

119 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER07-684-000

ORDER REJECTING PROPOSED SYSTEM AGREEMENT AMENDMENT

(Issued May 25, 2007)

1. On March 30, 2007, Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies,¹ submitted an amendment to the Entergy System Agreement (System Agreement). As discussed below, the Commission finds that the proposal is unjust and unreasonable and therefore rejects the proposed amendment.

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).² 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.

¹ The Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), and Entergy New Orleans, Inc.

² 16 U.S.C. § 824e (2000).

3. In Opinion No. 480,³ the Commission found that rough production cost equalization had been disrupted on the Entergy system. Opinion Nos. 480 and 480-A approved a numerical bandwidth of +/- 11 percent of the Entergy system average production costs in order to maintain rough equalization of production costs among the Entergy Operating Companies and required annual filings beginning in June 2007.⁴ The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and clarified in Opinion No. 480-A that any equalization payments would be made in 2007 after a full calendar year of data became available.⁵

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-3⁶ that had not been ordered by the Commission in Opinion Nos. 480 and 480-A. In its order accepting the compliance filing,⁷ 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

³ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 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).

⁴ Opinion No. 480, 111 FERC ¶ 61,311 at P 138-39.

⁵ Opinion No. 480-A, 113 FERC ¶ 61,282 at P 54.

⁶ 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 has also included the formulas for implementing the rough production cost equalization bandwidth remedy required by Opinion No. 480 in Service Schedule MSS-3.

⁷ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006) (*Compliance Order*).

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.

II. Entergy's Filing

5. Entergy proposes to amend section 30.12 of Service Schedule MSS-3, which provides the formula for determining each Operating Company's actual production costs.⁸ Entergy states that Exhibits ETR-26 and ETR-28 reflect the results of gas hedging by some Operating Companies in specific jurisdictions, which have historically been recorded in FERC Account 501, Fuel. Entergy notes that consistent with Exhibits ETR-26 and ETR-28, the formula for determining fuel expenses found in section 30.12 includes Account 501. However, Entergy states that last year it began recording hedging results in Account 557, Other Expenses. Thus, Entergy now proposes to amend the definition of Production O&M Fuel Expenses recorded in FERC Accounts 501, 518, and 547 to include the term "and Net Hedging Costs as recorded in Account 557" so that the section 30.12 formula continues to capture the hedging results.

6. Entergy requests that the proposed revisions be allowed to go into effect without suspension or hearing and that any waivers be granted to allow the revisions to take effect no later than 60 days after the filing date. Entergy requests an effective date of May 29, 2007.

III. Notice of Filing and Responsive Pleadings

7. Notice of Entergy's filing was published in the *Federal Register*, 72 Fed. Reg. 17,548 (2007), with comments, protests or interventions due on or before April 20, 2007. The Arkansas Public Service Commission (Arkansas Commission), the Mississippi Public Service Commission (Mississippi Commission), the Louisiana Commission, and the City Council of the City of New Orleans (New Orleans) filed notices of intervention.

8. On April 9, 2007, the Arkansas Commission, the Mississippi Commission, the New Orleans, and the Louisiana Commission filed a joint request for extension of time to file protests and comments. On April 10, 2007, the Commission granted an extension of time to file protests and comments until April 27, 2007. Louisiana Energy Users Group, Occidental Chemical Corporation, and Calpine Corporation filed timely motions to intervene. The Louisiana Commission and the Arkansas Commission filed protests and

⁸ An Operating Company's production costs are the sum of the company's actual variable production costs and actual fixed production costs.

comments. The Arkansas Electric Energy Consumers (AEEC) filed a timely motion to intervene and protest. On May 14, 2007, Entergy submitted an answer to the protests.

9. The Louisiana Commission argues that Entergy changed its substantive methodology for calculating production costs without the Commission's prior approval. Specifically, it asserts that Entergy changed its accounting for 2006 fuel hedging gains and losses so as to remove these costs from FERC Account 501 and from the methodology used in Exhibits ETR-26 and ETR-28. It contends that Entergy is attempting to put fuel hedging costs "in play" and subject to potential refunds under section 205 when the costs should be subject to equalization. Such a change of accounting constitutes a substantial modification in Entergy's methodology for comparing the Operating Companies' production costs, which the Louisiana Commission argues is in violation of Opinion No. 480, the *Compliance Order*, and the Commission's accounting regulations. Therefore, it contends that while the Commission should preserve the inclusion of natural gas hedging costs in the formula, the Commission should also direct Entergy not to change its accounting for the hedging costs.

10. The Louisiana Commission argues that Entergy's filing should be treated not as a section 205 filing, but rather as an amended compliance filing. It further argues that the Commission should ensure that Entergy's tariff conforms with the *Compliance Order* and its accounting conforms with the Commission's regulations.

11. The Louisiana Commission asserts that Entergy's unilateral change of accounting removes more than \$100 million in fuel hedging losses from an account included in the production cost formula approved by the Commission, *i.e.* Account 501. According to the Louisiana Commission, Entergy began experiencing significant losses in its natural gas hedging program in 2006 that would affect the System Agreement bandwidth remedy payments. In response, Entergy decided in September 2006 to change its accounting to move hedging losses from Account 501 to Account 557.⁹ Further, the Louisiana Commission states that the unilateral change violates the Commission's directive that

⁹ The Louisiana Commission states that Entergy Louisiana and Entergy Gulf States sought approval from the Louisiana Commission for a natural gas hedging program for the purpose of stabilizing the cost of fuel used in generating electricity. The Louisiana Commission accepted these initiatives and the Mississippi Commission accepted a similar proposal for Entergy Mississippi. However, when the Louisiana Commission learned that Entergy intended to change its accounting for fuel hedging costs, it prohibited Entergy Louisiana and Entergy Gulf States from making accounting changes. It states that Entergy was unable to produce any documents to justify its accounting change. Louisiana Commission Protest at 8.

