

168 FERC ¶ 61,093
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Midcontinent Independent System Operator, Inc.

Docket Nos. ER19-1503-000
ER19-1503-001

Entergy Services, LLC

ORDER ACCEPTING TARIFF REVISIONS

(Issued August 19, 2019)

1. On April 1, 2019, pursuant to section 205 of the Federal Power Act (FPA),¹ Midcontinent Independent System Operator, Inc. (MISO) and Entergy Services, LLC (Entergy) (together, the Filing Parties) submitted proposed revisions to the transmission formula rate templates of the Entergy Operating Companies² under Attachment O of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) (April Filing).³ As discussed below, we accept the revisions proposed in the April Filing, effective June 1, 2019, as requested.

I. Filing

2. The Filing Parties state that they propose to revise the Entergy Operating Companies' transmission formula rate templates to change the classification of certain accumulated deferred income tax (ADIT) accounts so that they are functionalized as "Other," which will remove the values in these ADIT accounts, and the associated

¹ 16 U.S.C. § 824d (2012).

² The Entergy Operating Companies are Entergy Arkansas, LLC (Entergy Arkansas), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, LLC, Entergy New Orleans, LLC, and Entergy Texas, Inc. April Filing at 1 n.2.

³ The Filing Parties state that MISO joined the April Filing as the administrator of its Tariff but takes no position on the substance of the filing. *Id.* at 1 n.1.

amortization of Income Tax Adjustments, from the Entergy Operating Companies' annual transmission revenue requirements.⁴

3. Specifically, the Filing Parties propose to change the classification of the accounts for ADIT that are related to Contributions in Aid of Construction (CIAC) – CIAC Federal ADIT⁵ and CIAC State ADIT⁶ (together, CIAC ADIT Accounts) – from “Plant-related” to “Other.”⁷ The Filing Parties state that they propose this change because the Filing Parties concluded it would be appropriate to remove ADIT associated with CIAC after discussions with interested parties during the most recent Annual Update process.⁸

4. The Filing Parties also propose to change the classification of the accounts for Regulatory Asset – MISO Deferral – Federal ADIT and Regulatory Asset – MISO Deferral – State ADIT (together, Regulatory Asset ADIT Accounts) from “Transmission” to “Other.”⁹ The Filing Parties explain that Entergy concluded that the Federal-related MISO Cost Deferrals in Account 1823MD had been fully amortized and therefore any remaining ADIT balance is retail-related and no longer appropriate for inclusion in the annual transmission revenue requirements.¹⁰

5. The Filing Parties contend that these revisions are just and reasonable because they ensure that these ADIT balances and associated Income Tax Adjustments amortization have the proper functionalization in the Entergy Operating Companies' transmission formula rate templates. The Filing Parties explain that the revisions will ensure that ADIT accounts that are not generally and properly includable in Commission-jurisdictional

⁴ *Id.* at 1. The Filing Parties state that the removal of the amortization from Income Tax Adjustments does not require a template change, noting that any associated amortization and excess deferred income taxes associated with these ADIT accounts will also be removed due to the change in classification to “Other.” *Id.* at 3 n.13.

⁵ CIAC – Federal ADIT is Account 282371 for Entergy Arkansas and Account 190181 for the other Entergy Operating Companies. *Id.* at 4.

⁶ CIAC – State ADIT is Account 282372 for Entergy Arkansas and Account 190182 for the other Entergy Operating Companies. *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* These accounts are, respectively, Account 283157 and Account 283158.

¹⁰ *Id.*

cost-of-service transmission rates are not reflected in the Entergy Operating Companies' annual transmission revenue requirements.¹¹ The Filing Parties request an effective date of June 1, 2019, to align with the annual update process for the upcoming rate year.¹²

6. On May 30, 2019, Commission staff issued a deficiency letter to the Filing Parties, stating that additional information is required by the Commission in order to evaluate the April Filing (Deficiency Letter). On June 20, 2019, the Filing Parties submitted a response to the Deficiency Letter (Deficiency Response).¹³

II. Notice and Responsive Pleadings

7. Notice of the April Filing was published in the *Federal Register*, 84 Fed. Reg. 14,110 (2019) with interventions and protests due on or before April 22, 2019. The Missouri Public Service Commission and the Public Utility Commission of Texas filed notices of intervention. The Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention and protest. On May 7, 2019, Entergy filed a motion for leave to answer and answer to the Louisiana Commission's protest. On May 28, 2019, the Louisiana Commission filed a motion for leave to answer and answer to Entergy's answer.

8. Notice of the Deficiency Response was published in the *Federal Register*, 84 Fed. Reg. 30,104 (2019) with interventions and protests due on or before July 11, 2019. None was filed.

A. Protest

9. The Louisiana Commission states that the retail rates charged by Entergy Louisiana are directly affected by the inputs to Entergy Louisiana's transmission formula rates. The Louisiana Commission explains that credits, which are determined based on the amount of revenues received from Entergy Louisiana's wholesale sales, reduce Entergy Louisiana's

¹¹ *Id.* at 3-5.

