Service to add "excluding ARO, if any." Entergy explains that this amendment takes into account that Exhibits ETR-26 and ETR-28 predated the existence of Statement of Financial Accounting Standards 143 relating to Asset Retirement Obligations (ARO). Also, Entergy proposes to revise the definition of Electric and Gas Plant in Service to read "Electric and Gas Plant in Service as defined in PXI above plus Gas Plant as recorded in FERC Account 118 excluding ARO, if any." According to Entergy, this revision includes all accounts that are reflected in the calculation of variable Electric Plant in Service.

10. Entergy requests that the Commission accept the proposed amendments 53 days after filing and grant any waivers, as necessary, to allow the proposed revisions to take effect no later than May 29, 2007. Entergy states that good cause exists to allow these amendments to be reflected concurrent with the other proposed changes to Service Schedule MSS-3 that were filed with the Commission on March 30, 2007. The other proposed changes were requested in Docket Nos. ER07-682-000, ER07-683-000 and ER07-684-000 and each included a request for an effective date of May 29, 2007.

## III. Notice of Filing and Responsive Pleadings

11. Notice of Entergy's filing was published in the *Federal Register*, 72 Fed. Reg. 19,488 (2007), with comments, protests or interventions due on or before April 27, 2007. The Louisiana Commission, Mississippi Public Service Commission, and Council of the City of New Orleans filed notices of intervention. Occidental Chemical Corporation and Louisiana Energy Users Group filed motions to intervene. The Louisiana Commission filed a protest and Entergy filed an answer.

12. The Louisiana Commission explicitly asserts that the Commission should approve the inclusion of the Property Under Capital Lease costs in the formula and the exclusion of the AROs. However, the Louisiana Commission contends that Entergy's amendments should be treated as an amended compliance filing and not a section 205 filing. The Louisiana Commission argues that Entergy included several references to deal with the accounting change for AROs in its initial compliance filing, without seeking any "modification" to the formulas. It contends that the same procedure should be followed for accounting reclassifications and changes referenced in Entergy's current filing. The Louisiana Commission maintains that since the change regarding operating company returns on equity does not change the tariff methodology, it too should be treated as a correction or clarification, and not as a section 205 filing.

## IV. Discussion

### A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

### B. Commission Determination

15. We disagree with the Louisiana Commission's assertion that Entergy's filing should be treated as an amended compliance filing and not a section 205 filing. In the Commission's November 2006 Compliance Order, the Commission explicitly told Entergy that "[a]ny time Entergy seeks to make a change, *e.g.*, a change to return on equity, it must make a section 205 filing with the Commission."[5] Here, we find that Entergy has made changes to accounts that differed from those used in Exhibits ETR-26 and ETR-28. For example, the change to reflect Nuclear Depreciation Expense is needed to capture the total nuclear depreciation expense. Since Exhibits ETR-26 and ETR-28 were developed using 2002 accounting methods and Entergy's accounting change for Nuclear Depreciation Expense occurred in 2003, the definition used in the production cost formula contained in Service Schedule MSS-3 had to be updated to reflect current accounting treatment. Next, because Entergy's changes to its definitions in the section 30.12 formula differ from those in Exhibits ETR-26 and ETR-28, this constitutes a change to the methodology of Exhibits ETR-26 and ETR-28. Similarly, Entergy's change to clarify the date to determine the retail return on common equity rates is a change to the methodology of Exhibits ETR-26 and ETR-28. Therefore, Entergy properly filed its amendments pursuant to section 205.

16. We also find good cause to grant waiver of the 60-day prior notice requirement[6] and accept Entergy's proposed changes to be effective May 30, 2007[7] to coincide with the effective date of the proposed changes in Docket No. ER07-682-000.[8]

17. We find that the proposed amendments appear to be just and reasonable, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Entergy's proposed amendments for filing to become effective May 30, 2007.

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[5] November 2006 Compliance Order, 117 FERC ¶ 61,203 at P 69.

[6] 18 C.F.R. § 35.11 (2006).

[7] Absent waiver of the prior notice provisions, the earliest date that a filing may become effective is the day after the 60-day notice period had expired, or as in the cases referenced, May 30, 2007. *See Entergy Services, Inc.*, Docket No. ER07-682-000 to be issued as119 FERC ¶ 61,190 (2007).

[8] We note that, concurrent with the issuance of this order, we are rejecting Entergy's proposed changes in Docket Nos. ER07-683-000 and ER07-684-000.

The Commission orders:

Entergy's proposed amendments to the System Agreement, are hereby accepted for filing to become effective May 30, 2007, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.