

119 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Entergy Services, Inc.

Docket No. ER07-683-000

ORDER REJECTING PROPOSED SYSTEM AGREEMENT AMENDMENT

(Issued May 25, 2007)

1. On March 30, 2007, Entergy Services, Inc., as agent and on behalf of the Entergy Operating Companies¹ (collectively, Entergy), submitted for filing an amendment to the Entergy System Agreement (System Agreement) pursuant to section 205 of the Federal Power Act (FPA).² For the reasons stated below, we reject the proposed amendment.

I. Background

2. On June 14, 2001, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint pursuant to section 206 of the Federal Power Act (FPA).³ The Louisiana Commission alleged that the System Agreement, a rate schedule that includes various service schedules governing, among other things, the allocation of certain costs associated with the integrated operations of the Entergy system, no longer operated to produce rough production cost equalization.

¹ The Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), and Entergy New Orleans, Inc. (Entergy New Orleans). The generation and bulk transmission systems of all the Operating Companies is collectively referred to as the Entergy system.

² 16 U.S.C. § 824d (2000).

³ 16 U.S.C. § 824e (2000).

3. In Opinion No. 480,⁴ the Commission found that rough production cost equalization had been disrupted on the Entergy system. Opinion Nos. 480 and 480-A approved a numerical bandwidth of +/- 11 percent of the Entergy system average production costs in order to maintain rough equalization of production costs among the Entergy Operating Companies and required annual filings beginning in June 2007.⁵ The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and clarified in Opinion No. 480-A that any equalization payments would be made in 2007 after a full calendar year of data became available.⁶

4. On April 10, 2006, Entergy submitted a compliance filing to implement the directives of Opinion Nos. 480 and 480-A. The compliance filing included proposed revisions to Service Schedule MSS-3⁷ that had not been ordered by the Commission in Opinion Nos. 480 and 480-A. In its order accepting the compliance filing,⁸ the Commission rejected these non-compliant amendments and denied, as beyond the scope of the compliance filing, Entergy's request to make adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28. The Commission explained that Entergy must comply with the requirements of Opinion Nos. 480 and 480-A, including the requirement to follow the methodology set forth in Exhibits ETR-26 and ETR-28. The Commission also stated that Entergy should make a section 205 filing if it desired to make any changes to the methodology in Exhibits ETR-26 and ETR-28.

⁴ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005) (Opinion No. 480), *aff'd*, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A).

⁵ Opinion No. 480, 111 FERC ¶ 61,311 at P 138-39.

⁶ Opinion No. 480-A, 113 FERC ¶ 61,282 at P 54.

⁷ Service Schedule MSS-3 includes a methodology for pricing energy exchanged among the Operating Companies and provides for an after-the-fact, hour-by-hour allocation of the cost of energy from an Operating Company whose generation provided energy in excess of that company's load to an Operating Company that produced less than its load. Entergy has also included the formulas for implementing the rough production cost equalization bandwidth remedy required by Opinion No. 480 in Service Schedule MSS-3.

⁸ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006) (*Compliance Order*).

II. Entergy's Filing

A. Description of Service Schedule MSS-3 Sections That Implement Bandwidth Remedy

5. Entergy explains that, in the *Compliance Order*, the Commission accepted, with certain modifications, Entergy's compliance filing that included new sections to Service Schedule MSS-3 to implement the directives of Opinion Nos. 480 and 480-A. These sections – sections 30.11 through 30.14 – provide the method for calculating the production costs of the various Operating Companies for purposes of calculating the bandwidth remedy. Entergy adds that section 30.11 explains the general approach for calculating payments between the Operating Companies to the extent required to maintain rough production cost equalization pursuant to Opinion Nos. 480 and 480-A. Entergy states that section 30.11 provides the methodology for comparing actual production costs for each Operating Company (as calculated in section 30.12) to that Company's respective share of total system production costs (as calculated in section 30.13) to determine if any rough production cost equalization payments are due or must be received. Entergy states that section 30.14 explains associated billing procedures.

B. Description of Proposed New Section 30.15

6. Entergy proposes to amend the System Agreement by adding a new section, section 30.15, to Service Schedule MSS-3 to confirm the allocation of an individual Operating Company's bandwidth payment or receipt to the Operating Company's wholesale loads, if any, and to establish the allocation between retail jurisdictions in the case of two Operating Companies (Entergy Gulf States and Entergy Louisiana) that provide retail service to customers in two separate jurisdictions.

