

135 FERC ¶ 61,202  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Entergy Services, Inc.

Docket No. ER11-3274-000

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

(Issued May 31, 2011)

1. In this order, we accept for filing Entergy Services, Inc.'s (Entergy), acting as agent for the Entergy Operating Companies,<sup>1</sup> proposed amendments to Attachment H and Schedule 7 of the Operating Companies' Open Access Transmission Tariff (OATT) to recover costs associated with an ice storm, and suspend them for a nominal period, to become effective June 1, 2011, as requested, subject to refund. We also establish hearing and settlement judge procedures.

**I. Background**

2. On October 30, 1998, the Entergy Operating Companies, via a Commission-accepted settlement agreement,<sup>2</sup> amended their OATT to adopt a formula rate for use in deriving charges for service on Entergy's bulk transmission facilities (OATT Formula). In accordance with the OATT, on or before May 1 of each year, the Entergy Operating Companies submit an informational filing with the Commission to update the charges that will apply for OATT service for the upcoming June 1 through May 31 period, known as the rate year, using actual data from the prior calendar year (Annual Rate Update). The Annual Rate Update calculates charges for the upcoming rate year using historical,

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<sup>1</sup> The Entergy Operating Companies are: Entergy Arkansas, Inc. (EAI), Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

<sup>2</sup> *Entergy Services, Inc.*, Opinion No. 430, 85 FERC ¶ 61,163 (1998), *reh'g denied*, 91 FERC ¶ 61,153 (2000).

actual costs, loads and other inputs, such as revenue credits, as recorded during the rate year in accordance with the OATT Formula in Appendix A to Schedule 7 (Firm Point-to-Point Transmission Service) and Attachment H (Network Integration Transmission Service Charges) to the OATT.

## **II. Entergy's Proposed Tariff Amendments**

3. On April 1, 2011, Entergy filed proposed amendments to the OATT to include a new variable in Entergy Operating Companies' OATT Formula. Also, Entergy's filing corrects two typographical errors in Schedule 7. Entergy states that these amendments will permit recovery from its wholesale customers of their share of storm restoration costs under the OATT for costs associated with the plant in service and deferred Operations and Maintenance Expenses (O&M) related to the ice storm recorded on Entergy Arkansas, Inc.'s books in 2010. Entergy further notes that the proposed amendments are nearly identical to the amendments to the OATT for recovery of the storm costs related to hurricanes Katrina, Rita, Gustav and Ike that were included in the settlement agreement accepted by the Commission in Docket No. ER10-984-000.<sup>3</sup>

4. Entergy states that it sustained significant damage to its system caused by a severe ice storm in 2009. Entergy states that the Arkansas Public Service Commission (Arkansas Commission) authorized a retail recovery mechanism for the retail portion of the costs associated with this ice storm. Entergy states that at the Arkansas Commission, plant costs and deferred O&M costs associated with the 2009 ice storm were first allocated between retail and wholesale using the appropriate transmission and distribution demand factors. Entergy indicates that the retail portion of the capital and O&M costs was recorded in a regulatory asset account and securitized through the issuance of bonds. According to Entergy, the retail portion of the plant costs was offset by a contra account and the retail portion of the deferred O&M costs was credited to the storm reserve account (Account 228.1, Accumulated Provision for Property Insurance). Further, Entergy explains that it recorded the wholesale portion of the deferred O&M ice storm costs in a separate Account 228 sub-account. As a result, Entergy states that what remains on its books for the 2009 ice storm costs is the wholesale portion of the plant costs and the wholesale portion of the deferred O&M costs.

