120 FERC ¶ 61,094
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc. Docket No. ER07-956-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 26, 2007)

1. On May 29, 2007 Entergy Services Inc. (Entergy),[1] on behalf of the Entergy Operating Companies,[2] submitted for filing rates pursuant to Service Schedule MSS-3 of the Entergy System Agreement (System Agreement) implementing the Commission's decisions in Opinion Nos. 480 and 480-A. In this order, we accept these proposed rates for filing, and suspend them for a nominal period, to become effective June 1, 2007, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. On June 14, 2001, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint pursuant to section 206 of the Federal Power Act (FPA).[3] The Louisiana Commission alleged that the System Agreement, a rate schedule that includes various service schedules governing, among other things, the allocation of certain costs associated with the integrated operations of the Entergy system, no longer operated to produce rough production cost equalization.

3. In Opinion No. 480,[4] the Commission found that rough production cost equalization had been disrupted on the Entergy system. Opinion Nos. 480 and 480-A

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[1] Entergy Services, Inc. is a wholly owned subsidiary of Entergy Corporation.

[2] The Entergy Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

[3] 16 U.S.C. § 824e (2000).

[4] *Louisiana Public Service Comm'n v. Entergy Services, Inc*., Opinion No. 480,

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approved a numerical bandwidth of +/- 11 percent of the Entergy system average production cost in order to maintain the rough equalization of production costs among the Entergy Operating Companies and required annual filings beginning in June 2007. The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and that any equalization payments would be made in 2007 after a full calendar year of data became available.

4. On April 10, 2006, Entergy submitted a compliance filing to implement the directives of Opinion Nos. 480 and 480-A. The compliance filing included proposed revisions to Service Schedule MSS-3[5] that had not been ordered by the Commission in Opinion Nos. 480 and 480-A. In its order accepting the compliance filing,[6] the Commission rejected these non-compliant amendments and denied, as beyond the scope of the compliance filing, Entergy's request to make adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28. The Commission explained that Entergy must comply with the requirements of Opinion Nos. 480 and 480-A, including the requirement to follow the methodology set forth in Exhibits ETR-26 and ETR-28. The Commission also stated that Entergy should make a section 205 filing if it desired to make any changes to the methodology in Exhibits ETR-26 and ETR-28.

5. The further compliance filing was filed on December 18, 2006 and accepted by the Commission on April 27, 2007.[7] Additionally, on March 30, 2007 and April 6, 2007, the Operating Companies submitted certain proposed modifications to the December 18,

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111 FERC ¶ 61,311 (2005) (Opinion No. 480), *aff'd, Louisiana Public Service Comm'n v. Entergy Services, Inc*., Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A).

[5] Service Schedule MSS-3 includes a methodology for pricing energy exchanged among the Operating Companies and provides for an after-the-fact, hour-by-hour allocation of the cost of energy from an Operating Company whose generation provided energy in excess of that company's load to an Operating Company that produced less than its load. Entergy also has included the formulas for implementing the rough production cost equalization bandwidth remedy required by Opinion No. 480 in Service Schedule MSS-3.

[6] *Louisiana Public Service Comm'n v. Entergy Services, Inc*., 117 FERC ¶ 61,203 (2006).

[7] *Louisiana Public Service Comm'n v. Entergy Services, Inc*., 119 FERC ¶ 61,095 (2007).

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2006 Compliance Filing.[8] On May 25, 2007, the Commission issued four orders regarding those filings.[9] According to Entergy, the proposed rates are calculated in accordance with the Service Schedule MSS-3, as revised, pursuant to the May 25 Orders.

II. Entergy's Filing

6. On May 29, 2007 Entergy filed rates pursuant to Service Schedule MSS-3 of the System Agreement, as revised pursuant to the May 25 Orders, implementing the Commission's decisions in Opinion Nos. 480 and 480-A. Entergy calculated the payments and receipts under the Service Schedule MSS-3 bandwidth formula using data as reported in the Operating Companies' 2006 FERC Form No. 1. Each Operating Company's allocated Average Production Costs are compared to the Operating Company's Actual Production Costs to determine the dollar and percent disparity, as seen below:

	Initial Disparity	**Final Disparity**
Entergy Arkansas, Inc.	-27.99%	-11.00%
Entergy Gulf States, Inc.	8.68%	3.45%
Entergy Louisiana, LLC	8.80%	3.45%
Entergy Mississippi, Inc.	8.00%	3.45%
Entergy New Orleans, Inc.	-2.44%	-2.44%

7. Entergy Arkansas, Inc. (Entergy Arkansas) is the only Operating Company to have an initial disparity exceeding +/- 11 percent. Thus, as seen below, it was the only company to make payments:

	(Payment)/Receipt in Millions of Dollars
Entergy Arkansas, Inc.	(257.1)

[8] See March 30, 2007 filings in Docket Nos. ER07-682-000, ER07-683-000 and ER07-684-000, and April 6, 2007 filing in ER07-727-000.

[9] *Entergy Services, Inc.*, 119 FERC ¶ 61,190 (2007); *Entergy Services, Inc.*, 119 FERC ¶ 61,191 (2007); *Entergy Services, Inc.*, 119 FERC ¶ 61,192 (2007); *Entergy Services, Inc.*, 119 FERC ¶ 61,193 (2007) (*collectively*, May 25 Orders).

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Entergy Gulf States, Inc.	120.1
Entergy Louisiana, LLC	91.0
Entergy Mississippi, Inc.	40.6
Entergy New Orleans, Inc.	0

8. Entergy requests that the Commission accept the proposed rates for filing without suspension, hearing, or investigation. Additionally, Entergy requests waiver of the 60-day prior notice requirement and an effective date of June 1, 2007.

III. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 72 FR 33,478, with interventions and protests due on or before June 19, 2007. Motions to intervene were filed by: Occidental Chemical Corporation (Occidental); City of Osceola, Arkansas (Osceola); Arkansas Electric Energy Consumers, Inc. (AEEC); Louisiana Energy Users Group (LEUG); East Texas Electric Cooperative, Inc. (ETEC); Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), and Tex-La Electric Cooperative of Texas (Tex-La) (collectively, East Texas Cooperatives); Louisiana Public Service Commission (Louisiana Commission); and Mississippi Public Service Commission (Mississippi Commission), Arkansas Public Service Commission (Arkansas Commission), and Council of the City of New Orleans, Louisiana (Council) (collectively, the Retail Regulators). The Louisiana Commission and the Retail Regulators filed protests. On July 5, 2007 Entergy filed an answer to the protests. On July 18, 2007 the Louisiana Commission filed an answer. On July 23, 2007, the Arkansas Commission filed an answer. On July 25, 2007, Entergy filed an answer.

10. The Louisiana Commission argues that Entergy's filing fails to reflect the requirement of Service Schedule MSS-3, effective May 30, 2007, by incorrectly calculating net area requirements as they were calculated in Exhibits ETR-28 and ETR-26 from Docket EL01-88 as required by the Commission. Additionally, the Louisiana Commission argues that Entergy made an improper adjustment in its calculation of Production Revenue Credits – Sale for Resale (Account No. 447) that has the effect of artificially increasing Entergy Arkansas, Inc.'s production costs.

11. The Retail Regulators are concerned that the Commission's ruling(s) in this case could have the unintended effect of precluding the Retail Regulators from examining the prudence of their retail jurisdictional Operating Companies cost inputs in retail rate cases. Therefore, the Retail Regulators request that the Commission clarifies that the scope of this proceeding is limited solely to whether or not the bandwidth payments/receipts calculated by Entergy are just, reasonable, and not unduly discriminatory or preferential and does not extend to a consideration of whether the actual cost inputs underlying the calculations are just, reasonable and prudent.

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12. Alternatively, the Retail Regulators argue that even if the Commission determines that the scope of this proceeding does include a consideration of whether or not each of the underlying cost inputs supporting Entergy's proposed bandwidth payments/receipts are just, reasonable and prudent, Entergy's underlying cost inputs lack sufficient detail to enable any interested party to ascertain the prudence of such costs. To the extent that the Commission intends to undertake a full review of all cost inputs underlying Entergy's proposed bandwidth payments/receipts, the Retail Regulators urge the Commission to set this proceeding for hearing.

13. Finally, the Retail Regulators argue that Entergy has proposed to use the same methodology for allocating costs between wholesale and retail loads and between retail jurisdictions of a single Operating Company that the Commission rejected in Docket No. ER07-683-000.[10] Therefore, the Retail Regulators argue that this aspect of Entergy's filing should be rejected.

IV. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by Entergy, the Louisiana Commission, and the Arkansas Commission, and will, therefore, reject them.

V. Discussion

16. As an initial matter, in the hearing established below, all parties will have the opportunity to raise prudence issues, as we explained in our recent order denying the Arkansas Public Service Commission's complaint in Docket No. EL06-76-000.[11] While this proceeding will ultimately result in a Commission determination that will be binding on the states with respect to the bandwidth payments and receipts, and that determination necessarily will be based on underlying cost inputs and the reasonableness thereof, the Commission cannot determine, absent specific facts, all the circumstances in which a state might be preempted from reviewing the prudence of the underlying production costs incurred for the system. Additionally, we recognize that state commissions have

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[10] *See Entergy Services, Inc.*, 119 FERC ¶ 61,191 (2007).

[11] *Arkansas Public Service Commission v. Entergy Services, Inc.*, 119 FERC ¶ 61,223 (2007).

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jurisdiction over the siting and construction of new generation resources and thus the authority to make prudence determinations at that time.

17. We also note that the proper allocation of bandwidth payments and receipts to wholesale customers may be addressed by the parties under the hearing and settlement judge procedures established in this order. However, any issues related to the allocation of such payments and receipts among retail customers is beyond the jurisdiction of this Commission and, we note, have not been placed at issue before this Commission.

Hearing and Settlement Judge Procedures

18. Entergy's proposed rates raise issues of material fact that cannot be resolved based on the record before us. These issues of material fact are more appropriately addressed in the hearing procedures and settlement judge procedures ordered below.

19. Our preliminary analysis indicates that Entergy's proposed rate schedule 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 Entergy's proposed rates for filing, suspend it for a nominal period, make it effective June 1, 2007,[12] as requested, subject to refund, and set it for hearing and settlement judge procedures.

20. While we are setting the matters discussed herein 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 settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[13] If the parties choose, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.[14] The settlement judge

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[12] *Louisiana Public Service Commission v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 at P 10 (2006). *See also Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

[13] 18 C.F.R. § 385.603 (2007).

[14] If the parties decide to request a specific judge, they must make their joint request to the chief Judge in writing or by telephone a (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).

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shall report to the Chief Judge and the Commission within 30 days of the date of 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 rates are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2007, as requested, subject to refund, as discussed in the body of this order.

(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 regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Entergy's proposed rates pursuant to Service Schedule MSS-3 of the System Agreement implementing the Commission's decisions in Opinion Nos. 480 and 480-A. However, the hearing will be held in abeyance to give the parties time for settlement judge procedures, as discussed in Ordering 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 (2007), 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.

(D) 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.

(E) If the 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

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conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 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.