

157 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Entergy Gulf States Louisiana, L.L.C. Docket Nos. ER15-1436-000
Entergy Arkansas, Inc.
Entergy Louisiana, LLC
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Texas, Inc.

Entergy Arkansas, Inc. ER15-1453-000
Entergy Gulf States Louisiana, L.L.C.
Entergy Louisiana, LLC
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Texas, Inc.

Entergy Arkansas, Inc. ER16-1528-000
Entergy Louisiana, LLC (consolidated)
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Texas, Inc.

ORDER ACCEPTING AND SUSPENDING FILINGS, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING
PROCEEDINGS

(Issued December 15, 2016)

1. On April 1, 2015 in Docket No. ER15-1436-000, on behalf of the Entergy Operating Companies¹ and pursuant to section 205 of the Federal Power Act (FPA),² Entergy Services, Inc. (Entergy) filed proposed changes to the Entergy Operating Companies' transmission formula rate templates (transmission formula rate templates) in Attachment O of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), to become effective June 1, 2015, as described below. On the same day, in Docket No. ER15-1453-000, Entergy filed an actuarial report in support of the 2014 amounts for Post-Retirement Benefits Other than Pensions (PBOP) to be included in the Entergy Operating Companies' Attachment O annual formula rate update to become effective on June 1, 2015. On October 30, 2015, Entergy supplemented the filing with the specific amounts of PBOP costs for calendar year 2014. On April 28, 2016, in Docket No. ER16-1528-000, Entergy filed specific amounts of PBOP costs for calendar year 2015 to be included in the Entergy Operating Companies' Attachment O annual formula rate update to become effective June 1, 2016. Entergy also submitted an actuarial report in support of those costs.

2. In this order, we accept the proposed formula rate changes and PBOP amounts for filing and suspend the filings for a nominal period, to become effective on the dates requested, subject to refund. We also establish hearing and settlement judge procedures. Further, we consolidate Docket Nos. ER15-1436-000, ER15-1453-000, and ER16-1528-000 for purposes of hearing and settlement judge procedures and decision.

I. Background

3. The Entergy Operating Companies joined MISO as transmission-owning members on December 19, 2013. On February 15, 2013, in Docket No. ER13-948-000, Entergy and MISO filed the proposed transmission formula rate templates to establish formula rates for the Entergy Operating Companies to recover their transmission revenue requirements in four proposed transmission pricing zones of MISO. The proposed transmission formula rates were modeled on the standard form of Attachment O under the MISO Tariff, with several proposed modifications to incorporate established practices under the then-existing open access transmission tariff of the Entergy Operating

¹ On the date of the filing in Docket No. ER15-1436-000, the Entergy Operating Companies were: Entergy Arkansas, Inc.; Entergy Mississippi, Inc.; Entergy Texas, Inc.; Entergy New Orleans, Inc.; Entergy Gulf States Louisiana, L.L.C.; and Entergy Louisiana, LLC. Since that date, the latter two companies have combined into a single operating company, Entergy Louisiana, LLC.

² 16 U.S.C. § 824(d) (2012).

Companies (Entergy OATT).³ On June 20, 2013, the Commission accepted the transmission formula rate templates for filing effective December 19, 2013, subject to refund, and instituted hearing proceedings, which the Commission held in abeyance subject to the outcome of settlement proceedings.⁴

4. On July 31, 2015, Entergy, MISO and Joint Customers⁵ filed an offer of partial settlement (Settlement) regarding the transmission formula rates (Settlement Transmission Formula Rate Templates). In the initial filing, Entergy proposed to reflect in the transmission formula rate templates the effects of excess deferred income taxes and permanent differences in income taxes.⁶ As part of the Settlement, Entergy committed to make a filing in a separate docket to include the effects of excess deferred income taxes and permanent differences in income taxes in the transmission formula rate templates. On August 23, 2016, the Commission issued a letter order approving the Settlement,⁷ and, on September 28, 2016, granted Entergy's request for limited clarification to correct effective dates.⁸

³ Prior to becoming transmission-owning members of MISO, the Entergy Operating Companies provided open access transmission service under their open access transmission tariff on file with the Commission.

⁴ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013). In subsequent orders, the Commission consolidated the proceeding in Docket No. ER13-948-000 with proceedings in Docket Nos. ER14-649-000, ER14-1645-000, and EL14-19-000. *See Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,162 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,161 (2014).