5. Entergy states that, in order to correctly recover the wholesale portion of the 2009 ice storm costs under the OATT, it proposes to add back the revenue requirement related to the securitized retail portion of the ice storm costs so that 100 percent of the ice storm

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<sup>3</sup> In Docket No. ER10-984-000, Entergy amended its OATT Formula to clarify that the wholesale customers taking service under the OATT would bear their share of storm recovery costs in wholesale rates. *Entergy Services, Inc.*, 133 FERC ¶ 61,189 (2010).

costs will be reflected in the total revenue requirement. Entergy also proposes to include the transmission portion of the wholesale deferred O&M costs associated with the 2009 ice storm as a 2010 cost. Entergy has attached a spreadsheet (Transmission Securitization Analysis) showing the annual amounts of 2009 ice storm costs to be added to the total transmission revenue requirement for the period of 2010 through 2020. Entergy proposes to add the 2009 ice storm costs to rates for point-to-point and network transmission service by adding a new variable “SECUR<sub>IS</sub>” to its OATT Formula in Schedule 7 and Attachment H to its OATT. “SECUR<sub>IS</sub>” is the amount identified in the spreadsheet to be added to the total transmission revenue requirement each year.

6. Entergy states that, overall, its proposal to add the variable “SECUR<sub>IS</sub>” is consistent with the approach utilized in the settlement approved by the Commission in Docket No. ER10-984-000 and it is just and reasonable for the wholesale OATT customers to pay their share of the 2009 ice storm costs. Also, Entergy states that it proposes to correct two typographical errors in Schedule 7. In the formulas that develop the Short-Term Firm Transmission Service Rates, Entergy states that there are two formulas labeled “Daily On-Peak Firm Transmission Service Rate.” Entergy states that the second of those formulas should be labeled “Daily *Off*-Peak Firm Transmission Service Rate.” Entergy states that there are also two formulas that develop the Maximum Non-Firm Transmission Service Rate.” Entergy states that the second of those formulas should be labeled “Hourly *Off*-Peak Non-Firm Transmission Service Rate.”

7. Entergy requests a June 1, 2011 effective date, which is after 60 days’ notice, to correspond with the effective date of the next OATT wholesale rate update.

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 19,987 (2011), with interventions and protests due on or before April 22, 2011. Timely motions to intervene were filed by Arkansas Electric Cooperative Corporation (AECC); South Mississippi Electric Power Association (SMEPA); L-M Municipals;<sup>4</sup> Mississippi Delta Energy Agency (MDEA); Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale); and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi (Yazoo). A timely motion to intervene and comment was filed by East Texas Cooperatives.<sup>5</sup> A joint protest was filed on

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<sup>4</sup> L-M Municipals are: the Louisiana Energy and Power Authority (LEPA), the Lafayette Utilities System (Lafayette), and the Municipal Energy Agency of Mississippi (MEAM).

<sup>5</sup> East Texas Cooperatives are: East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

April 22, 2011 by several intervenors (collectively, Joint Protestors).<sup>6</sup> Entergy filed an answer to Joint Protestors' comments on May 9, 2011. On May 20, 2011, Joint Responders<sup>7</sup> filed an answer to Entergy's answer.

**A. Comments/Protests**

9. Joint Protestors state that Entergy's filing offers no demonstration that it is reasonable for Entergy to recover in 2011 OATT rates 2009 non-securitized O&M expenses for which Entergy has never sought nor received approval from this Commission to defer recovery.<sup>8</sup> In the absence of such approval, Joint Protestors argue that the inclusion of costs incurred in previous years constitutes retroactive ratemaking and is prohibited.<sup>9</sup>

10. Joint Protestors state that Entergy's attempt to recover 2009 costs in rate year 2011 is inconsistent with and would upset the structure of Entergy's formula rate, which is premised entirely on the recovery in a given year of costs incurred in the previous calendar year. Joint Protestors argue that Entergy's proposal to recover these 2009 costs in rate year 2011 also violates the Commission-approved settlement of Entergy's 2010 Annual Rate Update in Docket No. ER10-1367-000, based on Entergy's 2009 costs. Joint Protestors state that nothing in the 2010 Annual Update filing indicated that any O&M costs incurred during 2009 were being deferred for recovery in a later rate year. Joint Protestors explain that the O&M costs actually incurred by Entergy Arkansas in 2009 were at issue in Docket No. ER10-1367-000. Joint Protestors contend that Entergy's attempt to collect the 2009 O&M costs now is contrary to other Commission precedent and the Commission's policy against retroactive ratemaking.

