

UNITED STATES OF AMERICA 119 FERC ¶ 61,334
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Entergy Arkansas, Inc.	Docket No. ER07-628-000
Entergy Arkansas, Inc.	Docket No. ER07-629-000
Entergy Arkansas, Inc.	Docket No. ER07-630-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE UPDATE AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES
AND CONSOLIDATING PROCEEDINGS

(Issued June 29, 2007)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) 2007 Wholesale Formula Rate Update (2007 Update) in Docket No. ER07-628-000, and suspend it for a nominal period, to become effective March 1, 2007, as requested, subject to refund. We also establish hearing and settlement judge procedures, and consolidate this proceeding with the ongoing proceedings in Docket Nos. ER07-629-000 and ER07-630-000.¹

I. Background

2. On March 13, 2007, Entergy Services, Inc. (Entergy Services) filed the 2007 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

¹ Docket Nos. ER07-629-000 and ER07-630-000 will be addressed by separate Commission orders to be issued concurrently.

with numerous customers.² Additionally, the filing redetermines the distribution rate charged pursuant to the network integration transmission service agreements between Entergy Services and North Little Rock, between Entergy Services and West Memphis, and between Entergy Services and Prescott.

3. Entergy Arkansas requests that the redetermined charges and transmission loss factor become effective March 1, 2007, in accordance with the Agreements.

II. Notice of Filing and Responsive Pleadings

4. Notice of Entergy's filing was published in the *Federal Register*, 72 Fed. Reg. 14,790 (2007), with comments, protests or interventions due on or before April 3, 2007.³ Arkansas Electric Cooperative Corporation (AECC) filed a motion to intervene. Hope filed a motion to intervene and a preliminary protest. Subsequently, the City of Osceola, Arkansas (Osceola) and Hope (collectively, Arkansas Cities) filed a motion to consolidate this proceeding with the proceedings in Docket Nos. ER07-629-000 and ER07-630-000,⁴ and comments.

² The instant docket concerns the 2007 Update as applicable to the City of Hope, Arkansas (Hope), the City of Thayer, Missouri (Thayer), the City of Campbell, Missouri (Campbell), the City of North Little Rock, Arkansas (NLR), the City of West Memphis, Arkansas (West Memphis) and the City of Prescott, Arkansas (Prescott). The 2007 Update is filed in accordance with: (1) the power coordination, interchange and transmission service agreements between Entergy Arkansas and Campbell and Thayer; (2) the transmission service agreement between Entergy Arkansas and Hope; (3) the formula rate revisions accepted by the Commission on February 21, 1995 in Docket No. ER95-393-000, as applicable to Hope, Prescott, Thayer and Campbell; (4) the settlement agreement accepted by the Commission on July 2, 1999 in Docket No. ER98-2028-000; (5) the settlement agreement accepted by the Commission on September 16, 2004 in Docket No. ER03-599-000; (6) the settlement agreement accepted by the Commission on July 22, 2005 in Docket No. ER04-663-000; (7) the rate formulas accepted by the Commission on February 21, 2007 in Docket No. ER07-398, as applicable to Prescott and West Memphis; and (8) the formula rate revisions accepted by the Commission on February 21, 2007 in Docket No. ER07-399-000, as applicable to Hope, Thayer and Campbell (collectively, Agreements).

³ The Agreements provide that, because Entergy Arkansas' Form 1 Annual Report was to be filed April 18, 2007, Entergy Arkansas and Thayer, Hope, Campbell, North Little Rock, West Memphis and Prescott would have until June 1, 2007 to review the calculation of the rate redetermination and file comments.

⁴ All three filings were submitted for a different entity with respect to its 2007 Wholesale Formula Rate Update. Docket No. ER07-629-000 was submitted for AECC and Docket No. ER07-630-000 was submitted for Osceola.

5. In its preliminary protest, Hope argues that Entergy Arkansas is proposing a significant increase in Hope's monthly transmission demand rate that appears to be unjust and unreasonable. Hope asserts that until it reviews Entergy Arkansas' Annual Form 1, which is not to be filed until April 18, 2007, and because it has until June 1, 2007 to file additional comments, it is only raising a number of preliminary issues that do not include every issue that may arise with this filing. Hope raises the following preliminary issues: (1) transmission expense increases; (2) increase in total administrative and general operation and maintenance (O&M) expenses; (3) treatment of regional transmission organization (RTO) and Independent Coordinator of Transmission (ICT) start up costs; (4) how costs associated with hurricanes Rita and Katrina are being allocated; (5) increases in taxes other than income; (6) how independent power producer (IPP) investment in transmission is being handled and if Entergy Arkansas has refunded any IPP investment through transmission service credits; and (7) why no Transmission Equalization Payments were made.

6. On June 1, 2007 (after Entergy Arkansas filed its Annual Form 1), Arkansas Cities raised a number of concerns related to this proceeding: (1) whether any start-up costs associated with Entergy's past efforts at developing a RTO and ICT are being recovered in this proceeding; (2) how costs associated with hurricanes Rita and Katrina are being allocated; (3) the incentive compensation plans allocated to Entergy Arkansas; (4) the level of labor being charged to the transmission function; (5) the increase in total administrative and general O&M expenses; (6) increases in taxes other than income; (7) how IPP investment in transmission is being handled and if Entergy Arkansas has refunded any IPP investment through transmission service credits; (8) the increase in Transmission O&M expenses; and (9) why no Transmission Equalization Payments were made. In this joint pleading, Osceola raises several issues specific to Docket No. ER07-630-000, which will be set forth in the Commission order in that proceeding.

7. Arkansas Cities further seek consolidation of the three proceedings, arguing that the proceedings are similar and pertain to Entergy Arkansas' 2007 Update. They believe that it may be in the public interest to consolidate these proceedings because they are likely to result in settlements as in past Update proceedings, and also to save resources. Arkansas Cities also indicate that AECC does not oppose consolidation.

8. Entergy filed an answer stating that it was not opposed to consolidation. In addition, Entergy states that it has properly calculated the rates in accordance with the applicable rate formulas. However, to the extent the Commission believes that the 2007 Rate Updates justify further investigation, Entergy Services proposes that any further procedures, following acceptance for filing and effectiveness, include settlement judge procedures to allow the parties the opportunity to resolve their differences without the need for a full evidentiary hearing.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer because it has provided information that assisted us in our decision-making process.

B. Hearing and Settlement Judge Procedures

11. Entergy Arkansas' 2007 Update raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

12. Our preliminary analysis indicates that Entergy Arkansas' 2007 Update has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy Arkansas' 2007 Update for filing, suspend it for a nominal period, make it effective March 1, 2007, subject to refund, and set it for hearing and settlement judge procedures.

13. 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. 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.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 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

⁵ 18 C.F.R. § 385.603 (2006).

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. 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).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

14. Given common issues of law and fact, we will grant the Arkansas Cities' motion to consolidate, and consolidate this proceeding with the ongoing proceedings in Docket Nos. ER07-629-000 and ER07-630-000 for purposes of settlement, hearing and decision.

The Commission orders:

(A) Entergy's proposed 2007 Update is hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2007, as requested, subject to refund, as discussed in the body of this order.

(B) Docket No. ER07-628-000 is hereby consolidated with Docket Nos. ER07-629-000 and ER07-630-000.

(C) 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., Ch. I), a public hearing shall be held concerning Entergy Arkansas' 2007 Update. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), 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.

(E) 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.

(F) 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, N.E., 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)

Kimberly D. Bose,
Secretary.