

undersigned counsel, jointly and severally submit this Complaint and Motion for Consolidation against the 2008 transmission rate redetermination filing submitted on May 30, 2008, by Entergy Services concerning Entergy's formula rate for OATT service. As described more fully below, the 2008 transmission rate redetermination would impose rates that are unjust and unreasonable in violation of the FPA. Joint Complainants further request that the Commission consolidate proceedings on this Complaint with Docket No. ER08-1057-000, the docket assigned to Entergy's 2008 rate redetermination filing.

I. COMMUNICATIONS

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II. BACKGROUND AND DESCRIPTION OF THE PARTIES

A. AECC

AECC is an electric generation and transmission cooperative incorporated under Arkansas law with its principal place of business in Little Rock, Arkansas. AECC provides wholesale electricity to its seventeen electric distribution cooperative members.² These distribution cooperatives in turn provide electricity at retail to approximately 460,000 consumers, primarily in Arkansas. The certified service territories of AECC's member distribution cooperatives extend into each of the seventy-five counties in Arkansas and cover approximately 60% of the state's geographic area.

The loads and resources of AECC and its members are located in the control areas operated by three entities: American Electric Power Company's Southwestern Electric Power Company, Entergy Corporation's Entergy Arkansas, Inc. ("Entergy Arkansas"), and the Southwestern Power

² AECC's seventeen electric distribution cooperative members are: Arkansas Valley Electric Cooperative Corp. (Ozark, Arkansas); Ashley-Chicot Electric Cooperative, Inc. (Hamburg, Arkansas); C&L Electric Cooperative Corp. (Star City, Arkansas); Carroll Electric Cooperative Corp. (Berryville, Arkansas); Clay County Electric Cooperative Corp. (Corning, Arkansas); Craighead Electric Cooperative Corp. (Jonesboro, Arkansas); Farmers Electric Cooperative Corporation (Newport, Arkansas); First Electric Cooperative Corp. (Jacksonville, Arkansas); Mississippi County Electric Cooperative, Inc. (Blytheville, Arkansas); North Arkansas Electric Cooperative, Inc. (Salem, Arkansas); Ouachita Electric Cooperative Corp. (Camden, Arkansas); Ozarks Electric Cooperative Corp. (Fayetteville, Arkansas); Petit Jean Electric Cooperative Corp. (Clinton, Arkansas); Rich Mountain Electric Cooperative, Inc. (Mena, Arkansas); South Central Arkansas Electric Cooperative, Inc. (Arkadelphia, Arkansas); Southwest Arkansas Electric Cooperative Corp. (Texarkana, Arkansas); and Woodruff Electric Cooperative Corp. (Forrest City, Arkansas).

Administration. AECC relies on the transmission system of each of these three entities to serve its member loads in that entity's control area, and thus is a transmission-dependent utility on the transmission systems of those entities. AECC is a member of the Southwest Power Pool ("SPP").

B. MDEA

MDEA is a joint action agency organized and existing under the laws of the State of Mississippi. Clarksdale and Yazoo City are the current members of MDEA. Clarksdale and Yazoo City own and operate municipal electric systems for the purpose of serving customers located in and near the Cities. In addition to facilities for the transmission and distribution of electricity, Clarksdale owns and operates approximately 361 MW of gas-fired generation capacity. Clarksdale utilizes portions of the output of its generating facilities to serve the needs of Clarksdale's native load customers and sells the remainder for resale in the power markets in the South-Central part of the country. In addition to facilities for the transmission and distribution of electricity, Yazoo City owns and operates approximately 34 MW of gas-fired generation capacity. MDEA also owns a 23-mile, 230 kV transmission line from the Clarksdale system interconnected with the Entergy transmission system on Entergy's Ritchie-Batesville 230 kV transmission line near Lula, Mississippi. Clarksdale and Yazoo City are members of the SPP.

For many years, Clarksdale and Yazoo City received transmission and ancillary services from Entergy under contracts between Entergy and the Municipal Energy Agency of Mississippi ("MEAM"), of which Clarksdale and Yazoo City were members until August 25, 1998, when Clarksdale and Yazoo City terminated their membership in MEAM. Clarksdale and Yazoo City paid MEAM for the transmission services that MEAM procured from Entergy on their behalf. Clarksdale and Yazoo City formed MDEA following termination of their

membership in MEAM. Since May 1, 2001, MDEA, Clarksdale, and Yazoo City have received Network Transmission Service from Entergy pursuant to the terms of the Network Operating Agreement, Network Integration Transmission Service Agreement, and Interconnection Agreement approved in Dockets Nos. ER01-1593-000 and ER01-1866-000.