11. According to Joint Protestors, Entergy's filing only provides an unsupported summary of the total amount of securitized ice storm costs for which Entergy seeks recovery and includes no supporting documentation or workpapers demonstrating the

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<sup>6</sup> Joint Protestors are SMEPA, AECC, MDEA, Clarksdale, Yazoo, LEPA, Lafayette, and MEAM.

<sup>7</sup> Joint Responders are: SMEPA, AECC, MDEA, Clarksdale, and Yazoo.

<sup>8</sup> Joint Protestors at 2.

<sup>9</sup> Joint Protestors at 7 (citing *cf. FirstEnergy Serv. Co.*, 110 FERC ¶ 61,230, at P 15 (2005) (explaining that the Commission will permit deferral of costs when it is probable that the costs will be recovered in rates in a different period than the period in which they would otherwise be charged to expense under the general requirements of the Commission's Uniform System of Accounts)).

reasonableness of the amount of securitized ice storm costs that Entergy seeks to recover from OATT customers. Additionally, they claim that Entergy's filing lacks adequate support for the 15.80 percent allocation factor that Entergy utilized to assign securitized ice storm costs to transmission customers. Joint Protestors state that Entergy's approximately \$15.4 million in annual securitized ice storm revenue requirement is multiplied by the proposed 15.80 percent allocation factor in order to produce the securitized ice storm costs amounts that Entergy seeks to recover from OATT customers in rate years 2011-2020. Accordingly, Joint Protestors contend that Entergy must demonstrate the reasonableness of both its alleged securitized ice storm debt costs and the allocation factor used to assign a portion of those costs to the Entergy Operating Companies' OATT customers.

12. Joint Protestors state that Entergy's filing leaves unexplained several questions about the calculation of these storm damage totals and the mechanism utilized by Entergy to securitize the debt incurred by the company.<sup>10</sup> For example, Joint Protestors state that it is not clear from Entergy's filing whether it has properly functionalized its securitized storm damage costs among plant, accumulated depreciation, O&M, deferred O&M, etc. Joint Protestors further state that it is equally unclear whether the totals reported by Entergy properly account for any insurance or any other proceeds received by the company. Joint Protestors also state that Entergy's filing offers no information concerning the interest rates and financing terms associated with Entergy's securitization or any information detailing any external accounting costs, ongoing servicer fees or external ongoing financing costs included in the securitized amounts for which recovery is sought. Joint Protestors state that an analysis of all these factors is necessary to determine whether the securitized ice storm damage costs that Entergy seeks to recover from its OATT customers are just and reasonable. Although East Texas Cooperatives does not protest this filing, it notes that its review of the filing was complicated by the lack of sufficient supporting evidence from Entergy. It concedes that Entergy did provide additional information upon request; however, East Texas Cooperatives states that the information obtained was still insufficient to fully evaluate Entergy's claims.

13. Joint Protestors state that Entergy's proposed rate changes include impermissible unjust and unreasonable recovery and, in addition, there are several genuine issues of material fact concerning the justness and reasonableness of the remainder of Entergy's proposed revisions to its OATT Formula rate. Joint Protestors state that until these issues are resolved on an adequate record, it cannot be concluded that Entergy met its burden of proof in this matter and the proposed revisions to Entergy's OATT Formula rate cannot be found to be just and reasonable. Therefore, Joint Protestors request that the Commission suspend Entergy's proposed rate change and set the justness and

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<sup>10</sup> *Id.* at 9.

reasonableness of Entergy's proposed revisions to its OATT for an evidentiary hearing and settlement judge procedures.

