

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. ER03-753-000  
ER03-753-003

ORDER CONDITIONALLY APPROVING CONTESTED SETTLEMENT

(Issued April 14, 2005)

1. In this order, we approve a contested settlement between Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies, the Arkansas Public Service Commission, the Louisiana Public Service Commission (Louisiana PSC), and the Council of the City of New Orleans. The settlement resolves all issues that were set for hearing in the above-captioned docket relating to whether Entergy's proposed revisions to Service Schedule MSS-4 of the Entergy System Agreement, which would amend the existing cost-based formula rate and expand the application of the schedule to the sale of purchased power between operating companies, are just and reasonable. As discussed below, we find that the settlement is in the public interest and should be approved, with the condition that Entergy must file a notice with the Commission within 30 days of the Entergy Operating Companies entering into any long-term transaction pursuant to Service Schedule MSS-4.

2. This order benefits customers because it allows the Entergy Operating Companies to sell and purchase system power among one another at a formula rate that accurately reflects the cost of such power.

**I. Background**

3. On April 18, 2003, Entergy filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> amendments to Service Schedule MSS-4, which governs unit power purchases under the Entergy System Agreement (System Agreement). Entergy states that the purpose of Service Schedule MSS-4 is to set forth the basis for a unit power purchase between the Entergy Operating Companies. Service Schedule MSS-4 defines "power purchase" as the purchase of a portion of a designated generating unit's capability, which entitles the purchaser to receive each hour the same portion of the total energy generated

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<sup>1</sup> 16 U.S.C. § 824d (2000).

by that unit. Entergy states that Service Schedule MSS-4 prescribes a formula rate for calculating the payment by one Operating Company to another for a sale of the capability and associated energy of a designated generating unit.

4. While Service Schedule MSS-4 has been part of the System Agreement since 1982, it has not been used for any transaction since 1989. Entergy indicated that it is necessary to amend Service Schedule MSS-4 because, in its current form, it does not properly calculate the costs of a generating unit that has been in service for a period of years and does not include a provision to reflect the accumulated reserve for deferred income taxes (ADIT). The revisions would also provide a basis for the sale of purchased power from one Operating Company to another.

5. On June 10, 2003, the Commission issued an order accepting and suspending for a nominal period the amendments to Service Schedule MSS-4, and setting the matter for hearing to determine whether the proposed amendments are just and reasonable.<sup>2</sup> On October 6, 2004, the presiding judge certified the settlement to the Commission as contested but recommended its approval.

## **II. Details of the Settlement**

6. The settlement would revise Service Schedule MSS-4 to state that its purpose is to provide “the basis” for making a unit power purchase or sale of purchased power, unless the parties agree and the Commission approves another method which would provide for a lower monthly capacity charge. The settlement would revise the formula and the inputs used to calculate the investment of a designated generating unit. Further, the settlement provides that the capacity charge will be computed on a monthly basis rather than an annual basis, and revisions are made throughout the schedule to reflect this change in computation.

7. The settlement would modify Service Schedule MSS-4 to clarify that the price is the delivered cost of that power and that the cost excludes all timing effects on such costs due to retail ratemaking decisions that affect the selling Operating Company. The settlement would modify the definition of “expenses” to include, among other things, operation and maintenance expense accounts associated with production plant and an allocation of general plant depreciation expense and intangible plant amortization.

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<sup>2</sup> *Entergy Services, Inc.*, 103 FERC ¶ 61,322 (2003) (*Entergy*).

### III. Initial and Reply Comments and ALJ Certification of the Settlement

#### A. Initial Comments

8. Calpine Corporation (Calpine) and Tractebel Energy Marketing, Inc. (Tractebel) filed initial comments that do not raise any objections to the proposed revisions set forth in the settlement. However, both raise the policy issue of whether wholesale sales of electric power between Entergy Operating Companies pursuant to Service Schedule MSS-4 should comply with the Commission policy that sales between affiliates, including sales at cost-based rates, must be shown to be free from the potential for affiliate abuse.<sup>3</sup> Tractebel, in particular, contends that affiliate purchases made pursuant to this schedule must satisfy the requirement in *Mountainview* that wholesale purchases among affiliates must be tested against contemporaneous market transactions.