¹² *Id.* at 4, 6-7.

¹³ The Filing Parties state that MISO joined the Deficiency Response as the administrator of its Tariff but takes no position on the substance of the Deficiency Response. Deficiency Response at 1 n.1.

retail rates.¹⁴ The Louisiana Commission contends that the Filing Parties fail to explain why the CIAC ADIT Accounts and Regulatory Asset ADIT Accounts are not generally and properly includable in the Entergy Operating Companies' annual transmission revenue requirements, and why those accounts should be removed.¹⁵ According to the Louisiana Commission, the Filing Parties do not provide sufficient justification for excluding the CIAC ADIT Accounts and fail to provide data or evidence in support of excluding the Regulatory Asset ADIT Accounts.¹⁶ As a result, the Louisiana Commission argues that the Filing Parties fail to show that the April Filing is just and reasonable and urges the Commission to set it for hearing and settlement or another appropriate measure.¹⁷

B. Answers

10. In its answer to the protest, Entergy argues that the Louisiana Commission does not raise any substantive issues that warrant a hearing or further proceedings.¹⁸

11. Entergy asserts that the proposed removal of the CIAC ADIT Accounts is consistent with Commission precedent in *Ameren Illinois Company*,¹⁹ in which, according to Entergy, the Commission explained that the transmission owner in that proceeding should remove from its annual transmission revenue requirement the ADIT related to CIAC contributed by individual transmission customers.²⁰ Entergy states that after interested parties brought the Commission orders in *Ameren Illinois Company* to its attention, Entergy concluded that it would be appropriate to remove the CIAC ADIT Accounts.²¹ Entergy states that it agrees with the Commission's reasoning that all CIAC-related costs, including ADIT, are most appropriately borne by the party making

¹⁴ Louisiana Commission Protest at 1.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 4-5.

¹⁸ Entergy Answer at 2-3.

¹⁹ *Ameren Ill. Co.*, 156 FERC ¶ 61,209 (2016).

²⁰ Entergy Answer at 3 (citations omitted).

²¹ *Id.* at 3-4.

the CIAC payment, and Entergy asserts that such treatment is consistent with cost causation principles and Commission precedent.²²

12. Entergy explains that the Regulatory Asset ADIT Accounts contain the ADIT associated with the Entergy Operating Companies' deferred operation and maintenance costs and accrued carrying charges they accumulated related to their MISO integration (collectively, the Transition Costs) recovered pursuant to Schedule 47 of the MISO Tariff.²³ Entergy states that, pursuant to Schedule 47, the Entergy Operating Companies recovered Transition Costs over a 24-month period ending May 31, 2016, when the Transition Cost balance for each Entergy transmission pricing zone was reduced to zero.²⁴ Entergy states that accordingly, the associated ADIT is fully amortized, having also reduced to zero in 2016. Entergy states that the remaining balance in the Regulatory Asset ADIT Accounts is retail-related and therefore should be omitted from the annual transmission revenue requirements, as requested in the April Filing.²⁵

13. Lastly, Entergy argues that the proposed revisions are just and reasonable because they will produce a small reduction in the Entergy Operating Companies' annual transmission revenue requirements.²⁶ Using 2018 projected cost data, Entergy estimates that the net effect of removing both the CIAC ADIT Accounts and the Regulatory Asset ADIT Accounts would be a decrease of \$2.3 million in the Entergy Operating Companies' aggregate annual transmission revenue requirements.²⁷ Further, in response to the Louisiana Commission's concern about the effect of this change on retail rates, Entergy states that the proposed revisions would result in approximately a \$600,000 annual reduction to Entergy Louisiana's transmission revenue requirement. Entergy argues that the removal of approximately \$600,000 from wholesale transmission

²² *Id.* at 4.

²³ *Id.* at 5. Entergy notes that Schedule 47 itself did not contain a component to record ADIT. *Id.* at 6.

²⁴ *Id.* at 5-6 & n.14 (citation omitted).

²⁵ *Id.* at 6.

²⁶ *Id.* at 4.

²⁷ *Id.*

revenues that flow through as a revenue credit toward Entergy Louisiana's retail rates has a *de minimis* effect on Entergy Louisiana's retail rates, which were \$3.7 billion in 2018.²⁸

14. In its answer, the Louisiana Commission maintains that Entergy's answer does not support the proposal to remove ADIT accounts in a manner that will increase retail rates.²⁹ The Louisiana Commission points out that the cited *Ameren Illinois Company* decision did not address CIAC-related ADIT and argues that the *Ameren Illinois Company* case "is likely only non-binding dicta" rather than precedent.³⁰ However, the Louisiana Commission agrees that contributors of CIAC should bear the full cost of the contribution and its tax effects, and states that it has a similar rule for retail purposes.³¹ Thus, the Louisiana Commission argues that the CIAC contributors on both a wholesale and retail level should pay for the CIAC and its related tax effects and urges the Commission to reject the April Filing and to direct the Filing Parties to fully assign the CIAC-related ADIT to the CIAC contributors.³²