⁵ Joint Customers, for the purposes of the Settlement, comprise Mississippi Delta Energy Agency and its members; Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale Public Utility Commission); Public Service Commission of Yazoo City, Mississippi; South Mississippi Electric Power Association; and Arkansas Electric Cooperative Corporation. East Texas Electric Cooperative, Inc. did not join as one of Joint Customers in the Settlement, though it joins as a Joint Customer in the protest in ER15-1436-000.

⁶ *Entergy Servs., Inc.*, Application, Docket No. ER13-948-000, at 13-14 (Feb. 15, 2013).

⁷ *Entergy Servs., Inc.*, 156 FERC ¶ 61,127 (2016)

⁸ *Entergy Servs., Inc.*, 156 FERC ¶ 61,236 (2016).

II. Notice of Filings and Responsive Pleadings

5. Notice of the April 1, 2015 filing in Docket No. ER15-1436-000 was published in the *Federal Register*, 80 Fed. Reg. 19,078 (2015), with protests and interventions due on or before April 22, 2015. Timely motions to intervene were filed by South Mississippi Electric Power Association, NRG Companies, East Texas Electric Cooperative, Inc., Mississippi Delta Energy Agency, Arkansas Public Service Commission, Arkansas Electric Cooperative Corporation, and MISO. A timely protest and motion to consolidate was filed by Public Service Commission of Yazoo City, Clarksdale Public Utilities Commission, Mississippi Delta Energy Agency, South Mississippi Electric Power Association, Arkansas Electric Cooperative Corporation, and East Texas Electric Cooperative, Inc. (collectively, Joint Customers). Entergy filed an answer to the Joint Customers' protest. Joint Customers filed an answer to Entergy's answer.

6. Notice of the April 1, 2015 filing in Docket No. ER15-1453-000 was published in the *Federal Register*, 80 Fed. Reg. 19,656 (2015), with protests and interventions due on or before April 22, 2015. Timely motions to intervene were filed by Council of the City of New Orleans, East Texas Electric Cooperative, Mississippi Delta Energy Agency, Clarksdale Public Utility Commission, Public Service Commission of Yazoo City, South Mississippi Electric Power Association, and Arkansas Electric Cooperative Corporation. Joint Customers filed a protest and motion to consolidate. Entergy filed an answer and Joint Customers filed an answer to Entergy's answer.⁹ Notice of the October 30, 2015 supplement was published in the *Federal Register*, 80 Fed. Reg. 69,205 (2015) with protests and interventions due on November 20, 2015. None were filed.

7. Notice of the April 28, 2016 filing in Docket No. ER16-1528-000 was published in the *Federal Register*, 81 Fed. Reg. 28,864 (2016), with protests and interventions due on or before May 19, 2016. Timely motions to intervene were filed by South Mississippi Electric Power Association, and Arkansas Electric Cooperative Corporation. On May 12, 2016, Entergy submitted an errata filing to correct an inadvertently provided attachment.

⁹ Joint Customers filed one answer in Docket Nos. ER15-1436-000 and ER15-1453-000, which except for a renewal of their request to consolidate the proceedings, addressed only specific issues in Docket No. ER15-1436-000.

III. Filings

A. Docket No. ER15-1436-000

1. Entergy Filing

8. On April 1, 2015, Entergy proposed two changes to the transmission formula rate templates that were not reflected in the Settlement Transmission Formula Rate Templates. The first change, as provided under the Settlement, reflects the effects of excess deferred income taxes and permanent differences in income taxes. The second change reflects the inclusion in rate base of Accrued Pension Cost/Prepaid Pension Cost associated with the qualified defined benefit pension plans of the Entergy Operating Companies, which Entergy states it was unable to resolve in the Settlement.¹⁰

9. With regard to the tax related changes, Entergy states that excess deferred income taxes exist for the Entergy Operating Companies for tax depreciation normalized prior to the Tax Reform Act of 1986.¹¹ Entergy states that the income tax rate was higher in years prior to 1987, and that the difference between the historic tax rate and the current tax rate results in excess deferred income taxes. Entergy states that excess deferred income taxes reduce customer rates over the life of the property giving rise to the deferred taxes and that excess deferred income taxes are reversed using the average rate assumption method.

