

141 FERC ¶ 61,258  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Entergy Services, Inc.

Docket No. ER13-253-000

ORDER ACCEPTING UNEXECUTED REIMBURSEMENT AGREEMENT

(Issued December 28, 2012)

1. On October 31, 2012, Entergy Services, Inc. (Entergy), on behalf of its affiliate, Entergy Arkansas, Inc. (Entergy Arkansas), filed an unexecuted Reimbursement Agreement (Reimbursement Agreement) between Entergy Arkansas and Arkansas Electric Cooperative Corporation (Arkansas Electric Coop). As discussed further below, the Commission accepts the Reimbursement Agreement for filing to become effective January 1, 2013. We deny Arkansas Electric Coop's request that we place certain conditions on our acceptance of the Reimbursement Agreement.

**I. Background**

2. Entergy Arkansas and Arkansas Electric Coop entered into a Power Coordination, Interchange, and Transmission Services Agreement (Services Agreement) on June 27, 1977. They filed a restatement of that agreement with the Commission, incorporating all amendments to the Services Agreement, on October 1, 2001. The Services Agreement was filed in e-Tariff format in Docket No. ER11-2560-000 on December 29, 2010.<sup>1</sup>

3. Entergy Arkansas provides Arkansas Electric Coop with transmission services on Entergy Arkansas's system pursuant to the Services Agreement. Arkansas Electric Coop also requests transmission service under the Entergy Open Access Transmission Tariff (Entergy OATT) in conjunction with the Services Agreement. The Services Agreement provides for the operation and scheduling or dispatching of Arkansas Electric Coop's

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<sup>1</sup> *Entergy Arkansas, Inc.*, FERC FPA Electric Tariff, [Entergy Arkansas, Inc., Second Rev. Rate Schedule No. 82, 1.0.0](#)

resources, including all of Arkansas Electric Coop's co-owned units. The Services Agreement also describes the billing process specific to Arkansas Electric Coop.

## **II. Summary of Filing**

4. The Reimbursement Agreement is a facilities agreement under which Entergy Arkansas will design, engineer, and construct, and Arkansas Electric Coop will pay for, upgrades necessary for certain additional transmission services to deliver energy and capacity from Arkansas Electric Coop's Magnet Cove generation facility to its load on the Entergy Arkansas transmission system under the Services Agreement. Pursuant to Arkansas Electric Coop's open access same-time information system (OASIS) request, Entergy and its Independent Coordinator of Transmission (Entergy ICT)<sup>2</sup> developed and issued a facility study to identify the necessary upgrades. These upgrades include an increase of capacity on the Haskell-Woodlawn 115kV transmission line from 159 MVA to at least 191 MVA. Entergy states that this upgrade is in the nature of a Supplemental Upgrade under Attachment T to the Entergy OATT, and the Reimbursement Agreement provides Arkansas Electric Coop with certain rights that are afforded to Entergy OATT customers that fund Supplemental Upgrades.

5. Entergy states that Entergy Arkansas and Arkansas Electric Coop mutually negotiated the Reimbursement Agreement. Entergy also states that Entergy Arkansas and Arkansas Electric Coop agree on all of the terms contained in the Reimbursement Agreement, and that Arkansas Electric Coop has committed to fund the upgrades and is entitled, under the Reimbursement Agreement, to the same rights as those customers who fund similar upgrades under the Entergy OATT. It notes, however, that Arkansas Electric Coop is not willing to execute the agreement and requested that Entergy file the Reimbursement Agreement with the Commission unexecuted. Entergy requests that the Commission accept the Reimbursement Agreement for filing, to become effective January 1, 2013.

## **III. Notice of Filing and Responsive Pleadings**

6. Notice of the filing by Entergy was published in the *Federal Register*, 77 Fed. Reg. 67,357 (2012), with interventions and protests due on or before November 21, 2012. Arkansas Electric Coop filed a timely notice to intervene and comments. On December 6, 2012, Entergy filed, on behalf of Entergy Arkansas, a motion for leave to answer and answer. On December 14, 2012, Arkansas Electric Coop filed a motion for leave to answer and answer to Entergy Arkansas's answer.

