

143 FERC ¶ 61,106  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER12-1303-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE UPDATE AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 6, 2013)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) 2012 Wholesale Formula Rate Update (2012 Update) in Docket No. ER12-1303-000 and suspend it for a nominal period, to become effective March 1, 2012, as requested, subject to refund. We also establish hearing and settlement judge procedures.

**I. Background**

2. On March 21, 2012, Entergy Services, Inc. (Entergy) filed the 2012 Update on behalf of Entergy Arkansas in accordance with the Power Coordination, Interchange and Transmission Service Agreement (PCITSA) between Entergy Arkansas and the Arkansas Electric Cooperative Corporation (AECC). The 2012 Update redetermines the formula rate charges in accordance with: (1) the 1994 Joint Stipulation between Entergy Arkansas and AECC accepted by the Commission in Docket No. ER95-49-000, as revised by the 24<sup>th</sup> Amendment to the AECC PCITSA on March 26, 1996 in Docket No. ER96-1116-000; (2) the Settlement Agreement approved by the Commission on July 2, 1999 in Docket No. ER98-2028-000; (3) the Settlement Agreement approved by the Commission on September 16, 2004 in Docket No. ER03-599-000; (4) the Settlement Agreement approved by the Commission on July 22, 2005 in Docket No. ER04-663-000; (5) the Settlement Agreement approved by the Commission on February 6, 2008 in Docket Nos. ER07-628-000, ER07-629-000 and ER07-630-000; and (6) the pending Settlement Agreement in Docket Nos. ER11-2560-000 and ER11-3156-000 to address amendments to the PCITSA and the 2011 wholesale formula rate update (2011 Update)

(collectively, the Agreements).<sup>1</sup> Entergy requests that the 2012 Update become effective March 1, 2012, in accordance with the Agreements.

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

3. Notice of Entergy's filing was published in the *Federal Register*, 77 Fed. Reg. 19, 659 (2012), with interventions or comments due on or before April 11, 2012.<sup>2</sup> AECC filed a timely motion to intervene and protest.<sup>3</sup>

4. In its protest, AECC asserts that it has the right to review the information in Entergy Arkansas' FERC Form 1 and requests that the Commission institute a hearing to investigate the reasonableness of the redetermined charges under the PCITSA. AECC states that Entergy Arkansas has failed to respond to AECC's informal discovery questions submitted to Entergy Arkansas on May 3, 2012. AECC asserts that Entergy Arkansas' failure to respond has undermined the PCITSA review procedure and hindered AECC's evaluation of the data and assumptions underlying the 2012 Update.

5. AECC claims that, despite the lack of answers to its discovery requests, it has identified several ways in which Entergy Arkansas has not adequately supported the 2012 Update. AECC asserts that there are several unexplained increases in the 2012 Update's transmission<sup>4</sup> and distribution<sup>5</sup> costs compared to similar costs included in the 2011

---

<sup>1</sup> The Commission is acting on the Settlement Agreement in a concurrent order in Docket Nos. ER11-2560-000 and ER11-3156-000.

<sup>2</sup> The PCITSA provides that, because Entergy Arkansas' FERC Form 1 Annual Report would be filed on April 18, 2012, Entergy Arkansas and AECC would have until June 1, 2012 to review the calculation of the rate redetermination and file comments.

<sup>3</sup> AECC filed its protest on June 1, 2012 in accordance with the terms of the PCITSA. *See supra* note 2.

<sup>4</sup> AECC Protest at 3 (stating that there were the following transmission cost increases: Transmission Net Plant – 11.21 percent; Prepaid Taxes and Insurance – 39.61 percent; Transmission Rate Base – 9.05 percent; Regulatory Asset Amortization – IPPs – 7.70 percent; Transmission Depreciation Expense – 26.39 percent; and Investment Tax Credits – 32.97 percent).

<sup>5</sup> *Id.* (stating that there were the following distribution cost increases: Gross Distribution Plant – 11.65 percent; Net Distribution Plant – 14.24 percent; Prepaid Taxes and Insurance – 39.61 percent; Distribution Rate Base – 12.27 percent; Customer Specific Distribution Plant – 11.65 percent; and Investment Tax Credits – 32.97 percent).

Update. AECC states that it appears that Entergy Arkansas has not removed prepayments associated with retail regulatory commission fees and expenses consistent with the notes to the formula.<sup>6</sup>

6. AECC points to a discrepancy between the 2012 Update's production plant numbers and those filed in Entergy Arkansas' FERC Form 1. AECC argues that Entergy should implement the formula rate properly, even if the net effect of the discrepancy may be a slight increase. AECC asserts that its discovery of this discrepancy underscores the importance of receiving responses to its discovery requests, which will allow it to scrutinize all aspects of the 2012 Update.

7. AECC states that it has additional questions regarding, among other things, cost allocation, O&M expenses, revenue credits, cost of capital, plant in service, depreciation, other rate base, inputs for the 2009 ice storm cost recovery, and income taxes. AECC claims that Entergy Arkansas must answer these questions prior to the Commission finding that the 2012 Update is just and reasonable.<sup>7</sup>

### **III. Discussion**

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

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

#### **B. Hearing and Settlement Judge Procedures**

9. Entergy Arkansas' 2012 Update 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.

10. Our preliminary analysis indicates that Entergy Arkansas' 2012 Update has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy Arkansas' 2012 Update for filing, suspend it for a nominal period, make it effective March 1, 2012, subject to refund, and set it for hearing and settlement judge procedures.

---

<sup>6</sup> *Id.* at 3-4 (stating that footnote 15 of the notes to the formula provides that "Variable PPT shall not include any Prepayments related to retail regulatory commission fees and expenses").

<sup>7</sup> AECC provides a list of its additional questions in Attachment A of its protest.

11. 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>8</sup> 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.<sup>9</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.

The Commission orders:

(A) Entergy Arkansas' 2012 Update is hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2012, 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 Arkansas' 2012 Update. 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 (2012), 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 power and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

---

<sup>8</sup> 18 C.F.R. § 385.603.

<sup>9</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 Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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 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, NE, 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.