10. In addition, Entergy states that permanent differences in income taxes arise when income taxes or expenses on an Entergy Operating Company's financial statements are never taxable or deductible on the income tax return, or when income or expenses are recognized on the income tax return but are never recorded in the financial statements.¹² Entergy states that, unlike temporary differences, which eventually reverse and equal out between the financial statements and the income tax return, permanent differences never reverse.

¹⁰ Entergy Docket No. ER15-1436-000 Transmittal at 3.

¹¹ *Id.*

¹² *Id.* (citing Permanent tax differences include the tax effects of 1. equity component of Allowance for Funds Used During Construction (AFUDC), 2. net of tax debt component of AFUDC, and 3. prior flow-through of temporary differences).

11. Entergy states that its proposal to include formula elements in the transmission formula rate templates to address excess deferred income taxes and permanent differences in income taxes is consistent with Order No. 144,¹³ in which the Commission established the requirement that a public utility account for excess or deficiency in deferred taxes. To account for excess deferred income taxes, Entergy proposes to include the following language in the transmission formula rates as a new row: “Excess Deferred Income Taxes (enter negative).” In addition, Entergy proposes to add the following language to Note I: “Excess Deferred Income Taxes reduce income tax expense revenue requirement by the amount of the expense multiplied by (1/1-T).” Similarly, Entergy proposes to include a new row called “Permanent Differences in Incomes Taxes” and add the following language to Note I: “Permanent Differences in Income Taxes increases the income tax expense revenue requirement by the amount of the expense multiplied by (1/1-T) for differences in the income taxes under the Federal and State calculations and the income taxes recorded on the Company’s financial statement.” Entergy also provides, as an attachment to the filing, an illustration that shows how the proposed income tax adjustments will appear in the transmission formula rate templates. Regarding both proposed formula elements, Entergy states that other MISO transmission owners with transmission formula rates on file with the Commission have adopted this formulaic methodology.¹⁴

12. Entergy requests an effective date of June 1, 2015 with respect to excess deferred income taxes and permanent differences in income taxes. In addition, Entergy requests to apply these changes in the true-up calculations that it will perform pursuant to the transmission formula rate templates using cost data from 2014. Entergy states that, in the settlement in principle reached in Docket No. ER13-948-000, Joint Customers agreed not to protest the Entergy Operating Companies’ effective date (including application of the proposed formula rate change to the Entergy Operating Companies’ 2014 true-up calculations) in light of the fact that excess deferred income taxes and permanent differences in income taxes were included in the Entergy Operating Companies’ initial filing in Docket No. ER13-948-000 with an effective date of December 19, 2013, subject to refund.¹⁵

¹³ *Id.* at 4 (citing *Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, 15 FERC ¶ 61,133 (1981)).

¹⁴ *Id.* at 5 (citing *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224 (2012) (*DATC*); *American Transmission Co., LLC, et al.*, 105 FERC ¶ 61,388 (2003) (*ATC*)).

¹⁵ *Id.* at 6.

13. Regarding its proposed change to permit the recovery of Accrued Pension Cost and Prepaid Pension Cost, Entergy states that the Entergy Operating Companies account for pension costs for accounting and ratemaking purposes by following U.S. Generally Accepted Accounting Principles (GAAP) as set forth in Accounting Standards Codification (ASC) Topic 715-30.¹⁶ Entergy states that the pension plans' costs are accrued as a liability on each Entergy Operating Company's books. Entergy states that the liability is recognition of the pension plans' defined benefit pension obligation, which by its nature, is a long-term pension benefit obligation that is based on many assumptions and accrued over employees' working lives for payment commencing at retirement and ending at death of the employee or the designated beneficiary. In addition, Entergy states that because of the uncertainty inherent in the obligation's assumptions, pension accounting standards permit delayed recognition of certain changes in the obligation and changes on the value of assets set aside to meet that obligation.

