



point transmission service and non-firm transmission service and for network integration transmission service, based on actual data for the immediately preceding calendar year.<sup>2</sup> Each year, Entergy makes the rate redetermination filing on or about May 1, with the redetermined rates becoming effective, subject to refund, for bills rendered on or after June 1 of that year, for service during the preceding calendar month and remaining in effect for 12 months. Rates are redetermined according to a formula in Entergy's OATT.

3. Entergy's OATT provides that all parties (including the Commission's staff) shall have 120 days after each rate redetermination filing to review the redetermined rates and to file a complaint with the Commission regarding them. It also provides that the redetermined rates are subject to refund or surcharge until the latest of: (1) the end of the 120-day review period, if at such time there is no outstanding, unresolved complaint; (2) the final resolution of any complaint filed; or (3) the completion of any required corrections. It further provides that a corrected filing of the redetermined rates shall be submitted to the Commission and, after final acceptance by the Commission, any required refund or surcharge shall be made to each customer on the next normal monthly billing.

## **II. 2008 Rate Redetermination in Docket Nos. ER08-1057-000 and ER08-1057-001**

4. On May 30, 2008, as amended on June 6, 2008, Entergy filed its 2008 Rate Redetermination. Entergy is seeking a network transmission service revenue requirement of \$452,750,028. Entergy states that the short-term and long-term firm point-to-point transmission service rates are lower than the rates established in the settlement of Docket No. ER07-927 (2007 Settlement).<sup>3</sup> But it states that the network integration transmission service revenue requirement is higher (\$29.5 million or 4.5 percent) than that which was established in the 2007 Settlement. Entergy argues that the reduction in the long-term firm rate was driven by an increase in the long-term demand, whereas network integration transmission service billing determinants use a load-ratio methodology that will reflect the effect of the higher demand over a 12-month period. In light of the rate reduction for point-to-point service and the nominal increase to the network integration transmission service revenue requirement, Entergy requests that the instant filing be accepted without suspension or hearing.

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<sup>2</sup> The annual rate redetermination formula was first established in a partial settlement approved by the Commission in Docket No. ER95-112-000. *Entergy Services, Inc.*, Opinion No. 430, 85 FERC ¶ 61,163 (1998), *order on reh'g*, 91 FERC ¶ 61,153 (2000).

<sup>3</sup> See *Entergy Services, Inc.*, 124 FERC ¶ 161,100 (2008) (delegated letter order).

5. Entergy also notes that, pursuant to the settlement reached in Docket No. ER07-93-000, this filing includes the redetermined rates associated with Schedule 10 Recovery of Independent Coordinator of Transmission (ICT) Operation Costs. The rate for Schedule 10 charges has been calculated pursuant to the Settlement Agreement in Docket No. ER07-93-000, and is based on the total ICT operating costs for the previous calendar year, plus a true-up amount, divided by the total energy transmitted by the Entergy transmission system in the prior calendar year. The true-up amount will be the actual ICT operating costs billed to Entergy in the previous year, less the sum of the collections under Schedule 10 during the previous calendar year.

6. Entergy requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of June 1, 2008. Entergy states that the requested effective date of June 1, 2008 is provided for in section 7 of Appendix A to Schedule 7, and in section 5 of Appendix 1 to Attachment H, of its OATT. Accordingly, Entergy asserts that waiver is appropriate because Commission policy permits such waiver where "the rate change and the effective date are prescribed by contract, such as annual rate revisions required by contract to become effective on a date specified in the contract...."<sup>4</sup>

#### **Notice, Interventions, and Protests**

7. Notice of Entergy's initial filing was published in the *Federal Register*, 73 Fed. Reg. 33,069 (2008), with protests or interventions due on or before June 20, 2008. Notice of Entergy's corrected filing was published in the *Federal Register*, 73 Fed. Reg. 34,285 (2008), with protests or interventions due on or before June 27, 2008. The Mississippi Public Service Commission filed a notice of intervention and the Arkansas Public Service Commission filed an untimely motion to intervene. Cleco Power LLC (Cleco), East Texas Cooperatives,<sup>5</sup> and Arkansas Cities<sup>6</sup> filed motions to intervene. L-M Municipals<sup>7</sup> filed a motion to intervene and request for settlement judge proceedings. Joint Interveners<sup>8</sup> and NRG filed motions to intervene, protests, and requests for

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<sup>4</sup> *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

<sup>5</sup> East Texas Cooperatives are East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas.

<sup>6</sup> Arkansas Cities are the Cities of Prescott, Arkansas, the Conway Corporation, and the West Memphis Utilities Commission.

<sup>7</sup> L-M Municipals are Louisiana Energy and Power Authority, the Lafayette Utilities System, and the Municipal Energy Agency of Mississippi.