C. SMEPA

SMEPA is an incorporated, non-profit cooperative electric power association, organized and operating under and pursuant to Chapter 184, Mississippi Laws of 1936, as amended; Section 5463, *et seq.*, Vol. 4A Recompiled, Mississippi Code of 1942, and is a public utility under the laws of the State of Mississippi. SMEPA is owned and controlled by its members, which are distribution rural electric power associations, serving rural areas in Mississippi at retail. The loads served by SMEPA's member distribution cooperatives are predominantly domestic and include substantial farm loads. SMEPA currently receives transmission service from one of the Entergy Operating Companies, Entergy Mississippi, Inc. ("Entergy Mississippi") (formerly known as Mississippi Power & Light Company, or "MP&L"), pursuant to an Interconnection Agreement between MP&L and SMEPA dated July 18, 1979, as amended. The Interconnection Agreement also includes rate schedules for the provision of maintenance service, emergency service, replacement energy, and economy energy. SMEPA currently receives transmission service priced pursuant to Entergy's OATT. In addition, SMEPA has from time-to-time made reservations and entered into Transmission Service Agreements under Entergy's OATT for point-to-point service.

D. Entergy

Entergy Services is wholly owned by Entergy Corporation, an investor-owned registered public utility holding company, organized under the laws of the State of Delaware, with its

principal place of business in New Orleans, Louisiana. Entergy Services acts as the agent of its affiliated companies, which, *inter alia*, generate, transmit, distribute and sell electric power and energy at wholesale and retail. These affiliated operating utilities are Entergy Arkansas, Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy Mississippi, Entergy New Orleans, Inc., and Entergy Texas, Inc. (collectively, the “Entergy Operating Companies”).

III. BACKGROUND

On May 30, 2008, Entergy filed revised transmission rates purportedly in accordance with the rate formula in its tariff and with the partial settlement filed by Entergy on January 18, 1996, in Docket No. ER95-112-000 (“1998 Settlement”).³ Entergy’s May 30, 2008 rate redetermination filing was assigned Docket No. ER08-1057-000. On June 6, 2008, Entergy filed a correction to its May 30 rate redetermination filing; this filing was assigned Docket No. ER08-1057-001. On June 20, 2008, AECC, MDEA and SMEPA jointly and severally filed a Motion to Intervene and Protest which pointed out a number of aspects by which the proffered rate redetermination filing appeared to fail to carry Entergy’s burden of proof that it had properly complied with the requirements of the formula rate and which requested that the Commission set the matter for hearing. Several other parties filed motions to intervene and protests as well. On July 7, 2008, Entergy filed a Motion for Leave to Answer and Answer to the Joint Complainants’ Motion to Intervene and Protest, as well as to the protests of several other parties. On July 22, 2008, Joint Complainants filed a Motion for Leave To Respond and Response (“July 22 Response”) which demonstrated that: (1) initiating hearing and settlement judge procedures for the rate redetermination filing was consistent with both Entergy’s OATT and Commission precedent concerning earlier Entergy rate redetermination proceedings; and (2) pursuant to

³ The settlement was accepted by the Commission in *Entergy Services, Inc.*, 85 FERC ¶ 61,163 (1998).

Commission precedent, namely, *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098 at P 47 (2008), Entergy has the burden of proof concerning whether it has properly complied with the OATT's formula rate. The Commission has not yet acted on the motions to intervene and protests and answers in Docket No. ER08-1057-000.

Joint Complainants file this Complaint as a precautionary measure. The settlement in Docket No. ER95-112-000 provides:

The FERC Staff, Customers, and Companies shall have 120 days after each such filing to review the redetermination of the Rates and file a complaint at the FERC concerning such redetermination The redetermined Rates shall be subject to refund or surcharge until the latest of (1) the end of the review period, if at such time there is no outstanding, unresolved complaint pursuant to this section; (2) the final resolution of any complaint filed pursuant to this section or (3) any required corrections have been made. Any errors in data or application of the formulas in Attachments A and B to this Appendix C to the TST that are detected by any party during the review period shall be corrected by Companies as soon as possible after the end of the review period. A corrected filing of the redetermined Rates shall then be submitted to the FERC with a copy to each Customer. . . .⁴

In the absence of an order in Docket No. ER08-1057-000 setting Entergy's 2008 rate redetermination filing for hearing, Joint Complainants file this complaint within the 120-day review period described above in order to protect their right to refunds. Joint Complainants note that the fact that they are filing this complaint pursuant to, *inter alia*, Section 206 of the FPA does not, as discussed in their July 22 Response (at 5-6), change the fact that Entergy retains the burden of proof to demonstrate that it has correctly applied its formula rate.

