

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER04-886-000

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

(Issued September 20, 2004)

1. On May 27, 2004, Entergy Services, Inc., as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (Entergy), filed its 2004 annual informational filing containing the 2004 rate redetermination in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7 of its Open Access Transmission Tariff (OATT). The Commission accepts the filing and suspends it for a nominal period to be effective June 1, 2004, subject to refund, and establishes hearing and settlement judge procedures. Additionally, the filing is made subject to the outcome of the proceedings in Docket No. ER04-638-000. This order benefits customers because it provides the parties with a forum in which to resolve their disputes over Entergy's 2004 annual rate redetermination.

Background

2. Entergy's OATT provides for an annual redetermination of rates for long-term and short-term firm point-to-point transmission service and non-firm transmission service and for network integration transmission service, based on actual data for the immediately preceding calendar year.¹ Entergy makes the redetermination filing on or about May 1 of

¹The 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).

each year with the redetermined rates becoming effective for bills rendered on or after June 1 of that year for service during the preceding calendar month and remaining in effect for twelve months. Rates are determined according to the formula rates as defined in Entergy's OATT. Once the annual redetermination is filed with the Commission, the Commission and the customers have 120 days to review the filing.

3. Entergy made its 2004 annual rate redetermination filing on May 27, 2004, and requested an effective date of June 1, 2004. Entergy is seeking a network transmission service revenue requirement of \$349,855,435. Entergy proposes to increase its long-term firm transmission rate, from \$1.00/kW per month to \$1.13/kW per month, which is an increase of 13.0 percent. Entergy also proposes to increase its short-term firm transmission rate from \$1.06/kW per month to \$1.20/kW per month, which is an increase of 13.2 percent.

4. Entergy requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of June 1, 2004.

Notice, Interventions, and Protests

5. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 32,533 (2004), with protests or interventions due on or before June 17, 2004. The Louisiana Public Service Commission filed a notice of intervention. Timely motions to intervene were filed by: Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C. (jointly); East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc, and Tex-La Electric Cooperative of Texas, Inc. (jointly); Louisiana Energy and Power Authority; and the City Water & Light Plant of the City of Jonesboro, Arkansas. Timely motions to intervene and protests were filed by the Conway Corporation; the City of Prescott, Arkansas; the West Memphis Utilities Commission and Farmers Electric Cooperative Corporation (jointly); NRG Power Marketing, Inc.; Louisiana Generating LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; LSP Energy Limited Partnership and NRG Sterlington Power LLC (collectively "NRG Companies"); and South Mississippi Electric Power Association, Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission and Public Service Commission of Yazoo City (collectively "Joint Intervenors"). A timely motion to intervene, protest and request for hearing was filed by Lafayette Utilities System (Lafayette).

6. The protestors contend that Entergy has not explained various significant changes from the preceding year's data, which have the effect of raising rates. These changes include prepaid taxes and insurance, payroll related tax expense, general plant accumulated depreciation expense, administrative and general expenses, and regulatory commission expense. They also contend that Entergy's filing lacks necessary explanations and supporting documentation for determining the appropriateness of the various cost increases. NRG Companies note that the treatment of incremental rates is currently in settlement discussions in Docket No. ER04-638-000, and state that it now appears that embedded rate customers will be subsidizing the incremental service. Joint Intervenors state that it appears that Entergy has understated the incremental revenues for its one incremental agreement, thus overstating the transmission revenue requirement.

7. Lafayette, Joint Intervenors and NRG Companies state that discovery is necessary to determine what costs are driving a rate increase of this magnitude, and requests that the Commission suspend the matter and set it for hearing and refund. On July 2, 2004, Entergy filed an answer in response to the protests.

Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notice of intervention and timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding.

9. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2004), prohibits answers unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

B. Proposed Annual Rate Redetermination

10. Entergy's 2004 OATT raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

11. Our preliminary analysis indicates that the proposed 2004 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 2004 rate redetermination for filing, suspend it for a nominal period, to

become effective June 1, 2004,² subject to refund, and subject to the outcome of the proceedings in Docket No. ER04-638-000,³ and set it for hearing and settlement judge procedures.⁴

12. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. 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.⁵ 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.⁶ 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.

² See *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

³ The outcome of Entergy's on-going proceeding in Docket No. ER04-638-000, which addresses the treatment of incremental rates in the formula rate, will affect the rates proposed in this proceeding.

⁴ While we are making Docket No. ER04-886-000 subject to the outcome of Docket No. ER04-638-000, we are setting Docket No. ER04-886-000 for hearing and we do not intend that the hearing be held in abeyance pending the completion of Docket No. ER04-638-000. We expect that the hearing in Docket No. ER04-886-000 will proceed in a timely manner.

⁵ 18 C.F.R. ¶ 385.603 (2004).

⁶ 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. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) Entergy's proposed rates are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2004, subject to refund, and subject to the outcome of the proceedings in Docket No. ER04-638-000.

(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 Entergy's proposed 2004 rate redetermination. However, the hearing shall 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 (2004), 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 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 conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., 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.