<sup>8</sup> Joint Interveners are Mississippi Delta Energy Agency (MDEA), Arkansas Electric Cooperative, Clarksdale Public Utilities Commission of the City of Clarksdale,

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settlement judge proceedings. Entergy filed a motion for leave to answer and answer to protests, and East Texas Cooperatives and Joint Interveners filed a motion for leave to respond and responses to Entergy's answer.

8. Both NRG and L-M Municipals acknowledge that Entergy's filing is a small rate decrease, but argue that a small decrease in a rate does not equate to a just and reasonable rate, especially if the rate should be reduced further. They both request a settlement judge proceeding to address their concerns.

9. Specifically, L-M Municipals state that Entergy has already had to amend its Form 1 filings for its operating companies, and that customers need discovery to identify issues and ensure that there are not errors, given the amendment of the Form 1s, or errors that have not yet come to light.

10. NRG argues that the one cent reduction in the per-unit long-term rate results entirely from increased transmission demand on the Entergy transmission system. It further argues that the increased demand artificially decreases the per-unit transmission charge, even though Entergy's transmission costs have significantly increased. It states that a review of Entergy's cost support reveals that its network integration transmission service revenue requirement has actually increased in excess of \$30 million over the amount that was agreed to in the settlement of Entergy's 2007 rate determination – an increase of 7.5 percent. It argues that Entergy has not justified these substantial cost increases or provided any work papers demonstrating that these increased costs are reasonable.

11. In addition, NRG notes that it filed a complaint in Docket No. EL08-72-000, alleging that the formula that Entergy currently uses to set its transmission rates improperly allows Entergy to pass through bonus payments it makes to its executives to transmission customers.<sup>9</sup> NRG states that Entergy's 2008 transmission rates include millions in bonuses paid to company executives, based on Entergy's financial performance and not on the performance of the Entergy transmission system, that render the rates proposed under the instant docket unjust and unreasonable. It states that the inclusion of bonuses paid to Entergy's executives into its transmission rates results in excessively high transmission rates and the subsidization of Entergy's non-regulated subsidiaries by captive transmission ratepayers.

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Mississippi, the Public Service Commission of Yazoo City, Mississippi, and South Mississippi Electric Power Association.

<sup>9</sup> The Commission denied NRG's complaint on January 16, 2009. *NRG Energy, Inc. v. Entergy Services, Inc.*, 126 FERC ¶ 61,053 (2009) (Order on NRG Complaint).

12. Joint Interveners also argue that the decrease in the unit charge for long term firm transmission in Entergy's rate is a result of an increase in the transmission demand on the Entergy system. They state that Entergy's proposed 2008 network integration transmission service revenue requirement is \$31.4 million (or 7.5 percent) higher than the transmission revenue requirement (TRR) amount in the settlement agreed to in Docket No. ER07-927-000. Accordingly, Joint Interveners argue that Entergy's proposed rates require further investigation through the discovery and complaint period provided for in the January 18, 1996 partial settlement of Docket No. ER95-112-000.

13. While Joint Interveners argue that they need further discovery and analysis to identify all adjustments that should be made to Entergy's proposed rates in this proceeding, they highlight several potential issues. These include whether Entergy's accounting and ratemaking treatment of the storm costs has been appropriate. They further argue that Entergy's filing does not provide any support for the plant cost capitalized in order to test whether the new facilities are properly recorded as either transmission- or distribution-related. In addition, they argue that Entergy has included hurricane-related securitization costs in the Entergy Gulf States Louisiana (Schedule D.4.2.1) and Entergy Louisiana (Schedule D.4.3.1) plant costs, but that it is unclear whether both the capitalized plant cost and deferred costs (including the applicable carrying charge rates) relating to storm expenses are reasonable and have been treated properly pursuant to the formula rate.

14. Joint Interveners argue that they want to review the revised Form 1, where approximately \$2 million of the Entergy Arkansas outside services expense originally booked to Account 923 was removed from administrative and general expenses and allocated to Entergy's other functional groups, resulting in increased transmission operation and maintenance expenses. They further state that Entergy has not provided any supporting work papers or detailed explanations for a \$4.4 million adjustment labeled "Adjustment For Known or Projected Changes in ICT OP Costs." They argue that the \$12.1 million of prior year's 2007 annual cost included in the determination of the total ICT Operations Cost of \$16.5 million total must be supported with detailed data.

15. According to the Joint Interveners, Entergy must also provide supporting detail or explanation for the increase in prepaid taxes and insurance, which grew from 24.9 million in 2006 to \$40.5 million to 2007. They state that further analysis is required to confirm that Entergy has properly deducted all un-refunded independent power producer prepayments from transmission plant.