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<sup>2</sup> The Commission authorized transfer of the ICT function from Southwest Power Pool, Inc. to MISO as the provider of ICT services, effective December 1, 2012, in *Entergy Arkansas, Inc.*, 141 FERC ¶ 61,011 (2012).

**A. Comments of Arkansas Electric Coop**

7. Arkansas Electric Coop states that the increase of capacity on the Haskell-Woodlawn 115 kV transmission line is in the nature of a Supplemental Upgrade under Attachment T to the Entergy OATT. It maintains that Entergy Arkansas states that, under the Reimbursement Agreement, Arkansas Electric Coop is entitled to the same rights as customers who fund similar upgrades under the Entergy OATT. It also states that under section 4 of Attachment T to the Entergy OATT, if Entergy uses a Supplemental Upgrade to sell transmission service to customers other than the customer funding the Supplemental Upgrade, the funding customer is entitled to certain financial compensation from Entergy.

8. Arkansas Electric Coop states that this right to financial compensation provided impetus for its request that Entergy Arkansas file the Reimbursement Agreement unexecuted. Arkansas Electric Coop states that the Services Agreement contains no provision similar to that contained in the Entergy OATT governing the financial compensation to Arkansas Electric Coop if Entergy Arkansas uses the facilities for purposes other than Arkansas Electric Coop's deliveries from the Magnet Cove facility.

9. Arkansas Electric Coop states that it agreed in principle to fund the upgrades and to comply with the provisions of the Reimbursement Agreement in order to obtain delivery of the output the Magnet Cove facility. Section 6 of the Reimbursement Agreement, which addresses this issue, states:

[Arkansas Electric Coop] acknowledges and agrees that [Entergy Arkansas] shall retain all right, title, ownership and interest in any facilities erected by [Entergy Arkansas] pursuant to this Agreement. [Arkansas Electric Coop] also acknowledges and agrees that [Entergy Arkansas] has the right to serve any other customers from the facilities constructed pursuant to this Agreement; provided that [Arkansas Electric Coop] shall be treated, with respect to the Work and Upgrades (but only in that respect) as a customer who obtains transmission service by funding a Supplemental Upgrade pursuant to Section 4 of Attachment T to the Open Access Transmission Tariff filed with the Federal Energy Regulatory Commission by Entergy Services, Inc., on behalf of [Entergy Arkansas], et al.

10. Arkansas Electric Coop maintains that it agreed in principle to the terms contained in the Reimbursement Agreement, including section 6, but that it did not execute the Reimbursement Agreement because of its concern related to Entergy Corporation's proposed transfer of its facilities to new subsidiaries of ITC Holdings Corp. (ITC), and ITC's proposal that these subsidiaries join Midwest Independent Transmission System

Operator, Inc. (MISO) as transmission owners. Arkansas Electric Coop states that as part of this proposal, ITC would recover costs associated with Supplemental Upgrades funded by the Entergy Operating Companies (including Entergy Arkansas) on behalf of their bundled retail loads directly from the Entergy Operating Companies through a separate rate schedule to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO tariff), and the Entergy Operating Companies' rights to financial compensation would be converted to financial rights under the MISO tariff.

11. Arkansas Electric Coop states that it has not yet ascertained, and neither Entergy Arkansas nor ITC have been able to say with certainty, what treatment Arkansas Electric Coop's investment in the upgrades associated with the Magnet Cove facility might receive under the MISO tariff. Arkansas Electric Coop states that it does not wish to be deemed to have consented to treatment that turns out to be unjust, unreasonable and unduly discriminatory by executing the Reimbursement Agreement. It maintains that although the ITC-Entergy merger application contains general promises that customers will not be harmed, the application contains no specific information that would enable Arkansas Electric Coop to make this determination.

12. Arkansas Electric Coop notes that Section 4.5 of Attachment T to the Entergy OATT provides that a customer funding Supplemental Upgrades will maintain its rights to financial compensation if the Entergy ICT ceases to function and requires Entergy "to take all steps reasonable necessary to implement . . . a replacement entity to apply . . . financial rights." Further, if and when the proposed ITC transaction closes, the Entergy ICT arrangement will cease. But Arkansas Electric Coop contends that the Reimbursement Agreement imposes no comparable requirement on Entergy concerning Arkansas Electric Coop's rights to financial compensation when the Entergy ICT arrangement ceases.