**B. Entergy's Answer**

14. Entergy claims that Joint Protestors object to its proposal because these costs were incurred in 2009, stating that these storm costs should have been included in the 2010 Annual Rate Update and included within the settlement for that proceeding. However, Entergy states that due to the extraordinary nature of this event, costs for storm recovery were held in a separate account and not expensed during 2009. In fact, Entergy states that because of the inherent lag in receiving and paying restoration bills, seeking and receiving approval to securitize the restoration costs, and the date of securitization of these expenses (which did not occur until August 2010), including these costs in the 2009 test year was not possible. Entergy states that no final amounts for the expenses caused by the ice storm were available until March 31, 2010, the date through which costs were included in the securitization filing with the Arkansas Commission, and the Arkansas Commission's order approving the storm costs for securitization was not issued until May 25, 2010. Therefore, Entergy states that it could not and did not include the costs relating to this event in the last annual update using 2009 calendar year data that was filed and settled in Docket No. ER10-1367-000. Moreover, Entergy states that this is the same process that was used for the recovery of storm costs associated with Hurricanes Rita, Katrina, Gustav, and Ike restoration.

15. With regard to arguments by the Joint Protestors that Entergy has not supported the level of the costs and the transmission allocator in its filing, Entergy maintains that the cost justification and supporting information provided in the filing are more than adequate. However, Entergy states that it has provided further supporting workpapers and documentation for the costs incurred and the securitization of the debt at the parties' request, i.e., responses to informal data requests were provided to counsel for the Joint Protestors on April 15, 2011 and April 18, 2011 and the Joint Protestors acknowledged receipt of this information in their protest. Moreover, Entergy states that the methodology proposed and the formula change to recover these costs are based on a settlement for similar storm costs that was reached with the exact same parties seeking relief in this proceeding. Entergy explains that it proposed this methodology for ease of understanding for the parties affected by the costs, and for administrative efficiency.

16. Although Entergy believes that it has properly justified its proposed amendment, it acknowledges that Joint Protestors have identified some issues for discussion in their protest. Entergy states that the immediate appointment of a settlement judge is in the public interest and should assist the parties in resolving this dispute without further prolonged litigated proceedings before the Commission. Entergy states that it has already responded to some requests for information by the parties and commits to continue to respond to reasonable data requests submitted by the parties during the course of the settlement proceeding.

### **C. Joint Responders' Answer**

17. Joint Responders argue that Entergy's answer misconstrues and fails to respond to the substance of the Joint Protest, and does not assist in the development of the record in this proceeding. In particular, it asserts that, contrary to Entergy's suggestion, Joint Protestors challenge only \$547,103 of deferred, non-securitized wholesale O&M expenses, the settlement methodology cited by Entergy is inapposite because it has no binding force in other dockets, and Entergy has provided no additional information supporting its filing. Finally, Joint Responders argue that the filing should be suspended and set for hearing, as the predicate for settlement judge procedures.

### **IV. Discussion**

#### **A. Procedural Matters**

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Section 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Entergy and Joint Responders because they have provided information that assisted us in our decision-making process.

#### **B. Hearing and Settlement Judge Procedures**

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

20. Our preliminary analysis indicates that Entergy's proposed OATT amendments 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 Entergy's proposed amendments to Attachment H and Schedule 7 of the OATT for filing, suspend them for a nominal period, make them effective June 1, 2011, subject to refund, and set them for hearing and settlement judge procedures.<sup>11</sup>

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<sup>11</sup> In our review of Entergy's Transmittal at 3 and the attached Transmission Securitization Analysis, we observe that Entergy deferred the O&M costs in Account 228.1; however, such deferred costs are more appropriately accounted for in Account 182.3, Other Regulatory Assets, as consistent with the instructions of the account. *See* Account 182.3, 18 C.F.R. Part 101 (2011).

21. 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. 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>12</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>13</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the 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 amendments to the OATT are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2011, 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 Entergy's proposed OATT amendments. However, the hearing shall be held in abeyance to provide 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 (2011), 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 power and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

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<sup>12</sup> 18 C.F.R. § 385.603 (2011).

<sup>13</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 list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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 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 conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 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.