UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc. Docket Nos. ER05-719-000 and ER05-719-001

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 21, 2005)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) 2005 Wholesale Formula Rate Update (2005 Update), suspend it for a nominal period, to become effective March 1, 2005, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. On March 23, 2005, in Docket No. ER05-719-000, Entergy Services, Inc. (Entergy Services) filed the 2005 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 with numerous customers, as well as the Settlement Agreement in the 1998 Formula Rate Update proceeding (1998 Settlement).[1] On June 3,

[1]The 2005 Update is filed in accordance with: (1) the Power Coordination, Interchange and Transmission Service Agreements (PCITA) between Entergy Arkansas and the Cities of Conway, West Memphis and Osceola, Arkansas (Arkansas Cities); the Cities of Campbell and Thayer, Missouri (Missouri Cities); and the Arkansas Electric Cooperative Corporation (AECC); (2) the Transmission Service Agreement (TSA) between Entergy Arkansas and the City of Hope, Arkansas (Hope); (3) the TSA between Entergy Arkansas and the Louisiana Energy & Power Authority (LEPA); (4) the Wholesale Power Service Agreement (WPSA) between Entergy Arkansas and the City of Prescott, Arkansas (Prescott); and (5) the WPSA between Entergy Arkansas and the Farmers Electric Cooperative Corporation (Farmers). Additionally, the filing redetermines the distribution rate charged to the City of North Little Rock pursuant to the Network Integration Transmission Service Agreement.

2005, in Docket No. ER05-719-001, Entergy filed a revised Schedule B.13 to the 2005 Update after being informed by the City of North Little Rock, Arkansas, (North Little Rock) that two of the delivery points shown on Schedule B.13 had been retired by North Little Rock. Entergy requests an effective date of March 1, 2005, consistent with the terms of the underlying agreements.

Notice of Filings and Responsive Pleadings

3. Notice of the filing in Docket No. ER05-719-000 was published in the Federal Register, 70 Fed. Reg. 17,443 (2005), with comments, interventions and protests due on or before April 13, 2005. An errata notice was issued April 22, 2005, revising the comment, intervention and protest due date to June 1, 2005. Notice of the amended filing in Docket No. ER05-719-001 was issued June 13, 2005, with comments, interventions and protests due on or before June 24, 2005. The time to file comments was subsequently extended to and including August 26, 2005, after the parties asked the Commission to extend the comment period so they could engage in settlement discussions. Arkansas Electric Cooperative Corporation (AECC) filed a protest and request for hearing. Arkansas Cities and Cooperative (ACC)[2] filed comments.

4. Both AECC and ACC state that they need additional information to determine that Entergy Arkansas has properly treated certain items. AECC states that it needs more information regarding: (1) revenue credits and loads in the rate denominator; (2) labor cost shifts from distribution to transmission-related costs; (3) the methodology for allocation of distribution-related training and safety related payroll expense that shifts costs from O&M payroll to a clearing account; (4) the reasonableness of Entergy Arkansas' allocation of Entergy Services payroll expense to Entergy Arkansas; and (5) whether the 386% increase to transmission O&M is appropriately charged to Entergy Arkansas' transmission customers. ACC disputes and/or requests more information regarding: (1) Entergy Arkansas' treatment of the $6/MWH adder in the power purchase agreement (PPA) with Entergy New Orleans; and (2) the increase in Transmission Labor Costs.

5. AECC and ACC have concerns regarding Entergy Arkansas' treatment of certain independent power producer funding of new transmission, stating that transmission customers should not be required to pay a return on costs of new funded transmission

[2] The ACC is comprised of the Cities of Osceola, and Prescott, Arkansas; the Conway Corporation; the West Memphis Utilities Commission; and Farmer's Electric Cooperative Corporation.

investment that outside parties have funded, not Entergy Arkansas. AECC and ACC both oppose the treatment in the rates of the transmission service agreement with City Water and Light of the City of Jonesboro, Arkansas (Jonesboro), stating that the current treatment leaves other customers subsidizing Jonesboro. Finally, AECC requests that the Commission accept the rates subject to refund, and set the matter for an evidentiary hearing.

Discussion

Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

Hearing and Settlement Judge Procedures

7. Entergy Arkansas' 2005 Update raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that the 2005 Update 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 the 2005 Update for filing, suspend it for a nominal period, make it effective March 1, 2005,[3] as requested, subject to refund, and set it for hearing and settlement judge procedures. We find that waiver of the 60-day prior notice requirement is appropriate here because pursuant to the underlying agreements, Entergy is required to file the rate update on or after March 1, and the rate is to be effective as of March 1 of each year.

8. 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; with respect to the last two such filings, the parties were

[3] *See Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992). (The Commission generally grants waiver of the 60-day prior notice requirement for annual rate revisions required to become effective on an effective date prescribed in the agreement).

successful in settling.[4] To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall 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 60 days of the date of this order 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) The 2005 Update is hereby accepted for filing, suspended for a nominal period, to become effective March 1, 2005 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 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 2005 Update. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

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[4] On June 7, 2004, Entergy Services filed an offer of settlement in Docket Nos. ER03-599-000 *et al*. (2003 Update), and that settlement was accepted by Commission order issued September 16, 2004, 108 FERC ¶ 61,238 (2004). On April 4, 2005, Entergy Services filed an offer of settlement in Docket No. ER04-886-000 (2004 Update), and that settlement was accepted by Commission order issued June 16, 2005, 111 FERC ¶ 61,405 (2005).

[5] 18 C.F.R. ¶ 385.603 (2005).

[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).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), 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 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 settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., 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.