

138 FERC ¶ 61,030  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER11-3657-000

Mississippi Delta Energy Agency; Clarksdale Public  
Utilities Commission; Public Service Commission of  
Yazoo City; Arkansas Electric Cooperative Corporation  
and South Mississippi Electric Power Association

Docket No. EL11-64-000

v.

Entergy Services, Inc.

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 19, 2012)

1. On September 26, 2011, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, Arkansas Electric Cooperative Corporation, and South Mississippi Electric Power Association (collectively, Complainants) filed a complaint in Docket No. EL11-64-000 pursuant to sections 206, 306 and 309 of the Federal Power Act (FPA).<sup>1</sup> Complainants allege that the 2011 Rate Determination filing submitted in Docket No. ER11-3657-000 by Entergy Services, Inc. (Entergy) on behalf of the Entergy Operating Companies<sup>2</sup> departs from the proper application of Entergy's formula rate, and they request consolidation and hearing procedures. In this order we establish hearing and settlement judge procedures.

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, 825h (2006).

<sup>2</sup> The Entergy Operating Companies are: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc. (Entergy).

## **I. Background**

2. Appendix 1 to Attachment H and Appendix A to Schedule 7 of Entergy's Open Access Transmission Tariff (OATT) provide for an annual redetermination of rates for long-term and short-term firm point-to-point transmission service, non-firm point-to-point transmission service, and network integration transmission service, according to a formula in Entergy's OATT and based on actual data for the immediately preceding calendar year.<sup>3</sup> Each year, Entergy makes the rate redetermination filing on or about May 1, with the redetermined rates becoming effective, subject to refund, for bills rendered on or after June 1 of that year, and remaining in effect for 12 months.

3. Entergy's OATT provides that all parties (including the Commission's staff) shall have 120 days after each rate redetermination filing to review the redetermined rates and to file a complaint with the Commission regarding them. It also provides that the redetermined rates are subject to refund or surcharge until the latest of: (1) the end of the 120-day review period, if at such time there is no outstanding, unresolved complaint; (2) the final resolution of any complaint filed; or (3) the completion of any required corrections. It further provides that a corrected filing of the redetermined rates shall be submitted to the Commission and, after final acceptance by the Commission, any required refund or surcharge shall be made to each customer on the next normal monthly billing.

### **A. 2011 Rate Redetermination Filing**

4. On May 27, 2011, in accordance with Attachment H and Schedule 7 of its OATT and the settlement approved by the Commission in Opinion No. 430, Entergy filed its informational 2011 Rate Redetermination in Docket No. ER11-3657-000. Entergy explains that its OATT provides that such informational rate updates do not constitute rate change filings subject to the requirements of section 205 of the FPA,<sup>4</sup> and that public notice of the updates is not required. Entergy states that the charges were determined using historical, actual costs, loads and other inputs as recorded for 2010.

5. Entergy further explains that, in accordance with its OATT, Entergy submits an informational filing to the Commission that updates the charges that will apply for OATT service for the upcoming June 1 through May 31 period using actual data for the

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<sup>3</sup> The 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).

<sup>4</sup> 16 U.S.C. § 824d (2006).

immediately preceding calendar year. Entergy adds that its OATT provides the procedure that was agreed to by the parties to the settlement accepted in Opinion No. 430 as an alternative to the routine treatment of rate filings made pursuant to section 205 of the FPA.

**B. Complaint**

6. Complainants challenge various aspects of Entergy's 2011 Rate Redetermination, arguing that Entergy has not properly applied its formula rate. They argue that Entergy has improperly included Regional Transmission Market Operations costs in its transmission rates and revenue requirements. Complainants maintain that Entergy has not demonstrated that the specific costs included in the 2011 Rate Redetermination are properly recovered from transmission customers. Complainants argue that their preliminary calculation shows that the impact of Entergy's inclusion of Regional Transmission Market Operations costs significantly increases OATT rates.

7. Complainants suggest that Entergy's costs booked to Regional Transmission Market Operations accounts are costs incurred by Entergy to perform its Weekly Procurement Process (WPP). Complainants claim that since WPP costs are directly related to Entergy's procurement of energy on behalf of its retail customers, and are not related to the provision of transmission service, no WPP costs should be included in OATT rates. Thus, Complainants assert that any Regional Transmission Market Operations costs associated with the WPP should be removed from OATT rates.<sup>5</sup>

8. Complainants argue that the settlement approved in Opinion No. 430 makes clear that the rates and charges produced by the formula must exclude retail regulatory expenses and all retail related taxes. Complainants state that Entergy has violated this principle by attempting to include in transmission rate base prepayments for retail regulatory commission expenses and city franchise taxes.

9. Complainants argue that all previously deferred Texas Retail Commission 2009 Rate Case expenses must be removed from Entergy's administrative and general (A&G) expenses. Complainants maintain that all Texas regulatory cost amounts are retail regulatory expenses and must be excluded from the 2011 Rate Redetermination.