16. Joint Interveners argue that Entergy's filing reflects \$723,532 of negative revenue credits associated with the MDEA-related facility charge transmission revenue. In addition, they argue that analysis is necessary to confirm that Entergy's accounting and ratemaking treatment for the costs associated with the facilities charge previously billed to MDEA are appropriate.

17. Additionally, Joint Interveners argue that Entergy's 2007 total transmission operating and maintenance expenses of approximately \$89 million is almost \$9 million greater than in 2006, resulting in an 11 percent annual increase in total transmission operating and maintenance expenses. Similarly, Joint Interveners argue that administrative and general expense account shows unexplained significant increases from \$22.9 million in 2006 to \$25.8 million in 2007, a 13 percent increase. In addition, they note that Entergy's payroll-related taxes increased from \$37 million in 2006 to \$40.8 million in 2007, an annual increase of more than 10 percent. They argue that further information and analysis are necessary to evaluate the appropriateness of such increases.

18. Joint Interveners further argue that they must explore whether Entergy's wholesale customers are not charged for unreasonable and unsupported service company charges. They question whether Entergy has adhered to proper accounting and ratemaking principles in separating Entergy Gulf States into Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc., as that separation may affect Entergy's OATT rates.

### **III. Complaint and Motion to Consolidate in Docket No. EL08-91-000**

19. In Docket No. EL08-91-000, Joint Interveners filed a complaint and a motion for consolidation with Docket Nos. ER08-1057-000 and ER08-1057-001 (Entergy's 2008 rate redetermination). Joint Interveners state that they filed their complaint as a "precautionary measure" in order to preserve their rights in the absence of a Commission order in Docket No. ER08-1057-000.<sup>10</sup> They ask that the complaint be consolidated with the existing proceeding in Docket No. ER08-1057-000 and that the consolidated cases be set for hearing and settlement judge procedures.

20. Substantively, Joint Interveners' complaint repeats arguments that they made in their protest filed in Docket No. ER08-1057-000. In addition, Joint Interveners address executive bonus compensation, noting that, in the past, they have been unable to obtain sufficiently detailed information regarding Entergy's inclusion of executive bonus compensation in the formula rates for transmission service under OATT. They argue that it is inappropriate for Entergy's OATT rate to include executive bonus compensation that is related to unregulated merchant generation or that is tied to financial performance of unregulated subsidiaries. Joint Interveners further argue that, to the extent Entergy is including any bonus compensation in the charges under OATT formula rate that is not tied to transmission performance (as NRG alleges in the complaint filed in Docket No. EL08-72-000), Entergy is either inappropriately flowing through the formula non-transmission related costs, or the formula is, as the NRG Companies contend, unjust and unreasonable.

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<sup>10</sup> Joint Intervener Complaint at 8.

21. To the extent necessary, Joint Interveners seek waiver of any requirements under Rule 206 of the Commission's Rules of Practice and Procedure<sup>11</sup> that they may not have fully satisfied, arguing that they are complying with the procedure set forth in Entergy's OATT. Moreover, they argue that the relief that they seek is merely that the complaint be consolidated with the existing proceeding in Docket No. ER08-1057-000, and that the consolidated cases be set for hearing and settlement judge procedures.

### **Notice, Interventions, and Protests**

22. Notice was published in the *Federal Register*, 73 Fed. Reg. 57,618 (2008), with protests or interventions due on or before October 16, 2008. Cleco, East Texas Cooperatives, and L-M Municipals filed timely motions to intervene, and the Arkansas Commission and the Louisiana Commission filed timely notices of intervention. Entergy filed an answer to Joint Interveners complaint, and Joint Interveners and New Orleans filed answers to Entergy's answer. Entergy filed a motion to reject Joint Interveners answer. NRG companies filed a motion to intervene and join Joint Interveners complaint.

23. In their motion to intervene and join complaint, NRG Companies state that the allegations raised in Joint Interveners' complaint largely track those raised by the NRG Companies in Docket No. EL08-72-000. Because of the similarity of the two proceedings, NRG supports the pending motion to consolidate Docket Nos. EL08-72-000 and EL08-91-000.

24. In its answer to the complaint, Entergy states that Joint Interveners' arguments that they need additional information or analysis ignores the OATT procedures and should be dismissed. Entergy argues that the Joint Interveners' complaint does not contain a single reference to either the underlying cost data or supplemental information provided during the discovery period. Entergy further argues that Joint Interveners fail to meet the evidentiary threshold under section 206 of the Federal Power Act,<sup>12</sup> having submitted virtually no documentation, analysis, testimony, or evidence of any kind in support of their claim that the reasonableness of the formula rate inputs needs further investigation. It states that the Joint Interveners have not shown that the formula rate was applied incorrectly or that any errors were made in the application of the formula. Accordingly, Entergy argues that the Commission should remove the subject to refund provision consistent with the OATT procedures, find that Entergy's 2008 Rate Redetermination is not unjust and unreasonable, and dismiss the complaint.