Entergy not make changes to the methodology in Exhibits ETR-26 and ETR-28.¹⁰ It also contends that Entergy's failure to seek accounting guidance from the Commission violates the Commission's regulations.¹¹

12. Additionally, the Louisiana Commission argues that Entergy is wrongly transferring the fuel hedging costs. It states that for hedges, the ineffective portion (losses) of the hedge should be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income.¹² Because the hedged item is natural gas and all natural gas costs are accounted for in Account 501, the Louisiana Commission argues that the only way to reflect the ineffective portion of a cash flow hedge is to include the gains and losses from the hedging in the same account.

13. The Louisiana Commission also argues that the application of the accounting change to the 2006 remedy period is an impermissible retroactive ratemaking. It states that Entergy's internal decision to change the accounting was not made until September 2006, at which time most of the gas hedging losses for the year had already been incurred by Entergy.

14. AEEC states that it cannot determine whether Entergy's filing is just and reasonable because Entergy failed to provide sufficient information. AEEC argues that the Commission should allow parties to conduct appropriate discovery and should order a hearing. AEEC also requests that the proceedings in this and several other dockets¹³ related to the System Agreement be consolidated for efficiency.

¹⁰ *Compliance Order*, 117 FERC ¶ 61,203 at P 69.

¹¹ *See System Energy Resources, Inc.*, Opinion No. 333, 48 FERC ¶ 61,321 (1989).

¹² *See* 18 C.F.R. Part 101 General Instruction 24(E).

¹³ The other dockets mentioned by AEEC include Docket Nos. ER07-682-000 and ER07-683-000, which also incorporate proposed changes to Service Schedule MSS-3. AEEC also lists Docket No. EL07-48-000, which involves a petition for declaratory order by Entergy seeking to have a generator, constructed or purchased by an Operating Company to serve system load, found to be in the public interest and declared a System Resource with costs reflected in the System Agreement formula rates. The fourth docket is Docket No. EL07-52-000, and involves a complaint by the Louisiana Commission to revise Service Schedule MSS-3 to exclude interruptible load from the allocation of capacity costs among the Operating Companies and to revise the pricing of energy from the Vidalia hydroelectric plant.

15. The Arkansas Commission states that it supports, in principle, Entergy's proposal to amend the definition in section 30.12 because this modification would be consistent with Exhibits ETR-26 and ETR-28. However, the Arkansas Commission proposes one modification to the amendment. It contends that the hedging losses amount to approximately \$140 million, but that none of those hedging losses are on Entergy Arkansas' books because it does not have a hedging program. Thus, the Arkansas Commission argues that Entergy Arkansas should not suffer the consequences of the recent hedging losses without benefiting from the earlier hedging gains. It proposes that the hedging gains or losses utilized for bandwidth purposes be a five-year average of the gains and losses recorded in Account 557.

IV. Discussion

A. Procedural Matters

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

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

B. Commission Determination

18. The Commission's accounting rules for hedging are addressed in General Instruction No. 24, Accounting for Derivative Instruments and Hedging Activities. General Instruction No. 24 states that gains and losses, or ineffective portion, from hedge transactions "be reflected in the same income or expense account that is used when the hedged item enters into the determination of net income." In this case, the hedged item is natural gas which is reflected in Account 501, therefore the gains or losses on gas hedges are to be charged or credited to Account 501, as appropriate. The purpose of providing hedges is to manage the price volatility associated with natural gas burned at power stations. Accordingly, we will reject Entergy's proposed amendment to its System Agreement.

19. Additionally, we will require Entergy to revise its procedures to ensure that Account 501 is used to record gains and losses on gas hedges that are used to manage the price volatility associated with natural gas burned at power stations. In addition, we will require the Entergy Operating Companies to resubmit their 2006 FERC Form No. 1, within 30 days from the date of this order, to properly report the balance for Account 501

and Account 557. Because we are requiring Entergy to use Account 501 to record gas hedging results rather than Account 557, we reject the Arkansas Commission's request to implement a five-year average of the hedging costs.

20. Further, we will deny AEEC's request to consolidate the instant proceeding with Docket Nos. ER07-682-000, ER07-683-000, EL07-48-000 and EL07-52-000. Generally, we consolidate cases where there are common issues of law and fact for purposes of settlement, hearing and decision.¹⁴ Here, we are not instituting hearing or settlement judge procedures and, accordingly, consolidation is not warranted.

The Commission orders:

(A) Entergy's proposed amendments to the Entergy System Agreement are hereby rejected, as discussed in the body of this order.

(B) Entergy is hereby directed to revise its accounting procedures for recording gains and losses on gas hedges, and to resubmit the Entergy Operating Companies' 2006 FERC Form No. 1, within 30 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁴ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,391, at P 45 (2004); and *Cleco Power LLC*, 118 FERC ¶ 61,074, at P 32 (2007).