

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER07-985-000

ORDER ACCEPTING AND SUSPENDING PROPOSED AMENDMENT TO
SYSTEM AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued July 26, 2007)

1. On May 30, 2007, Entergy Services, Inc. (Entergy), acting as agent and on behalf of the Entergy Operating Companies,¹ filed a request to amend the Entergy System Agreement (System Agreement).² Entergy specifically proposes to revise section 30.12 of Service Schedule MSS-3 to exclude the amount of storm cost accruals recorded in FERC Account No. 924 from the calculation of each Operating Company's actual production costs. In this order, we accept the proposed amendment for filing, and suspend it for a nominal period, to become effective July 30, 2007, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. According to Entergy, Opinion No. 480 directed Entergy to follow the methodology in Exhibits ETR-26 and ETR-28 for purposes of calculating production cost

¹ The Entergy Operating Companies include: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana LLC, Entergy Mississippi, Inc. and Entergy New Orleans, Inc. (collectively, Entergy).

² The Entergy system has operated for over fifty years under the System Agreement and its predecessor System Agreements, which acts as an interconnection and pooling agreement, provides for the joint planning, construction and operation of the Operating Companies' facilities, allocates costs among the Entergy Operating Companies, and maintains a coordinated power pool among the five companies.

comparisons among the Operating Companies.³ Entergy points out that in the Commission's order accepting its subsequent compliance filing the Commission further directed Entergy to make a section 205 filing if it desired to make any changes to the methodology in Exhibits ETR-26 and ETR-28.⁴ Entergy contends that the proposed amendment is reasonable in order to exclude from the bandwidth calculation the storm cost accruals recorded in FERC Account No. 924.

3. Entergy states that FERC Account No. 924 contains, among other categories, the amounts collected to fund the Operating Companies' storm reserve, which are used to fund the non-capital portion of storm restoration activities. According to Entergy, these funds, which are effectively self-insurance dollars, predominantly have related to restoration of transmission and distribution plant due to the fact that overhead transmission and distribution facilities are most susceptible to storm events such as hurricanes and ice storms. Further, Entergy states that self-insurance is necessary for these assets because commercial insurance is generally not available at reasonable rates since Hurricane Andrew struck southern Florida in 1992. Entergy contends, absent the proposed modification to the formula, a significant portion of the transmission and distribution costs resulting from Hurricanes Katrina and Rita could be functionalized to production and affect payments and receipts under Service Schedule MSS-3. Therefore, Entergy proposes to amend section 30.12 of Service Schedule MSS-3 to exclude from the calculation of each Operating Company's actual production costs the amount of storm costs accruals recorded in FERC Account No. 924.

4. In addition, Entergy requests that any waivers be granted, as necessary, to allow the proposed revision to take effect no later than June 1, 2007. It explains that a June 1, 2007 effective date will allow implementation of the change for inclusion in June 2007 bandwidth formula payment/receipt calculations.

Notice of Filing and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 33,481 (2007), with interventions and protests due on or before June 20, 2007. The Arkansas

³ Citing *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 33 (2005) (Opinion No. 480), *aff'd*, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A).

⁴ Citing *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203, at P 69 (2006) (*Compliance Order*).

Public Service Commission and the Council of the City of New Orleans filed notices of intervention. The Louisiana Energy Users Group and Occidental Chemical Corporation filed timely motions to intervene. The Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention and a protest. Also, the Mississippi Delta Energy Agency and its members⁵ (together, MDEA Cities) filed a timely motion to intervene and conditional protest. On July 5, 2007, Entergy filed an answer to the Louisiana Commission's protest.

6. The Louisiana Commission states that it fully supports excluding transmission and distribution storm costs accruals from the calculation of production costs by removing those costs from Account No. 924. It states that non-capitalized transmission and distribution costs are not production related and should not be included in the calculation of future production costs. It adds that it would be unduly discriminatory for jurisdictions that securitize storm costs to be denied credit for these amounts under the bandwidth remedy and for states that do not securitize to receive credit, due only to accounting anomalies.

7. However, the Louisiana Commission states that it opposes Entergy's attempt to change retroactively the tariff remedy or to use this amendment to calculate remedy payments for prior periods. It argues that the proposed change should be made on a prospective basis only just as the Commission applied the remedy in Opinion Nos. 480 and 480-A. The Louisiana Commission argues that the modified version of the remedy may be applied only to the "first calendar year of data" following the filing, after which the first modified remedy payments would occur. The first calendar year following this filing is 2008; therefore, the Louisiana Commission contends that no payments should occur until 2009, if the modifications to the remedy are approved. The Louisiana Commission states that Entergy's request for a June 1, 2007 effective date would result in the application of a new methodology to a past period, and thus is impermissible.

8. MDEA Cities expresses its concern that Entergy has not provided an explanation for how it will define the term "storm cost accruals." Nor, MDEA Cities asserts, has Entergy stated how it will determine which costs should be excluded from, and which costs should remain included in, Account No. 924 for the purposes of calculating the Operating Companies' actual production costs. MDEA Cities also states its concern with ensuring that storm damage accruals are properly offset by any amounts received for the purpose of repairing damaged facilities, such as grant payments, and that those amounts

⁵ The Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi; and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi.

are correctly allocated to the production, transmission or distribution functions. MDEA Cities further states that the filing is not fully supported by information or explanation demonstrating all of the implications of the proposed modification for Entergy's transmission and generation customers, and therefore it requires additional information to fully understand the implications of the proposed modification.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), 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. Analysis

1. Effective Date

11. We disagree with the Louisiana Commission's argument that, to be consistent with the remedy adopted in Opinion No. 480, the proposed revisions should not be permitted to take effect until a future calendar year. As we explained in a recent Entergy order in which the Louisiana Commission raised similar arguments:

[T]he Commission's holding in Opinion Nos. 480 and 480-A did not change the fundamental tenets of section 205 of the FPA.⁶ Public utilities have a statutory right to amend their rates and charges and to propose that, absent waiver, the amendments be made effective after 60 days' notice. We cannot and did not change that basic right accorded by the FPA."^[7]

Further, however, in this proceeding, we find that Entergy has not demonstrated good cause to justify waiver of the 60-day prior notice requirement for its proposed

⁶ 16 U.S.C. § 824d (2000).

⁷ *Entergy Services, Inc.*, 119 FERC ¶ 61,190, at P 19 (2007).

amendment. Accordingly, we will establish an effective date of July 30, 2007 (*i.e.*, the date following 60 days' notice).⁸

2. Hearing and Settlement Judge Procedures

12. Entergy's proposed amendment raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

13. Our preliminary analysis indicates that Entergy's proposed amendment has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's proposed amendment for filing, suspend it for a nominal period, make it effective July 30, 2007, subject to refund, and set it for hearing and settlement judge procedures.

14. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁰ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to

⁸ 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 has expired or, as in this case, July 30, 2007. 16 U.S.C. § 824(d) (2000). *E.g.*, *Utah Power & Light Co.*, 30 FERC ¶ 61,015, at 61,024 n.9 (1985).

⁹ 18 C.F.R. § 385.603 (2007).

¹⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Entergy's proposed amendment is hereby accepted for filing and suspended for a nominal period, to become effective July 30, 2007, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Entergy's proposed amendment. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of a settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E.,

Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.