15. The Louisiana Commission states that the proposal to change the functionalization of the CIAC ADIT Accounts inappropriately shifts costs of \$3.2 million per year (\$800,000 for Entergy Louisiana) to retail customers.³³ The Louisiana Commission argues that this shift in costs is not *de minimis* and is not reasonable.³⁴ The Louisiana Commission adds that it is perplexed as to how CIAC-related ADIT could have been accounted for in a way that harms wholesale transmission customers in the first place, asserting that the ADIT should act as an offset to transmission rate base and should not result in an increased cost to wholesale or retail transmission customers.³⁵

²⁸ *Id.* at 4-5 (citation omitted).

²⁹ Louisiana Commission Answer at 2.

³⁰ *Id.* at 2-3.

³¹ *Id.* at 4.

³² *Id.* at 4, 6.

³³ *Id.* at 5.

³⁴ *Id.* at 6.

³⁵ *Id.* at 5.

C. Deficiency Response

16. The Filing Parties explain that the CIAC that gave rise to the CIAC ADIT Accounts is included in the Entergy Operating Companies' transmission formula rate templates as a reduction to plant in service.³⁶ The Filing Parties state that the CIAC amounts offset the expenditures for the projects, resulting in a zero balance in plant in service and no effect on the revenue requirement.³⁷ The Filing Parties further explain that the proposed functionalization of the resulting CIAC-related ADIT to "Other" would have the effect of removing the CIAC-related ADIT from the Entergy Operating Companies' annual transmission revenue requirement calculations. The Filing Parties state that the proposed changes to the CIAC ADIT Accounts are consistent with the treatment of other sub-accounts under Accounts 190 and 282 that do not impact the revenue requirement calculation.³⁸

17. The Filing Parties also explain, *inter alia*, that the regulatory assets that gave rise to the Regulatory Asset ADIT Accounts include: (1) MISO transition costs, relating to efforts to join MISO, such as costs associated with analysis, feasibility, and development; (2) the deferral of fuel capacity costs incurred in connection with MISO's resource adequacy auction transactions that are recovered through retail rates; and (3) the under-recovery of MISO non-fuel operating and maintenance expenses recovered through retail rate riders.³⁹

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention serve to make the entities that filed them parties to this proceeding.

³⁶ Deficiency Response at 2.

³⁷ *Id.*

³⁸ *Id.* at 3.

³⁹ *Id.* at 5-6.

19. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by Entergy and the Louisiana Commission because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

20. We find that the proposed revisions to the MISO Tariff are consistent with cost causation principles and are just and reasonable and not unduly discriminatory. The ADIT Worksheet in the Entergy Operating Companies' transmission formula rate templates generally excludes ADIT subaccounts that do not relate to the Attachment O transmission revenue requirement calculation. As the Filing Parties explain, the proposed changes to the CIAC ADIT Accounts are consistent with the treatment of other subaccounts under Accounts 190 and 282 that do not impact the revenue requirement calculation.

21. The CIAC amounts that gave rise to the CIAC-ADIT Accounts offset the expenditures for the projects and thus do not affect the Entergy Operating Companies' annual transmission revenue requirements. Since the CIAC is not included in the calculation of the annual transmission revenue requirements, we find Entergy's proposal to change the classification of the CIAC ADIT Accounts to similarly exclude the tax effects of the CIAC from the annual transmission revenue requirements is just and reasonable and consistent with cost causation principles and Commission precedent.⁴⁰ To the extent the Louisiana Commission asks the Commission to direct Entergy to fully assign the CIAC-related ADIT to the CIAC contributors or to require Entergy to further explain its rationale for its past accounting for this ADIT, those requests are beyond the scope of the revisions proposed in the April Filing.

22. We also find that Entergy has adequately demonstrated that the ADIT associated with the Transition Costs recovered under the MISO Tariff have been fully amortized and that only retail-related costs remain in the Regulatory Asset ADIT Accounts. Since it is appropriate to exclude retail-related costs from wholesale transmission rates, we find that the proposed revisions to the Entergy Operating Companies' transmission formula rate templates to change the classification of the Regulatory Asset ADIT Accounts in order to exclude them from transmission rates, are just and reasonable.

⁴⁰ See *Trailblazer Pipeline Co.*, 55 FERC ¶ 61,050, at 61,150 (1991) (citation omitted) ("the contributor [of a CIAC] should bear the tax burden created as a result of its contribution. In other words, '[i]f a contributor is to make a CIAC in order to gain services by which he is to benefit, the contributor should pay the full cost of its contribution, including its tax effect.'").

The Commission orders:

The revisions to the MISO Attachment O transmission formula rate templates proposed in the April Filing are hereby accepted, effective June 1, 2019, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.