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<sup>11</sup> 18 C.F.R. § 385.206 (2008).

<sup>12</sup> 16 U.S.C. § 825e (2006).

#### IV. Discussion

##### A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will grant Arkansas Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest and answers unless otherwise ordered by the decisional authority. We are not persuaded to accept answers filed in Docket Nos. ER08-1057-000 and ER08-1057-001, and therefore, reject them. Similarly, we will not accept Joint Interveners' or NRG Companies' answers to Entergy's answer in Docket No. EL08-91-000.

##### B. 2008 Rate Redetermination

27. Entergy's 2008 Rate Redetermination 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.

28. Our preliminary analysis indicates that the proposed 2008 Rate Redetermination 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 the 2008 Rate Redetermination for filing, suspend it for a nominal period, make it effective June 1, 2008,<sup>13</sup> subject to refund, and set it for hearing and settlement judge procedures.

29. 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.<sup>14</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

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<sup>13</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

<sup>14</sup> 18 C.F.R. § 385.603 (2008).

otherwise, the Chief Judge will select a judge for this purpose.<sup>15</sup> 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 continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

### C. Complaint

30. We dismiss Joint Interveners complaint and motion to consolidate in Docket No. EL08-91-000, in part, and deny it in part. Joint Interveners explain that they filed the complaint in order to preserve their rights in the absence of a Commission order in Docket No. ER08-1057-000, and ask that the complaint be consolidated with the existing proceeding in Docket No. ER08-1057-000 and that the consolidated cases be set for hearing and settlement judge procedures. This order sets Entergy's 2008 Rate Redetermination for hearing and settlement judge procedures, including the issue of whether the level of executive bonus compensation shown in the 2008 Rate Redetermination filing has been appropriately determined under the formula rate. Therefore, we will dismiss as moot the issues in the Joint Interveners' complaint that track the issues raised in their protest to the 2008 Rate Redetermination.

31. We note that Joint Interveners raised the additional issue of executive bonus compensation, "as was alleged in the complaint filed on June 27, 2008, by the NRG Companies in Docket No. EL08-72-000."<sup>16</sup> However, as we stated in the Order on NRG Complaint,<sup>17</sup> a complainant must establish that the current rate is unjust and unreasonable, and the complainant must then establish that its alternative rate proposal is just and reasonable.<sup>18</sup> Joint Interveners provided no such specific data to support their claim that Entergy is inappropriately flowing through executive bonuses. The mere fact that Entergy's costs may have increased does not necessarily lead to a conclusion that Entergy's rate formula is unjust and unreasonable. Moreover, Commission precedent

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<sup>15</sup> 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 the Commission's judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

<sup>16</sup> Joint Interveners' Complaint at 13.

<sup>17</sup> 126 FERC ¶ 61,053 at P 31.

<sup>18</sup> See *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Michigan Electric Transmission Co.*, 116 FERC ¶ 61,164, at P 12 (2006).

supports recovery of reasonable costs associated with bonuses.<sup>19</sup> Accordingly, based on the information provided, and without prejudice to Joint Interveners submitting a new complaint on the issue of executive bonuses, we find that Joint Interveners have not met their burden of demonstrating that Entergy's existing rate formula is unjust and unreasonable, and we will deny Joint Interveners complaint with regard to executive bonuses.

The Commission orders:

(A) Entergy's 2008 Rate Redetermination is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2008, as requested, 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 2008 Rate Redetermination. 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 (2008), 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 the settlement judge, the

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<sup>19</sup> See 126 FERC ¶ 61,053 at P 33; See *Williams*, 77 FERC ¶ 61,277 at 62,179. Thus, it is irrelevant how state commissions may treat such costs. See, e.g., *Barton Village Inc.*, 100 FERC ¶ 61,244, at P 12 (2002) ("Under the Federal Power Act ... the Commission has exclusive jurisdiction over [] wholesale power sales rates ... [t]hus, we have no legal obligation to review, much less rely on, the findings of the [state]."); *Louisiana Pub. Serv. Comm'n v. Entergy Serv., Inc.*, 76 FERC ¶ 61,168, at 61,955 (1996) ("a ratemaking methodology proposed at the retail level ... does not govern the Commission's determination of the appropriate ratemaking methodologies to be used in developing wholesale rates") (citations omitted), *reh'g denied*, 80 FERC ¶ 61,282 (1997), *rev'd on other grounds*, 184 F.3d 892 (1999).

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.

(F) The complaint in Docket No. EL08-91-000 is hereby dismissed, in part, and denied, in part, as discussed in the body of this order.

By the Commission. Commission Kelliher is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.