14. Entergy states that, in addition to GAAP pension accounting rules, qualified pension plans funding requirements are set forth in the rules and regulation of the Internal Revenue Code, which have changed over time.¹⁷ Entergy states that the Pension Protection Act of 2006 requires such a change as it accelerated the timing of minimum required funding contributions to the pension trust starting in 2008 and also placed restrictions on pension plans that are less than 80 percent funded.¹⁸ Entergy states that, due to accelerated statutory funding requirements under the Pension Protection Act, timing differences exist between the cash contributions made by the Entergy Operating Companies to their pension plans and pension costs reflected in rates as determined under GAAP requirements. Entergy states that these timing differences are reflected as either a liability or an asset on each Entergy Operating Company's books, and that if net pension accruals exceed cumulative pension contributions, the difference results in an Accrued Pension Cost or liability. Entergy asserts that if cumulative pension contributions exceed cumulative net pension cost accruals, the difference results in a Prepaid Pension Cost or asset.

15. Entergy states that it utilizes an independent actuary on an ongoing basis to develop the Entergy Operating Companies' pension cost and funding obligations. Entergy states that it is appropriate for the cash pension contributions made by the Entergy Operating Companies to be reflected as an increase in rate base, as these contributions represent actual cash expenditures by the Entergy Operating Companies into an external trust that benefits both customers, through direct reductions to pension

¹⁶ *Id.*

¹⁷ *Id.* at 7.

¹⁸ *Id.*

costs, and employees, by increasing the funded status of the pension plan. Entergy states that the Entergy Operating Companies have a total company Prepaid Pension Cost of \$612.7 million.¹⁹ Entergy proposes to include the 13-month average of Accrued Pension Cost/Prepaid Pension Cost balances in the determination of rate base in the Entergy Operating Companies' Attachment O formula rates effective June 1, 2015. Specifically, with respect to Accrued Pension Cost/Prepaid Pension Cost, Entergy proposes to include language in the formula rate templates as a new row to identify "(Accrued Pension Cost)/Prepaid Pension Cost."²⁰ Entergy provides, as an attachment to the filing, an illustration of how the proposed adjustments to rate base with respect to Accrued Pension Cost/Prepaid Pension Cost will appear in the transmission formula rate templates.

2. Joint Customers Protest

16. Joint Customers contend that Entergy's filing is grossly deficient and should be rejected. Joint Customers note that, contrary to Entergy's assertion, Entergy's proposed modifications do not reflect established practices under the Entergy OATT.²¹ Joint Customers assert that Entergy's filing consists solely of a transmittal letter, which they state generally describes the proposed amendments and sets forth limited descriptions of the basis for such proposals; a nearly blank "Placeholder" tariff record; and an "[i]llustrative representation of the proposed sections within the [S]ettlement Transmission Formula Rate Templates" showing nothing more than a description of the line items proposed to be added to the Settlement Transmission Formula Rate Templates.²² Joint Customers state that they have agreed, as part of the Settlement, not to seek more than a nominal suspension of Entergy's filing, but that does not eliminate Entergy's obligation to meet the basic requirements of Part 35 of the Commission's regulations to provide meaningful support and explanations for the proposed rate changes and revenue requirements increases.²³ Joint Customers state that Entergy has not requested a waiver of any of the provisions under section 35.13, nor is there good cause for such waiver.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 10.

²¹ Joint Customers Docket No. ER15-1436-000 Protest at 2-3 (citing Entergy Docket No. ER15-1436-000 Transmittal at 2).

²² *Id.* at 6-7.

²³ *Id.* at 6.

17. Joint Customers also contend that Entergy's filing contains no quantification of the excess deferred income taxes and permanent differences in income taxes proposed to be added to the formula rate income tax calculations, and that this deficiency alone should be grounds for finding the filing deficient and rejecting it.²⁴ Joint Customers state that Entergy's filing is devoid of any data quantifying the amounts of excess deferred income taxes or calculations demonstrating the reversal (i.e., amortization) using the average rate assumption method.²⁵ Joint Customers assert that, without such information, the Commission and interested parties are prevented from evaluating the underlying data and methodologies that will drive the excess deferred income taxes to be included in the formula rate template income tax calculations. Similarly, Joint Customers state that Entergy's filing does not contain any data identifying the specific items associated with the permanent differences generally described above, including the temporary differences previously flowed through.

18. Joint Customers state that Entergy's filing fails to specify how these new line items of costs will be allocated in each Entergy Operating Company's formula rate template.²⁶ Joint Customers also state that Entergy fails to specify that the appropriate allocation of these costs (e.g., based on a labor ratio or net plant) is crucial to understanding the intended effects of the proposed modifications and determining whether, if adopted, these modifications are just and reasonable.