9. Tractebel also requests the Commission to clarify that, since the settlement contains no input data to establish initial rates, acceptance of the settlement will not relieve Entergy of its section 205 burden of filing and supporting initial rates for each particular designated generating unit. Further, Tractebel opposes any provision in Service Schedule MSS-4 that would act as a cost tracker, since cost trackers are explicitly disfavored per Commission precedent. It argues that the cost tracking provisions are incompatible with the *Edgar* and *Mountainview* requirements that call for the rates in question to be market-tested because cost trackers can result in rates that do not reflect the true cost of providing service.

10. Trial Staff filed initial comments in support of the settlement. Trial Staff recommends, however, two clarifications: (1) Entergy should clarify that reductions in the balance of Commission cost-of-service accounts can only be made consistent with Commission cost-of-service practice and policy, rather than that of some other regulator; and (2) Entergy should make an informational filing to reflect the inclusion of any new tax in the Service Schedule MSS-4 formula.

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<sup>3</sup> Citing *Southern California Edison Co. on behalf of Mountainview Power Company, LLC*, 106 FERC ¶ 61,183, order on reh'g, 109 FERC ¶ 61,086 (2004) (*Mountainview*) (standards for evaluating possible affiliate abuse apply to all affiliate long-term power purchase agreements, whether at cost or market-based rates); *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*) (setting forth standards for evaluating the justness and reasonableness of wholesale transactions involving an affiliate to ensure that affiliate abuse has not occurred).

## **B. Reply Comments**

11. Entergy replies that Calpine and Tractebel raise policy issues that go beyond the scope of the proceeding and, therefore, need not be considered by the Commission when acting on the settlement.

12. However, according to Entergy, if the Commission decides to consider the comments, the arguments of Calpine and Tractebel should be rejected. Entergy contends that *Edgar* and *Mountainview*, which relate to utilities entering into transactions with competitive affiliates to acquire new or additional generation resources, are distinguishable from and should not apply to the current proceeding. Entergy states that Service Schedule MSS-4 applies only to capacity and associated energy owned by one Entergy Operating Company and offered to another Entergy Operating Company, and does not provide for the acquisition of new or additional resources not already owned by Entergy Operating Companies. According to Entergy, the Commission's concern in *Mountainview* and *Edgar*, namely that affiliate transactions might result in increased rates to ratepayers if the price of the affiliate transaction exceeds the price of other supply options, does not apply to transactions under Service Schedule MSS-4 which are subject to central economic dispatch, regardless of which Operating Company owns the resource, and are governed by a Commission-approved rate schedule. Further, it claims that there is little benefit in having on file an approved, cost-based formula rate for transactions among the Entergy Operating Companies if an *Edgar* showing must be made each time the rate is used.

13. Entergy argues that Tractebel is mistaken in its claim that Entergy must file cost data to support initial rates because formula rate tariffs do not have such a requirement. Further, Entergy contends that the cost-tracker precedent relied upon by Tractebel makes clear that the Commission's concern relates to rates that automatically track changes to selected cost components ignoring offsetting changes in other costs. Entergy states that Service Schedule MSS-4, in contrast, compiles all of the elements included in a cost-of-service calculation and does not focus on only one element.

14. Trial Staff, in its reply comments, states that it continues to support the settlement and recommends that the Commission defer addressing the objections of Calpine and Tractebel until Entergy actually proposes a transaction under Service Schedule MSS-4. It contends that the two intervenors have not contested the reasonableness of the tariff amendments proposed in the settlement but, rather, raise policy concerns about future affiliate transactions. Moreover, if the Commission chooses to address the intervenors' objections, they should be dismissed on substantive grounds. Similar to Entergy, Trial Staff believes that the Commission should not apply *Edgar* and *Mountainview* to transactions pursuant to Service Schedule MSS-4 since the schedule does not implicate concerns about the type of affiliate abuse expressed in those cases. Trial Staff explains that *Edgar* and *Mountainview* involved the acquisition of new capacity by a utility to

meet its system needs. Transactions pursuant to Service Schedule MSS-4, in contrast, involve the transfer of excess capacity, already acquired or owned by one utility, to another utility within the same system.