13. Arkansas Electric Coop argues that the Commission should condition acceptance of the Reimbursement Agreement for filing on a requirement that Entergy Arkansas take all reasonable steps to implement comparable financial compensation rights for Arkansas Electric Coop if the proposed ITC transaction occurs, whether that involves negotiating an arrangement with ITC and MISO that is comparable to what it has arranged for itself with ITC or whether it involves indemnification by Entergy. Arkansas Electric Coop further states that such a condition is doubly warranted in this case inasmuch as the facilities that Arkansas Electric Coop is purchasing for Entergy will continue to be owned by a corporation controlled by Entergy's present shareholders, i.e., ITC, if the transaction occurs.

**B. Entergy's Answer**

14. In its answer, Entergy states that the concerns that Arkansas Electric Coop raises in its comments are without merit for three reasons.

15. First, Entergy states that Arkansas Electric Coop raises its concerns about financial compensation for the first time in its comments filed in this docket. Entergy states that Arkansas Electric Coop did not raise this specific issue when negotiating the Reimbursement Agreement. Entergy notes that Arkansas Electric Coop raised concerns with respect to other matters, which were resolved through discussions between Entergy Arkansas and Arkansas Electric Coop. Entergy maintains that not having raised its issues during negotiations, Arkansas Electric Coop should not now obtain conditions on Entergy Arkansas' filing.

16. Second, Entergy states that Arkansas Electric Coop's concerns can and should be raised and discussed through involvement in the MISO Financial Transmission Rights Working Group (FTR Working Group). Entergy states that the FTR Working Group is currently engaged in an ongoing collaborative effort with stakeholders in connection with revisions to the MISO auction revenue right and FTR provisions of the MISO tariff. Entergy states that Arkansas Electric Coop was and still is welcome to participate in that collaborative effort in order to alleviate its concerns regarding how financial compensation is to be addressed under the MISO tariff, but to date Arkansas Electric Coop has opted not to do so.

17. Third, Entergy states that Arkansas Electric Coop's concerns are already addressed in proposed Module B-1 Attachment 6 of the MISO tariff, which contains the compensation provisions of Attachment T of the Entergy OATT, and that proposed Module B-1 Attachment 6 is currently pending Commission approval in Docket No. ER12-2682-000. Entergy states that MISO submitted Module B-1 Attachment 6 to effectuate the transfer from Entergy Corporation to ITC of certain jurisdictional transmission facilities and the integration of those facilities into MISO. Entergy points to section 2.2.1 of Module B-1 Attachment 6, which states:

A customer that funded a Supplemental Upgrade will receive a Financial Payment if Entergy determines that (a) additional Long-Term Point-to-Point (PTP) Transmission Service, the designation of a Long-Term Network Resource (*i.e.*, the designation of a Network Resource for a period of at least one year), Network Resource Interconnection Service (NRIS) status, or Energy Resource Interconnection Service (ERIS) status is subsequently granted to another customer using the capacity that was created or expanded by the Supplemental Upgrade or (b) MISO determines that such Supplemental Upgrade is necessary to serve forecasted load growth reliably in the next calendar year. The designation of a Network Resource on a short-term basis (*i.e.*, for a period of less than one year) using a Supplemental Upgrade will not qualify as a "Long-Term Network Resource" under this Attachment, and

does not entitle the original funding party to a Financial Payment.

18. Entergy states that this proposed provision directly addresses the comments filed by Arkansas Electric Coop in this proceeding. Entergy thus maintains that Entergy Arkansas has done exactly what Arkansas Electric Coop is requesting, and that the compensation assurances Arkansas Electric Coop seeks are now in the hands of the Commission.

**C. Arkansas Electric Coop's Response**

19. Arkansas Electric Coop disputes Entergy's contention that Arkansas Electric Coop first raised its concerns after Entergy filed the Reimbursement Agreement with the Commission. Arkansas Electric Coop states that it raised its concerns with Entergy in writing during the course of negotiating the terms of the Reimbursement Agreement.