19. Joint Customers assert that Entergy's proposed formula rate modifications to include excess deferred income taxes and permanent differences in income taxes in the income tax calculations raise issues of material fact and require a hearing.²⁷ Joint Customers dispute Entergy's claim that these proposed modifications are consistent with the requirements of Order No. 144, and argue that the two cases that Entergy cites in support of the proposed modifications (*DATC* and *ATC*), were simply orders setting rate proposals for hearing and settlement procedures. Joint Customers state that both of these proceedings ultimately settled and therefore lack precedential value here.

20. Regarding the Prepaid Pension Costs, Joint Customers assert that Entergy fails to provide any accounting or other data setting forth how this \$612.7 million cost was incurred, how it was calculated, and why it is the responsibility of transmission

²⁴ *Id.* at 7.

²⁵ *Id.*

²⁶ *Id.* at 9.

²⁷ *Id.* at 11.

customers.²⁸ Joint Customers state that, based on the information included in Entergy's transmittal letter, the effect of including the prepaid pension asset in rate base is approximately an \$8.0 million unjustified increase in the annual transmission revenue requirement for the Entergy Operating Companies. Among other things, Joint Customers argue that without the benefit of historical information regarding the Entergy Operating Companies' pension plan practices from both accounting and ratemaking perspectives, it is impossible to evaluate whether Entergy's proposed modification to include a Prepaid Pension Cost component in rate base will result in just and reasonable rates.

21. Lastly, Joint Customers state that both this filing in Docket No. ER15-1436-000 and Entergy's filing in Docket No. ER15-1453-000, in which Entergy filed an actuarial report purportedly supporting the 2014 amounts for PBOP to be included in the Entergy Operating Companies' transmission formula rates, relate to changes to the Entergy Operating Companies' formula rates that should be considered together.²⁹ Joint Customers request that the Commission consolidate Entergy's PBOP filing in Docket No. ER15-1453-000 with this filing (in Docket No. ER15-1436-000), so that all issues related to Entergy's formula rate templates may be addressed in a single proceeding.

3. Entergy Answer

22. Entergy states that Joint Customers' protest contains apparent misunderstandings or mischaracterizations of Entergy's proposals, and that Joint Customers wholly fail to justify their insistence that the Commission reject them.³⁰

23. Entergy states that it did not submit detailed cost and accounting information regarding deferred income taxes and permanent differences in income taxes because the objective of the filing was to establish a generic formula rate change to reflect those tax-related effects, not to establish the effect on the Entergy Operating Companies' transmission revenue requirements as a result of incorporating those effects in their transmission rate formulas.³¹ Entergy does not dispute Joint Customers' observation that Entergy did not provide such data, but Entergy argues that the lack of such data does not render its initial filing deficient. Entergy states that the initial filing provided a thorough analysis and justification of the justness and reasonableness of the proposed generic changes to the transmission rate formulas.

²⁸ *Id.* at 9.

²⁹ *Id.* at 22.

³⁰ Entergy Docket No. ER15-1436-000 Answer at 2-3.

³¹ *Id.* at 4 (citing Entergy Docket No. ER15-1436-000 Transmittal at 3-6).

24. Regarding Accrued Pension Cost/Prepaid Pension Cost, Entergy states that Joint Customers significantly overstate the effect on transmission service customers. Entergy states that the actual estimated effect on transmission service arising from the proposed changes is approximately \$1.3 million annually.³² Entergy states that Joint Customers' \$8 million calculation fails to consider the effects of accumulated deferred income taxes (ADIT) and also inappropriately utilizes an amount for income taxes that has been adjusted for items that have no relationship to pension considerations. While Entergy asserts that Joint Customers have not established that Entergy's filing was deficient and should be rejected, Entergy provides additional explanation and information in support of the proposal, including an actuarial report that provides detailed information about the Entergy Operating Companies' pension obligations and a commitment to submit more information when it becomes available. Entergy states that the fundamental principle underlying the Accrued Pension Cost/Prepaid Pension Cost proposal is that the Entergy Operating Companies incur pension costs and prepaid pension costs as necessary and reasonable costs of conducting business as public utilities. Entergy therefore argues that the Entergy Operating Companies should be permitted to recover those costs.

