

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Entergy Services, Inc.

Docket No. ER04-638-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS  
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 6, 2004)

1. In this order, we accept for filing Entergy Services, Inc.'s (Entergy) proposed revisions to its Open Access Transmission Tariff (OATT), suspend them for a nominal period, to become effective May 11, 2004, subject to refund. We also set the proposed tariff revisions for hearing but hold the hearing in abeyance so that the parties may engage in settlement discussions. This action benefits customers because it provides the parties with a forum in which to resolve their disputes over Entergy's proposed revisions to its OATT, and it benefits native load customers because it establishes procedures to ensure that Entergy's transmission rates are just and reasonable.

**Background**

2. Entergy's OATT contains formulas to calculate rates for point-to-point and network transmission service. The OATT also states that firm and non-firm transmission rates shall be redetermined each year based on data from the preceding calendar year. To implement the redetermined rates, the OATT requires Entergy to submit an "informational filing" on or about May 1 of each year containing a calculation and comparison of the rates and all supporting cost of service data for those rates.

3. On December 31, 2002, Entergy filed with the Commission a long-term firm point-to-point transmission service agreement between Entergy and the City Water & Light Plant of the City of Jonesboro (the Jonesboro TSA),<sup>1</sup> which was approved by the

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<sup>1</sup> See Docket No. ER03-363-000, et al.

Commission on July 2, 2003.<sup>2</sup> The Jonesboro TSA was the first instance of an incrementally priced transmission service agreement under Entergy's OATT.<sup>3</sup>

### **Entergy's Revisions to Its OATT**

4. On March 11, 2004, Entergy submitted for filing revised tariff sheets to implement proposed revisions to its transmission service rate formulas.<sup>4</sup> The proposed modifications remove from the embedded-rate calculation any revenues received from incrementally priced contracts for transmission service, as well as the loads associated with such contracts. According to Entergy, these changes allow recovery of total transmission costs from all customers. Entergy notes that, although it only has one such contract (the Jonesboro TSA), the changes to the rate formulas are intended to apply to all incrementally priced contracts it may enter into with customers on its transmission system in the future. In addition, Entergy requests an effective date of May 10, 2004 for the revisions to its OATT.

### **Notice of Filings and Responsive Pleadings**

5. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 13,518 (2004), with comments, interventions, and protests due on or before April 1, 2004. The City of Jonesboro; AECC, the South Mississippi Electric Power Association, the Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, and the Public Service Commission of Yazoo City (collectively, Joint Protestors); Cleco Power LLC; Lafayette Utilities System and Louisiana Energy and Power; and NRG filed timely motions to intervene. The Arkansas Public Service Commission, the Mississippi Public Service Commission, the Council of the City of New Orleans, and the Louisiana Public Service Commission filed notices of intervention. The Joint Protestors and NRG Companies (NRG) filed protests. In addition, Entergy filed an answer to the protests.

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<sup>2</sup> Entergy Services, Inc., 104 FERC ¶ 61,028 (2003). Arkansas Electric Cooperative Corporation, Inc. (AECC) has filed a request for rehearing of that order, which is currently pending.

<sup>3</sup> Pursuant to the Jonesboro TSA, the City of Jonesboro agreed to pay the contract price in advance, and Entergy estimated that the prepayment would yield an effective rate for transmission service of \$1.00/kW/month for the 13-year contract period.

<sup>4</sup> The proposed revised sheets are: First Revised Sheet No. 150, Second Revised Sheet No. 151, First Revised Sheet No. 152, First Revised Sheet No. 153, First Revised Sheet No. 227, and First Revised Sheet No. 228, Second Revised Volume No. 3.

6. The Joint Protestors request that the Commission set Entergy's proposed formula rate revisions to its OATT for hearing to determine the justness and reasonableness of the modifications. NRG requests that the Commission reject Entergy's proposed rate formula revisions as being discriminatory to Entergy's embedded-rate customers. Both the Joint Protestors and NRG assert that Entergy has not shown that its proposed rate formula revisions will not result in charges to embedded-cost customers in excess of their pro-rata usage of Entergy's transmission system if the revenue generated under incremental contracts is less than a load-ratio share of Entergy's transmission revenue requirement. Furthermore, although the Joint Protestors do not oppose Entergy's use of incrementally priced contracts, they state that they are unwilling to subsidize those rates when they recover less than an appropriate share of Entergy's transmission revenue requirement. In this regard, the Joint Protestors and NRG assert that Entergy, and not its embedded-cost customers, should bear the risk of any revenue shortfall created by Entergy's choice to charge incremental-rate and embedded-rate customers different rates. In addition, the Joint Protestors propose an alternative approach which they believe might better assure comparable treatment between incremental-rate and embedded-rate customers.

## **Discussion**

### **Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), 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.

### **Hearing and Settlement Judge Procedures**

8. Entergy's proposed tariff revisions to its OATT raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.<sup>5</sup> Our preliminary analysis indicates that these revisions 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

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<sup>5</sup> Although we decline to reject, as requested by NRG, Entergy's proposed rate revisions in this order, we note that NRG may raise at hearing any of the issues raised in its protest.

proposed tariff revisions for filing, suspend them for a nominal period, make them effective May 11, 2004,<sup>6</sup> subject to refund, and set them for hearing and settlement judge procedures.

9. While we are setting this matter 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.<sup>7</sup> 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.<sup>8</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning 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 or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Entergy's proposed revised tariff sheets, which are listed in footnote four, are accepted for filing, suspended for a nominal period, to become effective May 11, 2004, 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 FPA, particularly sections 205 and

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<sup>6</sup> We note that Entergy's proposed effective date for its revisions to its OATT falls one day short of the required 60-day notice period. The 60-day notice period required by our regulations starts to run on the first day after the date of filing. Thus, the earliest date that a filing may become effective, absent waiver of the notice requirements, is the day after the 60-day notice period has expired or, as in this case, May 11, 2004. See *Utah Power & Light Co.*, 30 FERC ¶ 61,015 at 61,024 n.9 (1985).

<sup>7</sup> 18 C.F.R. § 385.603 (2003).

<sup>8</sup> 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 listing of the Commission's judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of the Administrative Law Judges).

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 the proposed tariff revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2003), the Chief Administrative Law Judge is hereby authorized 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 in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, 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, within fifteen (15) days of the date of the presiding judge's designation, shall convene a conference in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such 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 )

Magalie R. Salas,  
Secretary.