20. Second, Arkansas Electric Coop argues that the existence of a working group to address financial transmission rights does not obviate the need for Commission action here. It maintains that the question before the Commission at this time is whether to accept the Reimbursement Agreement as filed – not as it might be interpreted in the future by the MISO FTR Working Group – and the instant docket is the appropriate forum in which to address Arkansas Electric Coop's concerns. Arkansas Electric Coop notes that Entergy Arkansas negotiated an agreement with ITC to address the issue of upgrades Entergy Arkansas funded on behalf of its retail customers and included the agreement as part of the package of agreements submitted for approval in Docket No. ER12-2681-000 in connection with the application for Commission authorization of the ITC transaction in Docket No. ER12-145-000.

21. Finally, Arkansas Electric Coop disputes Entergy's claim that Arkansas Electric Coop's concerns are already addressed in proposed Module B-1 Attachment 6 of the MISO tariff. Arkansas Electric Coop states that the language in section 2.2.1 addresses rights associated with network upgrades whose costs were directly assigned under the Entergy OATT, and the Reimbursement Agreement does not assign the costs of network upgrades under the Entergy OATT because Arkansas Electric Coop is not a network customer of Entergy. Arkansas Electric Coop states that its grandfathered Services Agreement with Entergy Arkansas contains no provision governing the rate treatment of an investment after it is made or for financial compensation to Arkansas Electric Coop if Entergy Arkansas uses the facilities for purposes other than Arkansas Electric Coop's deliveries out of Magnet Cove.

22. Arkansas Electric Coop states that Module B-1 Attachment 6 does not address rights associated with upgrades whose costs are directly assigned under Arkansas Electric Coop's Services Agreement with Entergy Arkansas. Arkansas Electric Coop acknowledges that it may attempt to raise this issue when it files comments on proposed

Module B-1 in Docket No. ER12-2682-000, but there is no guarantee that MISO or the Commission will view Arkansas Electric Coop's concerns as within the scope of that filing. Arkansas Electric Coop also states that Module B-1 is by its terms limited to the interval between Entergy's proposed disposition of its transmission assets to affiliates of ITC and Entergy Arkansas's integration of its generation assets into MISO. Thus, even if it were applicable to Arkansas Electric Coop's grandfathered agreement and the Reimbursement Agreement, it would not address what happens upon Entergy's actual integration into MISO in December 2013.

#### **IV. Discussion**

##### **A. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), Arkansas Electric Coop's timely, unopposed motion to intervene serves to make it a party to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer and Arkansas Electric Coop's answer to Entergy because they have provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

25. We find that the terms and conditions of the Reimbursement Agreement are just and reasonable, and not unduly discriminatory or preferential. The terms and conditions of the Reimbursement Agreement incorporate the rate treatment that has been accepted as just and reasonable for customers who obtain transmission service by funding Supplemental Upgrades under Attachment T of the Entergy OATT. Arkansas Electric Coop will fund network upgrades necessary for certain additional transmission services under the Services Agreement and receive the same rights as those customers who fund similar upgrades under the Entergy OATT. Accordingly, we will accept the Reimbursement Agreement for filing, to become effective January 1, 2013, as requested.

26. We find that Arkansas Electric Coop's concerns with regard to its future treatment upon any future transfer of the Entergy transmission system to ITC and/or integration of that system into MISO are beyond the scope of this proceeding. Its concerns are more appropriately addressed in the proceedings that directly concern the terms and conditions

of service over the Entergy transmission system, including service that customers obtained by funding Supplemental Upgrades under Attachment T of the Entergy OATT,<sup>3</sup> upon the proposed transfer of those transmission assets to ITC and/or integration of those assets into MISO.

The Commission orders:

(A) The Reimbursement Agreement is accepted for filing, to become effective January 1, 2013, as discussed in the body of this order.

(B) Arkansas Electric Coop's request that acceptance of the Reimbursement Agreement be subject to conditions is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>3</sup> As noted, the Reimbursement Agreement provides Arkansas Electric Coop the same rights as customers who fund Supplemental Upgrades under Attachment T of the Entergy OATT.