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ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF THE APPLICATION)
OF ENTERGY ARKANSAS, INC. FOR)
APPROVAL OF STORM RECOVERY)
RIDER (RIDER SR))

DOCKET NO. 01-084-U
ORDER NO. 5

ORDER

On April 18, 2001, Entergy Arkansas, Inc. ("EAI") filed *An Application For Approval of Storm Recovery Rider* ("Rider SR") ("Application") to recover approximately \$155 million in costs it incurred as a result of the December 2000 ice storms. In support of its Application, EAI also filed the testimony of Dennis A. Lytle, Hugh T. McDonald, J. David Wright, Gina M. Morello, and Gordon D. Meyer.

The Attorney General of the State of Arkansas ("AG") advised the Commission of his intention to participate in the docket on April 19, 2001. Arkansas Electric Energy Consumers, Inc. ("AEEC") filed its *Petition to Intervene* ("Petition") on April 24, 2001, as amended by its *Supplement to Petition to Intervene* filed on April 26, 2001. AEEC's Petition was granted by the Commission by Order No. 1, issued on April 27, 2001.

The General Staff of the Arkansas Public Service Commission ("Staff") filed an *Initial Response of General Staff to EAI's Application, AEEC's Petition to Intervene, and AG's Initial Response*¹ ("Staff Initial Response") on May 1, 2001. In that filing, Staff requested that, prior to addressing the merits of EAI's Application, the Commission first "address the policy question of whether those [storm] costs should be recovered through a Rider without a general rate case or as part of a general rate case...." Staff recommended that, after the Commission made a decision on

¹The AG had filed, on April 25, 2001, the *Attorney General's Initial Response to EAI's Application and Arkansas Electric Energy Consumers, Inc.'s Petition to Intervene*.

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7

the policy question, the issues of appropriate costs, cost levels, cost allocation, and rate design could be addressed in conjunction with EAI's final accounting of storm damage costs in whatever proceeding the Commission deemed appropriate.

On May 7, 2001, EAI filed its *Response to Petition To Intervene of Arkansas Electric Energy Consumers And Initial Responses of the Arkansas Attorney General and the Arkansas Public Service Commission General Staff* ("EAI Initial Response") objecting to Staff's suggestion that this matter be bifurcated to first address the limited issue of whether EAI's storm costs should be recovered through a specific rate rider without a general rate case or as part of a general rate case. In response to some of the objections of the other parties, EAI also proposed a revised procedural schedule by which EAI would conclude a final accounting of its storm damage costs by July 10, 2001; the Commission would conduct a public hearing on October 9, 2001; and Rider SR, if approved, would be implemented thereafter.

On May 9, 2001, the Commission issued Order No. 2 directing all parties to file written comments by May 17, 2001, addressing the limited issue of whether the more appropriate vehicle for EAI to seek recovery of its storm damage costs is a rider as proposed by EAI or is a general rate case proceeding. On May 14, the Commission issued Order No. 4 extending the comment filing date to May 18, 2001. EAI, Staff, the AG, and AEEC all filed comments pursuant to Order No. 2 on May 1, 2001.²

The parties addressed a number of issues in their filed comments. AEEC questioned whether EAI should be allowed to recover the storm damage costs at all. AEEC also raised concerns as to whether it is appropriate to "recognize a special exception to the rule against retroactive ratemaking",

²EAI filed *Comments of Entergy Arkansas, Inc.* ("EAI Comments"), Staff filed *Comments of General Staff Pursuant to Order No. 2* ("Staff Comments"), the AG filed *Initial Comments of The Arkansas Attorney General* ("AG Comments"), and AEEC filed *Arkansas Electric Energy Consumers, Inc.'s Response to Commission Order No. 2, Comments on Storm Damage Expense Recovery And Response to EAI's Proposed Procedural Schedule* ("AEEC Comments").

noting that “(a)lthough there are exceptions, utilities generally are not permitted to recover from ratepayers for past losses.” Further, AEEC raised issues regarding both the composition of the storm damage costs and the structure of EAI’s proposed “exact recovery” mechanism. The AG expressed his general objection to the use of riders to collect surcharges from customers without looking at the company’s total cost of service and revenue requirements, and further expressed his concern regarding EAI’s current over earnings.

Staff stated that it was not necessarily opposed to recovery of prudently incurred storm damage costs which are properly documented. However, Staff urged that the Commission should consider EAI’s request only in the context of a general rate case. Staff argued that EAI has not justified a deviation from this procedure and that there is no precedent for EAI’s request. Staff further argued that consideration of the storm damage costs in a general rate case will allow for timely recovery and for a comprehensive review of all costs and the total impact on EAI’s ratepayers.