7. Entergy states that the new section is needed because of disputes that have arisen in proceedings pending in Louisiana and Arkansas concerning the appropriate allocation of these payments or receipts to retail and wholesale customers. Entergy asserts that these state proceedings could lead to an attempt to impermissibly trap costs related to the recovery of any payments or to the inappropriate disbursement of more than 100 percent of any receipts. Entergy states that without the addition of section 30.15, these disputes will likely result in unnecessary, time-consuming, and expensive litigation in order to establish an Operating Company's entitlement to 100 percent recovery of any payments and to limit disbursement to no more and no less than 100 percent of any receipts.

8. Entergy explains the three allocation steps envisioned in section 30.15 as follows. In Step 1 (Total Operating Company), the payments/receipts to maintain rough production cost equalization will be determined on a total company basis for each of the five Operating Companies, in accordance with sections 30.11, 30.12, and 30.13. Entergy states that this step was addressed by the Commission in the *Compliance Order* and the

ordered modifications to these sections are contained in the compliance filing made in December 2006 in Docket No. EL01-88-006.⁹ Entergy states that the instant filing does not modify this step. Entergy explains that, for two Operating Companies, Entergy Mississippi and Entergy New Orleans, only this first step is necessary because they have no wholesale loads and they operate in only one retail jurisdiction.

9. In Step 2 (Wholesale), an Operating Company's payments/receipts, as determined in Step 1, will be allocated first between the individual Operating Company's wholesale and retail loads. Entergy explains that currently there are two Operating Companies with wholesale loads affected by this step – Entergy Arkansas and Entergy Gulf States. Entergy explains that the portion of bandwidth payments/receipts not allocated to an Operating Company's wholesale load will be allocated to its retail jurisdiction(s). Entergy states that the sum of the amounts allocated to an Operating Company's wholesale and retail loads will equal the total Operating Company amount determined in Step 1.

10. In Step 3 (Retail), Entergy explains that two Operating Companies – Entergy Gulf States and Entergy Louisiana – provide retail service to customers in two separate jurisdictions. Entergy states that Entergy Gulf States provides retail electric service to customers in Louisiana, subject to regulation by the Louisiana Commission, and to customers in Texas, subject to regulation by the Public Utility Commission of Texas. Entergy states that Entergy Louisiana provides retail electric service to customers in the Fifteenth Ward of New Orleans (Algiers), subject to regulation by the Council of the City of New Orleans (New Orleans), and to customers in Louisiana, subject to regulation by the Louisiana Commission. Entergy explains that section 30.15 provides the basis for allocating an Operating Company's bandwidth payments/receipts among its retail jurisdictions. Lastly, Entergy states that the sum of the amounts allocated to an Operating Company's retail jurisdiction will equal the total Operating Company amount determined in Step 1, less any amount allocated to the wholesale loads in Step 2.

III. Notice of Filing and Responsive Pleadings

11. Notice of Entergy's filing was published in the Federal Register,¹⁰ with protests and interventions due on or before April 20, 2007. On April 9, 2007, the Arkansas Public Service Commission (Arkansas Commission), the Mississippi Public Service Commission (Mississippi Commission), the Louisiana Commission, and New Orleans

⁹ This compliance filing was recently accepted by the Commission in *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 119 FERC ¶ 61,095 (2007).

¹⁰ 72 Fed. Reg. 17,548 (2007).

jointly filed an unopposed motion for an extension of time to file protests, comments, and motions to intervene. The Commission granted an extension to and including April 27, 2007.

12. Notices of intervention and protests were filed by the Arkansas, Mississippi, and Louisiana Commissions, and New Orleans. A timely motion to intervene and protest was filed by Arkansas Electric Energy Consumers, Inc. (AEEC). Timely motions to intervene raising no issues were filed by the Louisiana Energy Users Group and Occidental Chemical Corporation. Entergy filed an answer to the protests, and the Louisiana Commission filed an answer to Entergy's answer.

13. In their joint protest, the Arkansas and Mississippi Commissions argue that Entergy's proposal in this proceeding improperly requests that the Commission directly preempt state retail ratemaking decisions, and therefore, should be rejected. They assert that Entergy's explanation that the instant proposal is needed because of disputes that have arisen in Louisiana and Arkansas and its fears of trapped costs, in fact, refers to Entergy's request for a general retail rate increase filed by Entergy Arkansas before the Arkansas Commission. The Arkansas and Mississippi Commissions explain that in that state proceeding Entergy Arkansas proposed a split of costs between its retail and wholesale customers, which was opposed by the Staff of the Arkansas Commission, as well as others, and is still pending.

14. The Arkansas and Mississippi Commissions argue that Entergy is here requesting that the Commission preempt an Arkansas Commission decision which has not even been issued because it has encountered opposition to its proposal that its Operating Company, Entergy Arkansas, itself put into the retail rate proceeding. The Arkansas and Mississippi Commissions also argue that Entergy Arkansas' retail/wholesale cost split has always been decided by the Arkansas Commission, and the fact that Entergy Arkansas made its own proposal in its retail rate case is explicit recognition that the decision is uniquely jurisdictional to the Arkansas Commission. Moreover, they argue that Entergy neglects to mention that a key issue in resolving this dispute is the meaning of two previous retail settlement agreements, signed by Entergy Arkansas, and the Arkansas Commission's intent in approving those proposals.

