

124 FERC ¶ 61,020
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. ER08-927-000

ORDER ACCEPTING TARIFF AMENDMENT

(Issued July 7, 2008)

1. On May 8, 2008, Entergy Services, Inc., filed on behalf of the Entergy Operating Companies¹ (collectively, Entergy) a proposed amendment to the Entergy System Agreement (System Agreement) pursuant to section 205 of the Federal Power Act (FPA).² The proposed amendment seeks to exclude from the System Agreement's rough production cost equalization calculation certain costs resulting from a rate increase in the Toledo Bend Power Sales Agreement (Toledo Bend Agreement).³ As discussed below, we accept the proposed System Agreement amendment, effective May 31, 2008.

I. Background

A. System Agreement

2. A detailed history of Entergy's production cost equalization under the System Agreement can be found in Opinion No. 480.⁴ In brief, the Entergy system has operated for over fifty years under a System Agreement that acts as an interconnection and pooling

¹ Entergy Arkansas, Inc., Entergy Gulf States, Louisiana L.L.C. (Entergy Gulf States), Entergy Texas, Inc., Entergy Louisiana LLC (Entergy Louisiana), Entergy Mississippi, Inc. and Entergy New Orleans, Inc. (Entergy New Orleans).

² 16 U.S.C. § 824e (2006).

³ See *Entergy Services, Inc.*, Docket No. ER07-984-000 (2007) (unpublished letter order).

⁴ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *aff'd*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *remanded Louisiana Pub. Serv. Comm'n. v. FERC*, 522 F.3d 378 (2008).

agreement, provides for the joint planning, construction and operation of the Operating Companies' facilities, and maintains a coordinated power pool among its six Operating Companies. In Opinion Nos. 234, 234-A, 292, and 292-A⁵ the Commission found that the Entergy system is highly integrated and that generation facilities are planned, constructed and operated for the benefit of the whole system.⁶

3. In 2005, the Commission issued Opinion No. 480, which found that "rough production costs on the Entergy system had been disrupted."⁷ As a remedy, the Commission imposed a "bandwidth remedy" to help keep the Entergy system in rough production cost equalization and to help avoid drastic rate disparities in the future.⁸

B. Entergy's Filing

4. Entergy is proposing to amend the System Agreement to exclude from the bandwidth calculation certain cost increases resulting from the amendment to the Toledo Bend Agreement, that was accepted for filing in Docket No. ER07-984-000 (Amended Toledo Bend Agreement).⁹ Specifically, Entergy proposes to amend section 30.12 (Actual Production Costs) of Service Schedule MSS-3, which governs the costs factored into determining Entergy's actual production costs for purposes of the bandwidth calculation.

5. The Toledo Bend Agreement is a power sales contract between the Sabine River Authority, the State of Louisiana, the State of Texas, the Central Louisiana Electric Company, Entergy Gulf States, and Entergy Louisiana for power from the Toledo Bend hydroelectric plant. The Commission originally accepted the Toledo Bend Agreement

⁵ *Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305, *reh'g denied*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985), *aff'd*, *Mississippi Industries v. FERC*, 808 F.2d 1525 (D.C. Cir.), *vacated and rev'd in part and remanded*, 822 F.2d 1104 (D.C.Cir. 1987), *cert. denied*, 484 U.S. 985 (1987), *order on remand*, *System Energy Resources, Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh'g denied*, Opinion 292-A, 42 FERC ¶ 61,091 (1988), *aff'd sub nom. City of New Orleans v. FERC*, 875 F. 2d 903 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990).

⁶ Opinion No. 292 at 61,614; Opinion No. 234 at 61,650-51, 61,654-56.

⁷ Opinion No. 480 at P 136.

⁸ *Id.* P 144.

⁹ *See Entergy Services, Inc.*, Docket No. ER07-984-000 (Aug. 10, 2007) (unpublished letter order).

for filing, effective, February 1, 1994.¹⁰ Entergy explains that in early 2007, the parties to the Toledo Bend Agreement decided to amend it. Among other things, the amendment included an increase in the power rate charged to Entergy Gulf States and Entergy Louisiana. In return for Entergy Gulf States and Entergy Louisiana agreeing to the increased rates, the parties to the Toledo Bend Agreement and the Louisiana Public Service Commission (Louisiana Commission) agreed that any production costs resulting from the Amended Toledo Bend Agreement would not be included in the calculation of Entergy Gulf States' and Entergy Louisiana's production costs for purposes of calculating the annual rough production cost equalization bandwidth payments and receipts. A new section 8.17, added to the Amended Toledo Bend Agreement, states:

Section 8.17. Termination of Amendment. In the event that any state or federal regulatory agency with jurisdiction includes any increased costs resulting from this Amendment . . . for purposes of calculating relative production costs under FERC Order No. 480 and 480-A . . . all terms and conditions of the [original] Power Sales Agreement shall become effective and this Amendment shall be null and void.[¹¹]

On August 10, 2007, the Amended Toledo Bend Agreement was accepted for filing.¹²

6. Entergy proposes to amend footnote 1 of section 30.12 of Service Schedule MSS-3 to include in the list of adjustments to the amounts used to calculate a company's production costs: "exclusion of any increased costs resulting from the amended Toledo Bend Power Sales Agreement accepted for filing in Docket No. ER07-984." Entergy argues that the proposed amendment to section 30.12 of Service Schedule MSS-3 is appropriate because it represents the agreement between the Louisiana Commission, Entergy Louisiana, and Entergy Gulf States that was accepted by the Commission in Docket No. ER07-984-000.