As set forth in Order No. 2, the threshold issue at this stage of this proceeding is limited to whether it is more appropriate to consider EAI’s storm damage cost recovery request as a single issue, i.e. establishing an incremental rate on a stand-alone basis, or, alternatively, whether it is more appropriate to consider such cost recovery measured against and in the context of all other EAI cost changes in a general rate case.

EAI argued that the recovery of its storm damage cost through an incremental rate charge as proposed in Rider SR is in the public interest because it “would be administratively efficient, and . . . (it would) encourag(e) the timely restoration of service after the next round of storms.”³ EAI also

³The Commission hopes and presumes that this statement was not intended to imply that timely restoration of service is contingent upon cost recovery through a rider as this would most certainly contradict a fundamental tenet of a public utility’s service obligation in recognition of its associated privilege of being the monopoly service provider.

argued that a “general rate proceeding offers no advantage to Rider SR in recovering...” these costs, and that its proposed Rider SR, when coupled with its promise to file for a general rate change and an extension of its Regulatory Earnings Review Tariff (“RERT”), adequately eliminates the “possibility of over earnings as an issue and ensuring adequate time for review.” EAI argued that, if the Commission is concerned “that a utility’s rates are no longer reasonable”, the Commission “can initiate a general rate proceeding with its show cause authority....” Further, in EAI’s opinion, the Rider provides benefits not available through a general rate filing. Those benefits, according to EAI, include: avoidance of additional carrying charges given the Rider’s immediate implementation⁴, collection of exact cost in the Rider which avoids the over- recovery potential inherent in base rates⁵, and a more thorough investigation of these costs because the Rider is considered in a separate, non-rate case docket⁶. Finally, EAI argued that Rider SR’s immediate recovery “(b)olsters EAI’s financial integrity” and will avoid an adverse “impact (to) its creditworthiness.”

The Commission has, on occasion, considered and approved isolated items for refund or recovery outside the context of a general rate case.⁷ It has done so only with very careful consideration, and on a limited case-specific basis. In this case, EAI seems to be contending that the

⁴EAI argues that recovery through a general rate case would delay beginning recovery until 2003. (EAI Comments at 7.)

⁵EAI argues that there is a greater potential to over-collect non-recurring costs if put in base rates. (EAI Comments at 13.)

⁶The proposed rider and related costs would not “be competing for attention with a host of other issues.” (EAI Comments at 11.)

⁷The Commission has not previously approved, outside of a rate case, storm damage cost recovery. (Staff Comments at 3.)

choice to use a single-issue recovery rider is completely within its discretion.⁸ EAI also appears to contend that no overall rate impact assessment is necessary in this proceeding.⁹

As a preliminary matter, and as a restatement of public utility law on this point, the Commission must clarify that the discretion to allow cost recovery of this type of expense outside the context of a general rate review proceeding rests solely with the Commission. EAI cites neither any Arkansas statutory authority nor any persuasive case law from any other jurisdiction which would require the Commission to consider storm damage recovery outside a general change in rates. EAI does have the right under current statutory authority and procedures¹⁰ to request, at its discretion, recovery of its storm damage costs in a general rate filing, including a procedure “which allows for rates to become effective more quickly upon a showing of an immediate and impelling necessity.”¹¹

The Commission agrees with EAI’s contention that, at times, “(r)iders (may be) ... especially appropriate when dealing with a discrete...cost that is not ongoing...” Riders and rate cases are not, however, mutually exclusive. Most riders currently in operation were approved, and appropriately so, within the context of a general change in rates.¹² EAI’s proposed Rider SR could be as easily

⁸EAI argues that use of the rider is discretionary, absent a Commission finding of either imprudence or “credible evidence that implementation of the rider will prejudice the legitimate interests of its customers....” (EAI Comments at 15.)

⁹EAI argues that after approval, the Commission, not EAI, “can initiate a general rate proceeding with its show cause authority...” to question EAI’s overall rate structure. (EAI Comments at 12.)

¹⁰Pursuant to Ark. Code. Ann. §23-4-401 *et. seq.*

¹¹While immediacy of recovery to “(b)olster EAI’s financial integrity” does not appear to rise to the level of financial jeopardy normally associated with rate treatment under the Immediate and Impelling provision (“I and I”), that choice is EAI’s.

¹²Most riders currently on file with the Commission are those which deal with fuel cost changes.

offered within a general rate case.¹³ The Commission's concern is not solely the implementation of a separate Rider; rather, it is EAI's proposal to recover the storm damage incremental costs through Rider SR without consideration of any other changes in circumstances.