10. Complainants argue that Entergy's 2011 Rate Redetermination improperly includes hurricane damage expense related to a hurricane that occurred in a prior test period. Among other things, Complainants maintain that the issue of collection in Entergy's OATT rates of hurricane-related charges has been fully and finally resolved in

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<sup>5</sup> Complaint at 19.

the settlement for Docket Nos. EL09-78 and ER09-1214, and all previously incurred hurricane costs should be removed from the 2011 Rate Redetermination.<sup>6</sup>

11. Complainants argue that Entergy has impermissibly limited the Accumulated Deferred Income Taxes (ADIT) included in its formula rate calculation by using a single criterion for its classification of ADIT. Complainants assert that Entergy should be required to include all ADIT associated with items included in the development of the OATT rates, regardless of whether they are rate base, expense, or revenue items.

12. Complainants claim that the 2011 Rate Redetermination transmission revenue requirement should include a credit for Transmission Plant and an allocated portion of General Plant revenues. Complainants maintain that because the OATT customers are bearing an allocated share of the costs associated with Transmission and General Plant, they are entitled to credit for an allocated share of associated revenues.<sup>7</sup>

13. In addition, Complainants argue that Entergy has not shown that certain operating and maintenance (O&M) expenses are properly recoverable as transmission costs. Complainants assert that absent sufficient clarification and supporting documentation, Entergy has failed to demonstrate that these expenses are properly included in the 2011 Rate Redetermination.

14. Complainants argue that Entergy should be required to remove unauthorized accruals to reserve accounts and to credit the transmission rate base for non-escrowed reserve funds. Complainants assert that, to the extent Entergy is permitted to include in the A&G expense any accruals that are not set aside in restricted external accounts, there should be a rate base offset for the accumulated reserve accruals.

15. Further, Complainants argue that Entergy has improperly included costs associated with radial facilities that serve only retail load. Complainants assert that Entergy's OATT requires that wholesale transmission customers be responsible for costs for radial transmission lines that serve only wholesale transmission customers. Complainants assert that absent sufficient clarification and supporting documentation, Entergy has failed to demonstrate that the radial facilities show some degree of integration with the network warranting rolled-in pricing.

16. Complainants assert that it is inappropriate for Entergy's OATT formula rate to include incentive compensation that is unrelated to transmission service, but rather is related to Entergy's wholesale commodities or tied to financial performance of its

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<sup>6</sup> *Id.* at 29.

<sup>7</sup> *Id.* at 34.

wholesale commodities function. Complainants assert that, to the extent Entergy recovers any incentive compensation under the OATT formula rate that is not tied to transmission performance, Entergy is inappropriately flowing through the formula rate non-transmission related costs.

17. Finally, Complainants state that an uncontested settlement was filed in September 2011.<sup>8</sup> This uncontested settlement will determine whether Entergy may recover from customers under the OATT securitized and unsecuritized O&M costs associated with the ice storm that occurred in 2009 that had not previously been recovered in transmission rates. If approved, Entergy must recalculate OATT rates contained in the 2011 Rate Determination to be consistent with the settlement agreement.<sup>9</sup> The Complainants argue that if the settlement is approved, the existing 2009 Entergy Arkansas, Inc. deferred ice storm expense line item should not be included in the 2010 test year for the 2011 Rate Redetermination and all associated costs should be removed.

18. Complainants request that the Commission set this case for hearing and settlement judge procedures, and consolidate the proceedings.

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

19. Entergy's filing in Docket No. ER11-3657-000 is an informational filing; accordingly, it was not publicly noticed. The Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City filed motions to intervene.

20. Notice of the complaint was published in the *Federal Register*, 76 Fed. Reg. 62055 (2011), with interventions and protests due on or before October 19, 2011. Cleco Power filed a motion to intervene. The Louisiana Energy and Power Authority, the Lafayette Utilities System, and the Municipal Energy Agency of Mississippi (collectively, L-M Municipals) and East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives) filed timely motions to intervene. Conway Corporation, West Memphis Utilities Commission, the City of Osceola, Arkansas, the City of Benton, Arkansas, and the City of Prescott, Arkansas (collectively, Arkansas

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<sup>8</sup> *Id.* at 50 (referring to Entergy Services, Inc., Offer of Settlement, Docket No. ER11-3274 (filed September 22, 2011)).

<sup>9</sup> The Commission approved the uncontested settlement on November 30, 2011 (see *Entergy Services, Inc.*, 137 FERC ¶ 61,175 (2011)).

Cities) also filed a motion to intervene. Entergy filed an answer to the complaint. On November 3, 2011, Complainants filed a response to Entergy's answer.