25. Entergy also states that the Commission should deny Joint Customers' request to consolidate this proceeding with the proceeding in Docket No. ER15-1453-000.³³ Entergy states that the separate proceedings address separate and distinct issues and can be expected to proceed on separate procedural timelines. Entergy states that consolidation of the two proceedings will muddy the issues and likely cause delays in the Commission's considerations of Entergy's formula rate proposal in this proceeding.

4. Joint Customers Answer to Entergy Answer

26. Joint Customers state that Entergy's characterization of the proposed tariff revisions as "generic" is a novel attempt to avoid providing adequate support of its filings.³⁴ Joint Customers state that section 35.13 of the Commission's regulations is clear as to the kind of support that must be included as part of an FPA section 205 filing, and that Entergy has not provided, nor are Joint Customers aware of, any case law that provides an exemption from these requirements for so-called "generic" filings.

27. Joint Customers assert that in both its initial filing and answer, Entergy fails to demonstrate that its proposed inclusion of excess deferred income taxes and permanent differences in income taxes are appropriate for ratemaking purposes. Joint Customers

³² *Id.* at 7.

³³ *Id.* at 13.

³⁴ Joint Customers Docket No. ER15-1436-000 Answer to Answer at 4.

state that Entergy has not identified any supporting guidance from the Commission whereby the Commission has ruled on the merits of similar excess deferred income taxes to be included in the calculation of income taxes, or allowed similar permanent timing differences to be included in the calculation of income taxes.³⁵

28. Joint Customers reiterate their argument that Entergy's proposal to include a rate base adjustment for Accrued Pension Cost/Prepaid Pension Cost is unjustified. Joint Customers state that Entergy's response that the effect on transmission rates is approximately \$1.3 million "rests on an apples-to-oranges comparison."³⁶ Joint Customers assert that the \$1.3 million annual impact that Entergy computed is the impact on only the wholesale customers, whereas Joint Customers computed the impact on the total annual transmission revenue requirement. In addition, Joint Customers state that because Entergy's adjustment for the ADIT effect that was not reflected in Joint Customer's calculation reduces the estimated increase to \$4.7 million, the appropriate comparison to Joint Customers' \$8.0 million calculation is the \$4.7 million computed by Entergy, not \$1.3 million. Nevertheless, Joint Customers argue that Entergy's proposal results in a significant increase to costs which should be rejected on the basis that it is unsupported and leads to unjust and unreasonable rates.

29. Joint Customers state that Entergy's opposition to consolidation of the proceedings is unconvincing.³⁷ Joint Customers state that both filings relate to changes to the same formula rate templates and that consolidating the two proceedings will promote greater administrative efficiency and allow the parties to the two proceedings (and the Commission) to utilize their resources more effectively in addressing issues common to both proceedings.

B. Docket No. ER15-1453-000

1. Entergy Filing

30. On April 1, 2015, pursuant to the formula rate protocols set forth in Attachment O of the MISO Tariff, Entergy submitted an actuarial report in support of the 2014 PBOP amounts to be included in the Entergy Operating Companies' Attachment O formula rate update to become effective on June 1, 2015. Entergy states that it submits the filing for the limited purpose of initiating the process of securing Commission review and acceptance of the Entergy Operating Companies' actual 2014 PBOP costs. Entergy

³⁵ *Id.* at 4-5 (citation omitted).

³⁶ *Id.* at 7 (citing Entergy Docket No. ER15-1436-000 Answer at 7).

³⁷ *Id.* at 13-14.

further states, that, given the limited scope of this filing, Entergy does not believe that the majority of the filing requirements in section 35.13 of the Commission's regulations are applicable to this filing. To the extent that any of the requirements of section 35.13 may apply, Entergy requests waiver as necessary.³⁸ On October 30, 2015, Entergy supplemented the filing with the specific amounts of PBOP costs for calendar year 2014.