15. Louisiana PSC replies that Calpine and Tractebel raise no issues regarding the only issue set for hearing, *i.e.*, whether Service Schedule MSS-4 produces just and reasonable rates, and therefore provide no basis to reject the settlement. It contends that future claims of affiliate abuse are speculative and should be addressed in the future.

16. Entergy's supplemental comments, which are supported by Trial Staff and Louisiana PSC, address Trial Staff's suggested clarifications. First, Entergy will replace the phrase "cost of service purposes" in section 40.04(e) with the following language: "FERC costs of service purposes, including, but not limited to, SFAS 109 ADIT amounts and ADIT amounts arising from retail ratemaking decisions . . . ." Second, Entergy will seek Commission approval of any new type of tax that Entergy seeks to include in the MSS-4 formula. Entergy subsequently filed a revised version of Service Schedule MSS-4 to reflect these changes.

### **C. ALJ Certification**

17. In his certification of the contested settlement, the presiding judge stated that approval of the settlement is in the public interest and is recommended. The presiding judge noted that all of the settling parties filed comments in support of certification, and that Tractebel explicitly and Calpine implicitly also support certification of the settlement. The presiding judge stated that the issues underlying the settlement, the justness and reasonableness of the formula rate in Service Schedule MSS-4, do not raise policy implications for the Commission.

## **IV. Discussion**

18. Upon review of the settlement and the comments, we find that the matters raised by Calpine and Tractebel do not warrant the Commission rejecting the settlement. As the presiding judge notes in his certification, neither Calpine nor Tractebel object to any of the proposed revisions to Service Schedule MSS-4 set forth in the settlement.

19. In this proceeding, Entergy proposed, pursuant to section 205 of the FPA, to amend its existing Service Schedule MSS-4. The proceeding thus is focused on whether the proposed revisions to Service Schedule MSS-4 are just and reasonable.<sup>4</sup> The issues raised by Calpine and Tractebel - - whether the *Edgar/Mountainview* policy would apply (as well as Tractebel's concerns about input data and its "cost tracker" argument) - - are

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<sup>4</sup> *Entergy*, 103 FERC ¶ 61,322 at P 14.

beyond the scope of the proceeding. If affiliate abuse should occur when transacting under Service Schedule MSS-4, Calpine and Tractebel may raise such issues in a section 206 proceeding at that time.

20. As a condition of approval, therefore, Entergy must also file a notice with the Commission within 30 days of Entergy Operating Companies entering into any long-term transaction, *i.e.*, one year or more, pursuant to Service Schedule MSS-4. This condition will provide interested parties with the ability to identify and the opportunity to challenge the transaction under section 206 of the FPA.<sup>5</sup>

21. Accordingly, we find that, as conditioned, the settlement represents a reasonable resolution of the matters at issue in this proceeding and is in the public interest. Therefore, we conditionally approve the settlement as filed.

The Commission orders:

(A) The offer of settlement is hereby conditionally approved, as discussed in the body of this order.

(B) Entergy is hereby directed to file a notice with the Commission within 30 days of Entergy Operating Companies entering into any long-term transaction pursuant to Service Schedule MSS-4, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>5</sup> Entergy indicates that Service Schedule MSS-4 is intended for intermittent opportunity sales. Entergy Reply Brief at 6, 9. Although it appears that long-term transactions are unlikely under the schedule, we will nonetheless condition approval of the settlement on Entergy's filing a notice of such transactions to provide third parties with a reasonable opportunity to raise possible affiliate abuse issues at such time.