21. In its answer, Entergy argues that the complaint should be dismissed because Complainants have failed to meet their burden of proof to show that the currently-effective OATT formula rate is unjust and unreasonable. Entergy argues that Complainants have not demonstrated that the cost inputs into the OATT formula rate are incorrect or that there are any errors in the calculation. Further, Entergy argues that Complainants have provided no evidence that the 2010 FERC Form 1 cost inputs, as filed in the 2011 Rate Redetermination, are unreasonable. However, to the extent that there are any issues that the Commission believes would justify further investigation, Entergy requests the appointment of a settlement judge.

22. Entergy maintains that it has met its burden of proof to demonstrate that it has properly applied the formula. Entergy argues that Complainants either misunderstand the basic formulaic calculations or they seek to disallow formula inputs that should properly flow through the Commission-accepted formula. Entergy states that where the Complainants seek exclusion of certain inputs, it is a direct challenge to the formula and that the burden of proof lies with the Complainants in those instances. Entergy also asserts that the Complainants ignore the fact that the Commission has held consistently that, for formula rates, the formula is the rate.<sup>10</sup>

23. Entergy argues that it has properly included prepayments for retail regulatory costs and city franchise taxes in the formula despite Complainants' insistence that prepayments for retail regulatory costs and city franchise taxes must be eliminated from rates. Entergy asserts that on the rate-base side of the formula, such costs are not expressly excluded as they are on the expense-side. Entergy further argues that if the Complainants seek to change the formula to exclude these costs on the rate-base side of the formula, then the Complainants must demonstrate that the change is both just and reasonable and warranted for prospective application.

24. Entergy argues that Complainants have misstated the basis by which Entergy computes ADIT and asserts that it has properly treated ADIT in its 2011 Rate Redetermination. Entergy asserts that if the asset or liability that gave rise to the ADIT line item is included in rate base in the rate formulas, then that ADIT is included in the "ratemaking" balance. Likewise, Entergy asserts that if that asset or liability is not

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<sup>10</sup> Entergy Answer at 5 (citing *Western Power Admin.*, 66 FERC ¶ 61,128, at n.10 (1994)).

included in rate base in the rate formulas, then that ADIT is included in the “other” balance.<sup>11</sup>

25. Entergy argues that Complainants’ allegation that it is necessary to include an adjustment increasing revenue credits allocated to the transmission function is incorrect. Entergy maintains that if Complainants seek such treatment, it will require a change to the formula.

26. Entergy asserts that all O&M expenses are treated properly in the formula calculations. Entergy argues that the Complainants’ request that certain O&M expenses be removed from the formula rate is a direct challenge to the structure of the formula rate itself.

27. Entergy argues that removal of “unauthorized accruals” to reserve accounts requires a formula change. Further, Entergy asserts that it has included these accruals in ratemaking proceedings before the various retail regulatory commissions and city councils that regulate its retail rates, and states that such accruals have been approved by those regulatory bodies.

28. Entergy asserts that it has properly handled incentive compensation under the formula, despite Complainants’ claim that the incentive compensation program is driven by non-transmission business. Entergy argues that the Complainants seek a change to the formula to prevent the recovery of a portion of the actual compensation paid.

29. Entergy maintains that Regional Transmission Market Operations costs are recovered properly in the OATT formula. Entergy states that costs included in the Regional Transmission Market Operations accounts are those costs required for developing and implementing the WPP. Entergy asserts that the WPP is a way to optimize the use of the transmission system by considering transmission information, bids, and cost data simultaneously. Thus, Entergy argues that the Regional Transmission Market Operations costs are appropriately considered transmission costs that should be included in the OATT formula.

30. Entergy argues that previously deferred Texas Retail Commission 2009 Rate Case expenses and 2008 hurricane expenses are properly included in the formula rate. Entergy states that at the time of the deferral of the 2009 Texas Retail proceeding, as well as the 2008 hurricane storm costs, not all costs were known. Entergy claims that it properly booked the costs once the cases closed.<sup>12</sup>

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<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 13.

31. Finally, Entergy argues that it has not changed its treatment of radial lines in the 2011 Rate Redetermination and that it historically has treated these lines properly within the OATT formula.

### **III. Discussion**

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

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Complainants' response to Entergy's answer, and will, therefore, reject it.

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

34. The complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we will set the complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA. Because Entergy's filing in Docket No. ER11-3657-000 is only an informational filing, we will deny the requests to consolidate that proceeding with the complaint proceeding in Docket No. EL11-64-000.

35. While we are setting this case 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, 18 C.F.R. § 385.603 (2011). 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>13</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.

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<sup>13</sup> The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

36. Based on Entergy's OATT and the settlement in Opinion No. 430, the 2011 redetermined rates are effective June 1, 2011, and are subject to refund from that date until the latest of the final resolution of the complaint or the completion of any required corrections.

The Commission orders:

(A) 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 section 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 1), a public hearing shall be held concerning this complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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 within five (5) days of the date of this order.

(C) 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.

(D) 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.

(E) The 2011 redetermined rates are effective June 1, 2011, and are subject to refund from that date, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.