15. In its protest, New Orleans does not take a position with respect to the portion of Entergy's proposed amendment that would allocate a portion of each Operating Company's bandwidth payment or receipt to wholesale loads. However, New Orleans states that it opposes the portion of section 30.15 that would allocate bandwidth payments/receipts between retail jurisdictions of the two Operating Companies, which provide service to customers in two separate retail jurisdictions, Entergy Louisiana and Entergy Gulf States. New Orleans argues that the allocation of payments and receipts among retail jurisdictions of a utility is entirely a matter of retail jurisdiction and that the Commission has no authority to determine such allocations, citing to section 201(b) of

the FPA which grants the Commission jurisdiction over “the sale of electric energy at wholesale in interstate commerce.”¹¹ New Orleans argues that the allocation of costs and revenues of a utility among its retail customers is beyond the Commission’s reach, as it is the province of the retail regulators.¹² New Orleans states that retail regulators have exclusive jurisdiction over retail rates.¹³

16. New Orleans asserts that while states must permit utilities to pass through Commission-approved wholesale costs to their retail customers,¹⁴ the allocation of such costs between jurisdictions and classes of retail customers has traditionally been a retail regulator determination. New Orleans further argues that the allocation of bandwidth payments and receipts among retail customers of an Operating Company is no different than the allocation of other revenues or expenses among such customers, and there is no element of interstate transmission or interstate wholesale sales of power involved in such allocation among retail customers. Thus, New Orleans argues, the Commission should reject Entergy’s filing proposing an allocation of such bandwidth payments/receipts between retail jurisdictions because the Commission has no authority to approve such an allocation.

17. In the event that the Commission disagrees with New Orleans’ position on jurisdiction, it argues that the Commission nevertheless should find that Entergy’s proposed allocation between retail jurisdictions is too vague, lacks specificity, and provides Entergy with too much discretion to warrant approval without further clarification. In particular, New Orleans argues that the production cost data that Entergy will use to calculate the allocation between retail jurisdictions is not contained in the Operating Companies’ FERC Form 1s nor, to its knowledge, any other published source. Additionally, New Orleans argues that the specific elements of the calculation that would distinguish one retail jurisdiction from another are nowhere delineated in the formula. New Orleans argues that neither the Commission, nor interested retail regulators, can know for sure what values the formula should or should not include or be able to verify

¹¹ 16 U.S.C. § 824(b)(1) (2000).

¹² *Citing Entergy Services, Inc.*, 58 FERC ¶ 61,234 at 61,771, *order on reh’g*, 60 FERC ¶ 61,168 (1992), *remanded on other grounds sub nom. Cajun Elec. Power Co-op. Inc. v. FERC*, 28 F.3d 173 (D.C. Cir. 1994); and *Public Service Co. of Indiana, Inc.*, 51 FERC ¶ 61,367 at 62,214, *order on reh’g*, 52 FERC ¶ 61,260, *clarified*, 53 FERC ¶ 61,131 (1990).

¹³ *Citing Lockyer v. Dynegy*, 375 F.3d 831, 851 (9th Cir. 2003); *Duke Energy Trading and Marketing, LLC*, 267 F.3d 1042, 1056 (9th Cir. 2001).

¹⁴ *Citing Lockyer v. Dynegy*, 375 F.3d 831, 851 (9th Cir. 2003).

Entergy's calculations under the formula. Further, New Orleans argues that Entergy fails to delineate which retail ratemaking adjustments to production costs it intends to include in its section 30.15 calculation. Accordingly, if it is not rejected, New Orleans argues that the Commission should require Entergy to clarify its proposal by filing a more detailed tariff provision that permits evaluation of the rate impact of the new provision.¹⁵

18. In its protest, the Louisiana Commission also argues that Entergy's filing seeks an illegal and unprecedented expansion of the Commission's jurisdiction, to encompass the allocation of bandwidth payments and receipts among jurisdictions served by individual Operating Companies on the Entergy system. The Louisiana Commission argues that the Commission has no jurisdiction to make these allocations absent a wholesale power transaction requiring the determination of costs incurred for a wholesale rate. Accordingly, the Louisiana Commission argues that the allocation of payments or receipts of an Operating Company for the purpose of determining the retail cost of service is not within the Commission's jurisdiction under the FPA. The Louisiana Commission acknowledges that the Commission can allocate costs or revenues to an Operating Company's wholesale jurisdiction for the purpose of setting the wholesale rate for a sale for resale. The Louisiana Commission states, however, that the Commission has never attempted to mandate that the retail jurisdiction accept the remaining portion of the costs or revenues.