2. Joint Customers Protest

31. Joint Customers state that the actuarial report provided by Entergy consists of 48 pages of data that, absent supplemental information from Entergy, are overly cumbersome, if not impossible, either to evaluate or to use to specifically identify the PBOP amounts that will be included in the to-be-filed Attachment O formula rate templates for each of the Entergy Operating Companies.³⁹ Joint Customers also state that Entergy's filing does not provide a "bridge" between information that is included in the actuarial report and the amounts of 2014 PBOP expense that each Entergy Operating Company plans to reflect in the formula rate templates. Joint Customers again request consolidation, asserting that this filing and Entergy's filing in Docket No. ER15-1436-000 relate to changes to the Entergy Operating Companies' formula rate templates that should be considered together.

3. Answers

32. In its answer, Entergy opposes consolidation of this proceeding with the proceeding in Docket No. ER15-1436-000, arguing that the two proceedings address separate and distinct issues and are on different procedural timelines.⁴⁰ In response, Joint Customers reiterate their request for the Commission to consolidate the proceedings.

C. Docket No. ER16-1528-000

33. On April 28, 2016, pursuant to the formula rate protocols set forth in Attachment O of MISO's Tariff, Entergy filed the specific amounts of PBOP costs for calendar year 2015 to be included in the Entergy Operating Companies' Attachment O formula rate update to become effective June 1, 2016. Entergy also submitted an actuarial report in support of those costs. Again, Entergy states that, given the limited scope of this filing,

³⁸ Entergy Docket No. ER15-1453-000 Transmittal at 2.

³⁹ Joint Customers Docket No. ER15-1453-000 Protest at 4.

⁴⁰ Entergy Docket No. ER15-1453-000 Answer at 5.

Entergy does not believe that the majority of section 35.13's filing requirements are applicable to this filing, and, to the extent that any of the requirements of section 35.13 may apply, Entergy requests waiver.⁴¹ On May 12, 2016, Entergy made an errata filing to the April 28, 2016 filing to correct an inadvertently provided attachment.

IV. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they filed them.⁴² Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Entergy and Joint Customers because they provided information that has assisted us in our decision-making process.

B. Substantive Matters

35. We find that Entergy's filings raise 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. Our preliminary analysis indicates that Entergy's proposed changes to the transmission formula rates and PBOP amounts have 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 filings, suspend them for a nominal period, make them effective on June 1, 2015 (for Docket Nos. ER15-1436-000 and ER15-1453-000, including application of proposed changes with respect to excess deferred income taxes and permanent differences in income taxes in Docket No. ER15-1436-000 to the true-up calculations performed pursuant to the transmission formula rate templates using cost data from 2014) and June 1, 2016 (for Docket No. ER16-1528-000), as requested, subject to refund, and establish hearing and settlement judge proceedings.

⁴¹ Entergy Docket No. ER16-1528-000 Transmittal at 2-3.

⁴² All of the intervenors that filed jointly for the purposes of this filing as Joint Customers also intervened separately; hence we also list them separately here.

36. Given the common issues of law and fact, we consolidate Docket Nos. ER15-1436-000, ER15-1453-000, and ER16-1528-000 for purposes of hearing and settlement judge procedures and decision.

37. While we are setting this matter 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, 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.⁴³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁴⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days 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's proposed changes to the transmission formula rate templates filed in Docket No. ER15-1436-000 are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2015, including application of proposed changes with respect to excess deferred income taxes and permanent differences in income taxes in Docket No. ER15-1436-000 to the true-up calculations performed pursuant to the transmission formula rate templates using cost data from 2014, as requested, subject to refund, as discussed in the body of this order.

(B) Entergy's proposed PBOP amounts and supporting actuarial reports filed in Docket No. ER15-1453-000 are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2015, as requested, subject to refund, as discussed in the body of this order.

⁴³ 18 C.F.R. § 385.603 (2016).

⁴⁴ 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 (5) days of this order. The Commission's website contains a list of Commission judges available for settlement procedures and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Entergy's proposed PBOP amounts and supporting actuarial reports filed in Docket No. ER16-1528-000 are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2016, as requested, subject to refund, as discussed in the body of this order.

(D) Docket Nos. ER15-1436-000, ER15-1453-000, and ER16-1528-000 are hereby consolidated for purposes of hearing and settlement judge procedures and decision, as discussed in the body of this order.

(E) 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 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 PBOP amounts and transmission formula rate templates, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure,⁴⁵ the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in these proceedings 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 participants 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.

(G) 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 participants 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 participants' progress toward settlement.

⁴⁵ 18 C.F.R. § 385.603 (2016).

(H) 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.