EAI's arguments fail to "demonstrate that its proposal results in a proper balancing of interest...(between ratepayer and stockholder)"¹⁴. EAI seeks recovery of approximately \$155 million. Its request would equate to a base rate increase of 4.4%. Yet, EAI asks that only one cost element be measured - storm damage operation and maintenance cost.¹⁵ Base rates are designed to remain static; however, EAI's existing rates were derived from costs, revenues, billing determinants, and underlying financial data for the year 1995. Over the last six years there have been changes in EAI's costs, revenues, growth level, and cost allocation data - changes which are not completely comprehended in the RERT. EAI proposes that the Commission give no consideration to any other changes in its circumstances that may have occurred over the last six years. Rider SR would simply collect 100% of all storm-related costs in isolation and without consideration of EAI's overall earnings level and rate structure. The Rider also raises issues of risk and the level of appropriate return, if any, which would be applied as a carrying charge.¹⁶

The Commission finds the following factors to be dispositive in this case:

The costs which EAI seeks to recover in Rider SR are significant,

¹³Use of a rider to collect any non-recurring, extraordinary cost could help assure that over-recovery or double recovery of costs does not occur. Assuming a finding for EAI storm damage recovery, the rider could be designed to monitor Operation and Maintenance to ensure that the storm damage rider has not become a vehicle in which to collect "prepayments" on future, regular maintenance activities and that any double or over-recovery may be prospectively eliminated through the rider.

¹⁴See Staff Comments at 5.

¹⁵In 2000, the cost of storm damage exceeded the \$12.5 million level of normal expense by \$155 million.

¹⁶The Commission reserves judgment on whether a return on the balance of these costs is appropriate. However, if these costs were approved and with a return, the return, applicable to the risk inherent to a "guaranteed" recovery, could be, within a general rate case, fashioned separately from that applied to other portions of rate base.

approximately \$155 million, which, if approved in total, would equate to a 4.4% rate increase;

EAI's revenues, costs and rate structure were last comprehensively reviewed over 6 years ago;

EAI has recorded excess earnings each year since at least 1997.

Therefore, the Commission finds that it would not be in the public interest to approve proposed Rider SR on a final basis without a full and comprehensive consideration of EAI's overall costs and revenues. However, the Commission will consider implementing Rider SR on an interim basis, subject to true-up and/or refund, pending consideration and resolution of a fully developed cost-of-service study in a general rate proceeding to be filed by EAI no later than November 1, 2001. Interim Rider SR, if approved, may remain in effect for some specific time period or may terminate with the issuance of a final Commission order in the general rate case.

Accordingly, the following procedural schedule is hereby established for the purpose of considering implementation of EAI's proposed Rider SR on an interim basis, subject to further investigation and true-up and/or refund in a general rate case proceeding to be filed by EAI no later than November 1, 2001. All other issues raised by AEEC, the AG and Staff in their May 18, 2001, comments can and should be addressed in the context of the following procedural schedule.

1. EAI shall file its final storm damage costs determination and testimony no later than 2:00 p.m., July 10, 2001.
2. Staff and Intervenor Direct Testimony shall be filed no later than 2:00 p.m., September 14, 2001.
3. EAI Rebuttal Testimony shall be filed no later than 2:00 p.m., October 8, 2001.
4. Staff and Intervenor Surrebuttal Testimony shall be filed no later than 2:00 p.m., October 26, 2001.
5. EAI Sur-surrebuttal Testimony shall be filed no later than 2:00 p.m., October 30, 2001.

6. A public hearing to consider the interim implementation of Rider SR, subject to further investigation and true-up and/or refund in a general rate case proceeding to be filed by EAI no later than November 1, 2001, is hereby set to begin at 9:30 a.m. on Thursday, November 8, 2001, in Commission Hearing Room No. 1, Arkansas Public Service Commission Building, 1000 Center Street, Little Rock, Arkansas.

7. The Commission will endeavor to issue its ruling on the interim implementation of Rider SR no later than December 1, 2001.

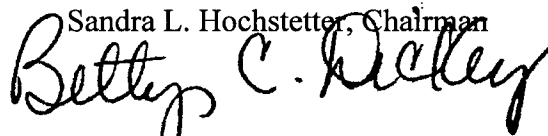
8. The Commission further orders EAI to file a general rate case with a fully developed cost of service study by November 1, 2001.

BY ORDER OF THE COMMISSION.

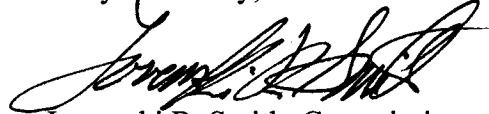
This 1st day of June, 2001.



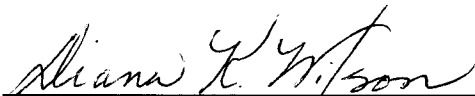
Sandra L. Hochstetter, Chairman



Betty C. Dickey, Commissioner



Lavenski R. Smith, Commissioner



Diana K. Wilson
Secretary of the Commission