

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Entergy Services, Inc.

Docket Nos. ER03-599-000, ER03-599-
001, ER03-599-002 and
ER03-599-003

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 17, 2004)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) 2003 Wholesale Formula Rate Update (2003 Update), suspend it for a nominal period, to become effective March 1, 2003, subject to refund. We also establish hearing and settlement judge procedures. This action benefits customers because it provides the parties with a forum in which to resolve their disputes over Entergy Arkansas' 2003 Update.

Background

2. On March 5, 2003, in Docket No. ER03-599-000, Entergy Services, Inc. (Entergy Services) filed the 2003 Update on behalf of Entergy Arkansas to redetermine the formula rate charges and the Transmission Loss Factor in accordance with various agreements and settlements it has with numerous customers, as well as the Settlement Agreement in the 1998 Formula Rate Update proceeding (1998 Settlement).¹

¹The 2003 Update is filed in accordance with: (1) the Power Coordination, Interchange and Transmission Service Agreements (PCITA) between Entergy Arkansas and the Cities of Conway, West Memphis and Osceola, Arkansas (Arkansas Cities); the Cities of Campbell and Thayer, Missouri (Missouri Cities); and the Arkansas Electric Cooperative Corporation (AECC); (2) the Transmission Service Agreement (TSA) between Entergy Arkansas and the City of Hope, Arkansas (Hope); (3) the TSA between Entergy Arkansas and the Louisiana Energy & Power Authority (LEPA); (4) the

(continued...)

3. On March 14, 2003, Entergy Services filed an amendment, in Docket No. ER03-599-001, to correct the requested effective date.² On May 15, 2003, Entergy Services filed an amendment, in Docket No. ER03-599-002, to correct erroneous billing demands for one customer, and to reflect the correct transmission demand for Entergy Arkansas. Finally, on July 22, 2003, Entergy Services filed an amendment, in Docket No. ER03-599-003, to correct erroneous billing and transmission demand rates.

Notice of Filings and Responsive Pleadings

4. Notice of the filing in Docket No. ER03-599-000 was published in the Federal Register, 68 Fed. Reg. 13, 292 (2003), with comments, interventions and protests due on or before March 19, 2003. Arkansas Cities³ filed a motion to intervene expressing concern that Entergy Arkansas has not adequately supported the formula rate redetermination. Arkansas Cities state that Entergy Arkansas has included certain storm damage cost elements in the formula rate redetermination in a manner inconsistent with the existing formulas. AECC filed a motion to intervene and comments expressing concern about the redetermination of plant, administrative and general (A&G) expense, the calculation of peak demand, Account 556 increases, and accumulated deferred income taxes (ADIT) amounts.

5. Notice of the filing in Docket No. ER03-599-001 was published in the Federal Register, 68 Fed. Reg. 15, 162 (2003), with comments, interventions and protests due on or before March 28, 2003. None was filed.

6. Notice of the filing in Docket No. ER03-599-002 was published in the Federal Register, 68 Fed. Reg. 31,696 (2003), with comments, interventions and protests due on or before June 5, 2003. On June 3, 2003, Entergy Services filed a letter extending the comment period until July 18, 2003. On June 5, 2003, AECC filed a protest requesting that this proceeding be set for hearing or settlement procedures to determine more

Wholesale Power Service Agreement (WPSA) between Entergy Arkansas and the City of Prescott, Arkansas (Prescott); and (5) the WPSA between Entergy Arkansas and the Farmers Electric Cooperative Corporation (Farmers). Additionally, the filing redetermines the distribution rate charged to the City of North Little Rock pursuant to the Network Integration Transmission Service Agreement.

² The originally filed effective date was March 1, 2002, which Entergy states was an error.

³ Arkansas Cities are the Cities of North Little Rock and Osceola, Arkansas and the Hope Water and Light Commission.

information on issues such as the TKW divisor,⁴ ice storm damage expense, ADIT, revenue credits, and accounting for common facilities. On June 9, 2003, the City of North Little Rock (NLR) filed a motion to intervene. On June 12, 2003, AECC filed a letter stating that the parties were attempting to resolve the issues privately, and, depending on the outcome, AECC anticipated either withdrawing or supplementing its protest.

7. Notice of the filing in Docket No. ER03-599-003 was published in the Federal Register, 68 Fed. Reg. 46,177 (2003), with comments, interventions and protests due on or before August 5, 2003. Arkansas Cities and AECC filed comments stating that the ADIT issue had been resolved by the new filing.

8. Entergy Services filed an answer on August 4, 2003, stating that: (1) its inclusion of storm damage costs was not an attempt to modify the formula rates; (2) it is proper to charge NLR distribution rates because section 5.a.(i) of Entergy Arkansas' Open Access Transmission Tariff (OATT) does apply to NLR; (3) NLR improperly concluded that costs incurred prior to July 1, 2002, were subject to a fixed rate Sierra Mobile Agreement with Entergy Arkansas; and (4) it was proper for Entergy Arkansas to exclude reactive support and voltage control revenue credits.

9. On August 19, 2003, Arkansas Cities filed an answer to Entergy Services' answer disputing all aspects of the answer, and further stating that Entergy Arkansas had improperly recorded NLR's payment for distribution plant to accumulated depreciation instead of against distribution plant in service.

10. On September 3, 2003, Entergy Services filed an answer to the answer of Arkansas Cities. Entergy Services conceded that NLR's payment for distribution plant to accumulated depreciation should have been recorded against distribution plant in service, and stated that it would be corrected. On all other issues, Entergy Services held its previous positions.

11. On September 22, 2003, Arkansas Cities filed an answer to Entergy Services' answer, stating that they were in agreement on the distribution plant payment issue, but conceding no other argument.

⁴ TKW is Arkansas Power and Light's net area system peak demand (kW) as increased by firm scheduled transmission deliveries at the time of the system peak which are not included in the net area peak demand.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest and an answer unless otherwise ordered by the decisional authority. We will accept the answers filed herein because they have provided information that assisted us in our decision-making process.

Hearing Procedures

13. Entergy Arkansas' 2003 Update raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the 2003 Update 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 2003 Update for filing, suspend it for a nominal period, make it effective March 1, 2003,⁵ as requested, 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; with respect to the last two such filings, the parties were successful in settling.⁶ To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁵ See Central Hudson Gas & Electric Corp., et al., 60 FERC ¶ 61,106 at 61,338, reh'g denied, 61 FERC ¶ 61,089 (1992).

⁶ On February 28, 2003, Entergy Services filed an Offer of Settlement in Docket Nos. ER01-1530-000, ER01-1530-001 (2001 Update), ER02-1247-000 and ER02-1247-001 (2002 Update). The settlement was accepted on October 23, 2003 by Director Letter Order.

⁷ 18 C.F.R. ¶ 385.603 (2003).

otherwise the Chief Judge will select a judge for this purpose.⁸ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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) The 2003 Update is hereby accepted for filing, suspended for a nominal period, to become effective March 1, 2003, 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 the justness and reasonableness of the 2003 Update. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2003), 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 in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, 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

⁸ 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).

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 administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such 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)

Magalie R. Salas,
Secretary.