⁴ 1998 Settlement, Attachment 1, Pages 10-11 of 23, Appendix C, Pages 10-11 of 11; *see also* Entergy OATT, Schedule 7, Appendix A at Pages 8-9 of 9 (Original Sheet Nos. 160-61); Entergy OATT, Attachment H, Appendix 1 at Pages 4-5 of 5 (Original Sheet Nos. 316-17).

IV. COMPLAINT

Joint Complaints are filing this Complaint because the rates proposed by Entergy in its 2008 rate redetermination filing appear unjust and unreasonable and unduly discriminatory under the FPA.

Entergy proposes to decrease its formula rate for long term firm transmission service from \$1.28/kW/mo. (based upon the March 7, 2008 settlement in the 2007 Rate Redetermination, Docket No. ER07-927-000) to \$1.27/kW/mo., an approximate 1% reduction to the previous settlement rate. However, the decrease in the unit charge for long term firm transmission is a result of an increase in the transmission demand on the Entergy system. Entergy's proposed 2008 Network Integration Transmission Service Revenue Requirement ("TRR") is \$31.4 million or 7.5% higher than the TRR amount in the settlement agreed to in the ER07-927-000 docket.⁵

Below are areas in which Entergy has not met its burden of proof concerning whether it has properly applied the formula rate, and therefore in which Entergy's proposed rates appear unjust, unreasonable and unduly discriminatory:

1. **Storm Expenses.** According to Entergy, some storm expenses arising from Hurricane Katrina have been booked as regulatory assets and are not included in this filing, although any hurricane-related costs that were eligible for capitalization in 2007 have been capitalized and are included in the 2007 cost data. Entergy has not demonstrated that its accounting and ratemaking treatment of the storm costs has been appropriate. Entergy's filing does not provide any support for the plant cost capitalized in order to determine whether the new facilities are properly

⁵ The uncontested settlement in Docket No. ER07-927-000 was filed on March 7, 2008 and was subsequently certified to the Commission on March 31, 2008. *See Entergy Servs., Inc.*, 122 FERC ¶ 63,017 (2008). The settlement was conditionally approved by the Commission by letter order dated July 29, 2008, 124 FERC ¶ 61,100.

recorded as either transmission- or distribution-related. In addition, Entergy has included hurricane-related securitization costs in the Entergy Gulf States Louisiana (Schedule D.4.2.1) and Entergy Louisiana (Schedule D.4.3.1) plant costs. Entergy has not demonstrated that both the capitalized plant costs and deferred costs (including the applicable carrying charge rates) relating to storm expenses are reasonable and have been treated properly pursuant to the formula rate. Accordingly, Entergy has not met its burden of proof on this item.

2. Revised Cost Allocations. In a revised Form 1, approximately \$2 million of the Entergy Arkansas outside services expense originally booked to Account 923 was removed from A&G expense and allocated to Entergy's other functional groups, resulting in increased transmission O&M expense. Entergy has not demonstrated that this increased cost allocation is appropriate. Entergy provided some additional information in response to a discovery request of the East Texas Cooperatives.⁶ Further review of this and potentially other related data is required to determine whether Entergy has properly adjusted these costs to determine the proper level of resulting costs allocated to wholesale transmission customers.

3. Schedule 10 Rates. Pursuant to the settlement in *Entergy Services, Inc.*, Docket No. ER07-93-000, Entergy's filing includes the redetermined rates associated with Schedule 10 – Recovery of Independent Coordinator of Transmission Operation Costs. The Schedule 10 rate in Entergy's filing includes the actual cost for 2007 of \$12.1 million in addition to a \$4.4 million Adjustment and a true-up amount of -\$4,706. The \$4.4 million Adjustment represents what

⁶ Although the data requests sent to Entergy in ER08-1057 pursuant to the rate redetermination provisions of the OATT thus far were not designated as settlement documents subject to the settlement privilege, Entergy has claimed such privilege in its responses to the data requests sent to it. Accordingly, Joint Complainants will not discuss the specifics of these responses, but merely note their existence and, where appropriate, that they do not provide sufficient information to conclude that Entergy has met its burden of proof in this proceeding. The fact that Entergy has treated its data responses as subject to the Commission's settlement privilege is all the more reason to set both Docket No. ER08-1057 and this Complaint for hearing, suspend the hearing and assign the matter to a settlement judge, as requested by Joint Complainants in their Motion for Leave to Respond and Response in Docket No. ER08-1057, filed on July 22, 2008.

