

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

July 16, 2020

In Reply Refer To:
Entergy Arkansas, Inc.
Docket No. ER18-1247-001

Entergy Services, LLC
919 Congress Avenue, Suite 701
Austin, TX 78701

Attention: Karis Anne Gong Parnham

Dear Ms. Parnham:

1. On July 9, 2019, Entergy Services, LLC (Entergy Services) submitted, in the above-referenced proceedings, a settlement agreement (Settlement) among Entergy Services, as agent for the Entergy Operating Companies,¹ the Louisiana Public Service Commission, and the Council of the City of New Orleans (collectively, the Settling Parties).² The Settlement addresses all issues set for hearing by the Commission's May 31, 2018 order³ concerning proposed revisions to Entergy Arkansas, Inc.'s Unit Power Sales and Designated Power Purchase Tariff to effectuate the return of protected and unprotected excess accumulated deferred income taxes (ADIT) resulting from the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act).
2. On July 29, 2019, Commission Trial Staff (Trial Staff) filed comments that stated that, "[a]lthough there are benefits associated with the Settlement, Trial Staff takes no position on the Settlement because it presents issues of first impression and is likely contrary to Commission precedent and policy because it does not return to customers

¹ 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.

² On October 25, 2019, Entergy Services filed an errata to the Settlement, which contained a copy of the Settlement signed by an Entergy Services representative.

³ *Entergy Ark., Inc.*, 163 FERC ¶ 61,166 (2018) (May 2018 Order).

hundreds of millions of dollars of excess [ADIT].”⁴ In particular, Trial Staff asserts that, on Entergy Louisiana’s 2015 federal and state tax returns, Entergy Louisiana took a deduction of Entergy Louisiana’s expected nuclear decommissioning costs, which resulted in the creation of ADIT, that the enactment of the Tax Cuts and Jobs Act resulted in excess ADIT associated with this deduction, and that the existence of uncertainty as to whether and to what extent the Internal Revenue Service (IRS) will uphold the deduction does not affect the requirement to return excess ADIT associated with the nuclear decommissioning deduction.⁵ To not return the excess ADIT in that situation, according to Trial Staff, is “likely contrary to Commission precedent and policy.”⁶

3. On August 8, 2019, Entergy Services submitted reply comments noting that no party opposes the Settlement.⁷ Also, Entergy Services argues that Trial Staff fails to identify how the Settlement violates specific Commission ratemaking precedent. Additionally, Entergy Services argues that, as soon as the amount of excess ADIT, if any, becomes known, Entergy Arkansas and Entergy Louisiana agree to “promptly refund such amounts to customers in the same manner that the other amounts of unprotected excess ADIT were returned.”⁸ Finally, Entergy Services argues that sophisticated parties all reached agreement with regard to the Settlement.⁹

4. On October 28, 2019, the Settlement Judge certified the Settlement to the Commission as uncontested.¹⁰

5. Article II.E(8) establishes the following standard of review for any changes to the Settlement: “The standard of review for any modifications to this Settlement Agreement offered by Settling Parties or by non-Settling Parties, including any modifications from [the Commission] acting *sua sponte*, shall be the just and reasonable standard.”

⁴ Trial Staff Comments at 1-2.

⁵ *Id.* at 10.

⁶ *Id.* at 11.

⁷ Entergy Services Comments at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 3-4, n. 13.

¹⁰ *Entergy Ark., Inc.*, 169 FERC ¶ 63,016 (2019).

6. The Settlement resolves all issues set for hearing in Docket No. ER18-1247-000.¹¹ The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

7. Entergy Services submitted a live tariff record in the Entergy Arkansas, Inc. tariff along with the Settlement. However, this live tariff record does not reflect the addition of proposed footnotes 1 through 3 to the Unit Power Sales and Designated Power Purchase Tariff, which are intended to reflect the terms of the Settlement and which Entergy Services included in clean and redlined tariff sheets submitted along with the Settlement in eLibrary. Consequently, we reject Entergy Services' tariff record filed in Entergy Arkansas, Inc.'s tariff and direct Entergy Services to make a compliance filing with revised live tariff records in both the Entergy Arkansas, Inc. and Entergy Arkansas, LLC tariffs in eTariff format,¹² within 30 days of this order, to reflect the Commission's action in this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ May 2018 Order, 163 FERC ¶ 61,166 at P 19.

¹² See *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *order on reh'g*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).