19. In addition, the Louisiana Commission argues that the Commission has never asserted jurisdiction to order intra-operating company retail allocations of System Agreement costs and revenues. The Louisiana Commission asserts that retail regulators have always made the allocations to the retail jurisdiction using allocation factors they deem appropriate. The Louisiana Commission asserts that the various retail jurisdictions have always determined the appropriate intra-operating company retail allocations for inclusion in retail rates and the Commission has never attempted to interfere with that.

20. The Louisiana Commission also argues that Entergy's proposed allocation method is inconsistent with the methodology adopted by the Commission and would ensure that the wholesale and retail jurisdictions within an Operating Company will have different deviations from the system average and that their deviations will differ from that of the Operating Company as a whole. Lastly, the Louisiana Commission argues that if the Commission is to remain consistent with its practice in implementing rough production cost equalization on Entergy's system, it must apply the new tariff prospectively to a

¹⁵ *Citing California Independent System Operator Corp.*, 117 FERC ¶ 61,356 at P 11 & 20 (2006); *Indicated Shippers v. Columbia Gulf Transmission Co.*, 106 FERC ¶ 61,040 at P 38-39 (2004); *PJM Interconnection, LLC*, 112 FERC ¶ 61,276 at P 10 (2005); *New York Independent System Operator, Inc.*, 101 FERC ¶ 61,216 at P 6 (2002).

future calendar year test period and commence payments and receipts under the modified tariff only after that future calendar year.

21. In its protest, AEEC argues that the instant proceeding should be consolidated for hearing with several other proceedings that it asserts involve many of the same parties and issues, in order to conserve the limited resources of both the Commission and other interested parties.¹⁶ AEEC also argues that Entergy is seeking in this proceeding to use the Commission's authority to circumvent the Arkansas Commission's ability to enforce Entergy Arkansas' promise in a state settlement agreement to protect Arkansas ratepayers from adverse impacts associated with changes in wholesale load, by taking from the Arkansas Commission the ability to allocate and control the costs that are passed through to Entergy Arkansas' retail ratepayers. Accordingly, AEEC requests that the Commission deny Entergy's filing; alternatively, AEEC asserts that the filing should be consolidated as noted above and set for hearing.

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by Entergy and the Louisiana Commission and will, therefore, reject them.

¹⁶ The other dockets mentioned by AEEC include Docket Nos. ER07-682-000 and ER07-684-000, which also incorporate proposed changes to Service Schedule MSS-3. AEEC also lists Docket No. EL07-48-000, which involves a petition for declaratory order by Entergy seeking to have a generator, constructed or purchased by an Operating Company to serve system load, found to be in the public interest and declared a System Resource with costs reflected in the System Agreement formula rates. The fourth docket is Docket No. EL07-52-000, and involves a complaint by the Louisiana Commission to revise Service Schedule MSS-3 to exclude interruptible load from the allocation of capacity costs among the Operating Companies and to revise the pricing of energy from the Vidalia hydroelectric plant.

B. Commission Determination

24. We will reject Entergy's proposed amendment. We are not persuaded by Entergy that the new section is needed because of disputes that have arisen in proceedings pending in Louisiana and Arkansas, concerning the appropriate allocation of these payments or receipts to retail and wholesale customers.

25. Entergy's concerns about trapped costs and 100 percent recovery of payments or disbursement of any receipts are premature. Entergy has not pointed to any state commission decision that is inconsistent with the recovery by any of its Operating Companies of payments or disbursement of receipts pursuant to implementation of Opinion No. 480. Entergy simply raises pending proceedings before the Arkansas and Louisiana Commissions and speculates as to the possibility of costs being trapped. Entergy may raise any of its concerns if and when a state commission that has jurisdiction over the retail operations of any Operating Company issues a decision that Entergy believes may be inconsistent with the Operating Company's right to recover payments or to the disbursement of receipts pursuant to implementation of Opinion No. 480.

26. Lastly, we will deny AEEC's request to consolidate the instant proceeding with Docket Nos. ER07-682-000, ER07-684-000, EL07-48-000, and EL07-52-000. Generally we consolidate cases where there are common issues of law and fact for purposes of settlement, hearing, and decision.¹⁷ Here, we are not instituting hearing or settlement judge procedures and, accordingly, consolidation is not warranted.

The Commission orders:

Entergy's proposed amendment to Service Schedule MSS-3 is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,319 at P 45 (2004); and *Cleco Power LLC*, 118 FERC ¶ 61,074 at P 32 (2007).