7. Accordingly, Entergy requests that the Commission accept the amendment for filing, effective May 31, 2008, without suspension or hearing.

¹⁰ See EGS Rate Schedule No. 176 and Cleco Rate Schedule No. 66.

¹¹ Amended Toledo Bend Agreement at section 8.17.

¹² See *supra* note 9.

II. Notice of Filing and Responsive Pleadings

8. Petitioners' filing was noticed in the *Federal Register*, 73 Fed. Reg. 31,850 (2008) with interventions and protests due on or before June 4, 2008. A timely motion to intervene was filed by Union Electric Company. Notices of intervention were filed by the Arkansas Public Service Commission, the Mississippi Public Service Commission, and the Louisiana Commission. The Council of the City of New Orleans (New Orleans Council) filed a timely motion to intervene and protest. Entergy filed an answer. The New Orleans Council filed a response to Entergy's answer.

9. The New Orleans Council argues that Entergy has not sufficiently justified its proposed change to the System Agreement. The New Orleans Council argues that changes to the System Agreement and the bandwidth payments must comply with Opinion Nos. 480 and 480-A, and that Entergy has not made its case. The New Orleans Council argues that the Commission should not permit Entergy Operating Companies, with or without state commission support, to allow deviations from the bandwidth remedy because they could potentially shift costs to other Entergy Operating Companies and their customers, contrary to the intent of Order No. 480.

10. The New Orleans Council also argues that Entergy has provided insufficient information in the filing to evaluate the effect of the cost exclusion on the bandwidth calculation. The filing does not state the magnitude of the incremental increase in costs associated with the amended Toledo Bend Agreement. The New Orleans Council argues that there is thus no way for customers or the Commission to evaluate the degree to which Entergy's proposal would shift costs.

11. In its answer, Entergy argues that this filing is consistent with Order No. 480 and prior Commission orders inviting Entergy to make a filing under FPA section 205 if Entergy sought to make any changes to the bandwidth methodology.¹³ Entergy argues that this filing comports with Order No. 480 because: (1) the costs are excluded to address a concern that is local in nature (i.e., wholly within a single state); (2) the Entergy Operating Company that incurs the cost agrees to the exclusion of the cost from the bandwidth remedy; (3) the public utility commission(s) that regulates the retail rates of the Entergy Operating Company whose costs are to be excluded from the bandwidth calculation agrees with that exclusion; and (4) the exclusion of the costs from the bandwidth calculations will not reduce any other Entergy Operating Company's receipt of revenues under the bandwidth remedy.

¹³ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203, at P 69 (2006).

12. Entergy also provides additional cost information. Further, Entergy states that it has informed the New Orleans Council that any payments Entergy New Orleans would receive in 2008 bandwidth payments would decrease if the Commission rejects the proposed amendment.¹⁴ As such, Entergy argues that part of the amendment to the Toledo Bend Agreement was a commitment to insulate the other Operating Companies from adverse rate effects under the bandwidth calculation.

13. In its response to Entergy, the New Orleans Council states that Entergy's response incorporates a standard to which the New Orleans Council agrees.

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 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding.

15. Rule 213(a) of the Commission's Rules of Practice and Procedure¹⁵ prohibits an answer to a protest or an answer, unless otherwise permitted by the decisional authority. We will accept Entergy's and the New Orleans Council's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

16. Based on the facts presented before us, we find that Entergy's proposed amendment to section 30.12 of Service Schedule MSS-3 is just and reasonable. Entergy has demonstrated that: the affected Entergy Operating Companies have agreed to absorb the rate increase by excluding it from the bandwidth calculations; the Louisiana Commission has signed off on that agreement; and, the exclusion of the costs from the bandwidth calculation will not reduce any other Entergy Operating Company's receipt of revenues under the bandwidth remedy. Accordingly, we accept Entergy's proposed amendment to the System Agreement, effective May 31, 2008, as requested.

¹⁴ Entergy states that in its 2008 bandwidth payment filing, submitted on May 30, 2008 in Docket No. ER08-1056, it stated that Entergy New Orleans ratepayers would receive \$6.5 million in bandwidth payments. Entergy states that its calculations assumed the acceptance by the Commission of the amendment to Service Schedule MSS-3 made in the instant filing.

¹⁵ 18 C.F.R. § 385.213(a)(2)(2008).

The Commission Orders:

Entergy's proposed amendment to section 30.12 of Service Schedule MSS-3 is hereby accepted, effective May 31, 2008.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.