Entergy explains in its footnote 2 of Schedule F.2 as the “Adjustment For Known or Projected Changes in ICT OP Costs.” Entergy has not provided any supporting workpapers or detailed explanations for these costs. Also, the \$12.1 million of prior year’s 2007 annual cost included in the determination of the total ICT Operations Cost of \$16.5 million total has not been supported with sufficiently detailed data.

4. Prepaid Taxes and Insurance. Entergy’s prepaid taxes and insurance increased from \$24.9 million in 2006 to \$40.5 million in 2007, an increase of more than 62%. This increase, for which Entergy’s filing provides no supporting detail or explanation, results in an increase to rate base of almost \$16 million. Entergy provided some initial data in its response to requests of the East Texas Cooperatives. However, Joint Complainants have asked follow-up questions based upon Entergy’s response, which are pending as of this date. Without at least the requested additional information, it is impossible to determine whether Entergy’s rate redetermination has properly complied with the formula rate.

5. IPP Prepayments. Further analysis is required to confirm whether Entergy has properly deducted all un-refunded IPP prepayments from transmission plant.

6. O&M Expense. Entergy’s 2007 total transmission O&M expense of approximately \$89 million is almost \$9 million greater than in 2006, resulting in an 11% annual increase in total transmission O&M expense. Although Joint Complainants have received information in discovery, those responses have not addressed their concerns, and Joint Complainants have asked follow-up questions seeking further information that may shed light on a number of significant increases in O&M expense from 2006 to 2007. Additionally, as noted above, Entergy Arkansas revised and resubmitted its 2007 Form 1 to redistribute almost \$2 million of O&M A&G expense to its other functional groups. Based on its filing and data responses to date, Entergy has not

demonstrated that these adjustments are reasonable and proper under the formula rate and have resulted in proper functional group cost assignment.

7. **A&G Expense Account 930.2.** A&G Expense Account 930.2, A&G Miscellaneous General Expenses, shows unexplained significant increases from \$22.9 million in 2006 to \$25.8 million in 2007, a 13% increase. Joint Complainants are awaiting the necessary explanation from Entergy in order to be able to determine whether Entergy's Account 930.2 expenses are reasonable and cost justified. At this point, Entergy has not carried its burden of proof on this item.

8. **Entergy Services Charges.** Based upon Entergy's 2007 resubmitted Form 1s, the Entergy Operating Companies recorded the following labor charges from Entergy Services in their O&M expense:

Entergy Arkansas	\$51,657,196
Entergy Gulf States La.	\$65,610,448
Entergy Louisiana	\$58,841,169
Entergy Mississippi	\$28,731,891
Entergy New Orleans	<u>\$13,187,527</u>
Total	\$218,028,231

The \$218.0 million of labor expense (a 10% increase compared to the \$198.1 million in ESI labor expense in 2006) included in Entergy's O&M expense is separate from and in addition to those ESI costs that are allocated and charged to the Entergy Operating Companies' capitalized plant. Joint Complainants have received some information from Entergy that purports to support

Entergy's allocated service company costs. However, at this time Entergy has not yet supported its determinations of allocated costs. Joint Complainants have asked additional questions to receive the necessary information in order to further analyze and determine the reasonableness of Entergy's costs.

9. Payroll-related Taxes. Entergy's payroll-related taxes increased from \$37 million in 2006 to \$40.8 million in 2007, an annual increase of more than 10%. Additional information and analysis are necessary to determine the reasonableness of Entergy's increased payroll taxes. Joint Complainants have asked Entergy to explain this increase in payroll-related taxes; however, at this time Joint Complainants have not received this requested data. Currently, Entergy has not met its burden of proof on this matter.

10. Separation of Entergy Gulf States. Although Entergy has provided some additional information in its response to Joint Complainants' request, further information and analysis are necessary to assure that Entergy has adhered to proper accounting and ratemaking principles in separating Entergy Gulf States into Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc., as that separation may affect Entergy's OATT rates.

11. Executive Bonus Compensation. Joint Complainants have, in the past, been unable to obtain sufficiently detailed information regarding Entergy's inclusion of executive bonus compensation in the formula rates for transmission service under the OATT. It is inappropriate for Entergy's OATT rate to include executive bonus compensation that is related to unregulated merchant generation or that is tied to financial performance of unregulated subsidiaries. To the extent Entergy is including any bonus compensation in the charges under the OATT formula rate that is not tied to transmission performance, as was alleged in the complaint filed on June 27, 2008, by the NRG Companies in Docket No. EL08-72-000, Entergy is inappropriately flowing

through the formula non-transmission related costs, or the formula is, as the NRG Companies contend, unjust and unreasonable.

V. RULE 206 REQUIREMENTS

As described above, Joint Complainants are filing this Complaint as a precautionary measure, as they have already protested Entergy's 2008 rate redetermination filing, and a Commission order on that filing has not yet been issued as of the date of the filing of this Complaint. As discussed above, in certain respects, Entergy's 2008 rate redetermination filing does not comport with the formula rate, and in these respects Entergy has not carried its burden of proof that its application of the formula rate is correct and the resulting rate is just and reasonable and not unduly discriminatory. Pursuant to Rule 206(a)(4), Joint Complainants state that they have not yet been able to quantify the financial impact on the rate. Pursuant to Rule 206(a)(6), Joint Complainants reiterate that the issues in this Complaint are identical to those in Docket No. ER08-1057-000, -001, and note that some of the issues may overlap with those in Docket No. EL08-72-000. Pursuant to Rule 206(a)(9), Joint Complainants note that they have not yet used any of the Commission's informal dispute resolution procedures, because they are requesting herein that this matter be set for hearing and settlement judge proceedings. To the extent necessary, Joint Complainants seek waiver of any Rule 206 requirements that they may not have fully satisfied because, as explained herein, Joint Complainants are complying with the procedure set forth in Entergy's OATT. Moreover, the relief that Joint Complainants are requesting is merely that the Complaint be consolidated with the existing proceeding in Docket No. ER08-1057-000 and that the consolidated cases be set for hearing and settlement judge procedures.

VI. MOTION TO CONSOLIDATE

Due to the complete identity of issues of fact and law between both the instant Complaint and Docket No. ER08-1057-000, Joint Complainants respectfully move that the Commission consolidate these two dockets. Joint Complainants would not oppose consolidation of the instant Complaint and Docket No. ER08-1057-000 with the complaint filed by the NRG Companies in Docket No. EL08-72-000.

VI. CONCLUSION

WHEREFORE, Joint Complainants respectfully request that the Commission:

1. Consolidate this Complaint with the proceeding in Docket No. ER08-1057-000;
2. Set for hearing in the consolidated proceedings the justness and reasonableness of the rate redetermination, including the justness and reasonableness of the costs claimed to underlie such rate redetermination;
3. Order that the amounts collected pursuant to the rate redetermination be collected subject to refund pending the outcome of the hearing on such rates;
4. Order that at any hearing held in this matter each of the Joint Complainants be permitted to appear by counsel, present evidence, and cross-examine the witnesses of other participants; and
5. Grant such other and further relief as the Commission may deem just and appropriate.

Respectfully submitted,

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Dated: September 26, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings. Joint Complainants have also served the following individuals who are designated as the appropriate corporate officials for Entergy on the Commission's website:

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Dated at Washington, D.C., this 26th day of September, 2008.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Arkansas Electric Cooperative Corporation,)
Mississippi Delta Energy Agency, and)
South Mississippi Electric Power Association

Complainants

v.

Docket No. EL08-___

Entergy Services, Inc.

Respondent

NOTICE OF COMPLAINT

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Take notice that on September 26, 2008, Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, and South Mississippi Electric Power Association (“Joint Complainants”) filed a formal complaint against Entergy Services, Inc. (“Entergy”) pursuant to the annual rate redetermination provisions contained in Entergy’s Open Access Transmission Tariff, and pursuant to Sections 206, 306 and 309 of the Federal Power Act and Rule 206 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, alleging that Entergy’s 2008 transmission rate redetermination would impose rates that are unjust and unreasonable in violation of the Federal Power Act.

Joint Complainants certify that copies of the complaint were served on the contacts for Entergy as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file

electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary

Document Content(s)

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