

132 FERC ¶ 61,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket No. EL10-55-000

v.

Entergy Corporation
Entergy Services, Inc.
Entergy Louisiana, L.L.C.
Entergy Arkansas, Inc.
Entergy New Orleans, Inc.
Entergy Mississippi, Inc.
Entergy Gulf States Louisiana, Inc.
Entergy Texas, Inc.

ORDER ON COMPLAINT, ESTABLISHING EVIDENTIARY HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued July 1, 2010)

1. On March 31, 2010, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint (Complaint) pursuant to sections 206 and 306 of the Federal Power Act (FPA),¹ against Entergy Corporation and its subsidiaries, Entergy Services, Inc., and six operating companies² (together, Operating Companies) (collectively, Entergy). The Complaint seeks to change the depreciation and decommissioning data and rates included in the Entergy rough production cost equalization bandwidth formula set forth in Service Schedule MSS-3 to the System

¹ 16 U.S.C. §§ 824e, 825e (2006).

² The Entergy Operating Companies are: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc.; and Entergy Texas, Inc.

Agreement, as discussed below. The Louisiana Commission moved for summary disposition, asking the Commission to adopt, prospectively and retroactively, revised depreciation and decommissioning data and rates for the 2009 and 2010 bandwidth proceedings.

2. Because we find that there are issues of material fact that cannot be resolved on the basis of the written record,³ we deny the Louisiana Commission's motion for summary disposition, establish a trial-type evidentiary hearing and settlement judge procedures, and set a refund effective date of March 31, 2010, the date the complaint was filed.

I. Background

3. Although each individual Entergy Operating Company owns dedicated generation and transmission assets, the Entergy system is planned and operated as a single, integrated electric system in accordance with the System Agreement, a Commission-jurisdictional rate schedule that operates to produce rough production cost equalization. In 2005, the Commission issued Opinion No. 480,⁴ which found that the Operating Companies' production costs were not roughly equal, and that the System Agreement was no longer just and reasonable. In Opinion Nos. 480 and 480-A, the Commission approved a numerical bandwidth of +/-11 percent of the Entergy system average production cost in order to maintain the rough production cost equalization among the Operating Companies. The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and that any equalization payments would be made in 2007 after a full calendar year of data became available. The Commission accepted Entergy's amended Service Schedule MSS-3, which incorporated the rough production cost equalization bandwidth calculation (bandwidth formula).⁵

³ See *Cajun Elec. Power Coop. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1995) (citing *Vermont Dept. of Pub. Serv. v. FERC*, 817 F.2d 127, 140 (D.C. Cir. 1987); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993)).

⁴ *Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁵ *Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007).

4. Through annual compliance filings (bandwidth proceedings), Entergy calculated the bandwidth payments and receipts under the Service Schedule MSS-3 bandwidth formula using data reported in each Operating Company's FERC Form 1. Entergy made its first annual bandwidth filing on May 29, 2007 in Docket No. ER07-956-000. On May 30, 2008, Entergy made its second annual bandwidth filing in Docket No. ER08-1056-000 and on May 30, 2009, Entergy made its third annual bandwidth filing in Docket No. ER09-1224-000. The Louisiana Commission submitted protests in all three proceedings regarding depreciation. In Opinion No. 505,⁶ which addressed the first bandwidth filing, the Commission held that while it has authority to change the depreciation and decommissioning expenses included in the bandwidth formula, it would not do so in a proceeding established to determine the actual production costs of the Operating Companies.⁷ Instead, the Commission explained that the proper avenue to make changes to the bandwidth formula would be to make a filing under section 205 or 206 of the FPA.⁸

II. Complaint

5. In its Complaint, the Louisiana Commission seeks to modify certain text in section 30.12 of Service Schedule MSS-3 to the Entergy System Agreement relating to depreciation expense, nuclear decommissioning expense, and accumulated provision for depreciation and amortization. Specifically, the Louisiana Commission states that it seeks modifications of Service Schedule MSS-3 of the System Agreement to change the definitions of Nuclear Accumulated Provision for Depreciation and Amortization (NAD), the Nuclear Depreciation and Amortization Expense (NDE), the Accumulated Provision for Depreciation and Amortization (ADXN), General Plant Accumulated Provision for Depreciation (GAD), Depreciation and Amortization Expense (DEXN) and General Plant Depreciation Expense (GDX) to require that those inputs be calculated in accordance with Commission policy, the FPA, Uniform System of Accounts and Generally Accepted Accounting Principles, regardless of the amounts approved by retail regulators, and regardless of the fact that what the Louisiana Commission considers improper amounts are recorded as "actual" data in the applicable FERC accounts.⁹

⁶ *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010) (Opinion No. 505).

⁷ *Id.* P 172.

⁸ *Id.* P 170, 172.

⁹ Louisiana Commission's Complaint at 3-4.

6. The Louisiana Commission argues that depreciation and decommissioning expenses included in Entergy's rates should reflect the costs properly attributable to the period in question, given the useful life of the property. The Louisiana Commission argues that Entergy's depreciation and decommissioning rates do not meet this standard and therefore are unjust and unreasonable. The Louisiana Commission's primary concern with these rates revolves around whether a 40-year or a 60-year expected service life should be used for certain nuclear facilities.

7. Specifically, the Louisiana Commission states that the Commission should correct assumptions regarding retirement dates for certain gas-fired generating units, correct assumptions regarding life spans for certain combined cycle gas-fired generating units, normalize interim retirement data for certain of Entergy's nuclear units, and modify the methodology used to incorporate inflation in the terminal salvage costs for coal-fired generating units. The Louisiana Commission also states that adjusted production plant depreciation rates are required to ensure just and reasonable rates for the Entergy Operating Companies.

8. The Louisiana Commission states that the use of incorrect data in Service Schedule MSS-3 has the effect of overstating the depreciation expense of Entergy Arkansas and understating the depreciation expense of Entergy Gulf States Louisiana. The Louisiana Commission states that these errors make the bandwidth payments unjust, unreasonable and unduly discriminatory, in violation of the FPA.¹⁰ The Louisiana Commission requests that the Commission summarily correct the errors, or if necessary, change the tariff and correct the errors. Alternatively, the Louisiana Commission states that the Commission should set the case for hearing and establish the refund effective date at the earliest date allowed by law.¹¹

9. The Louisiana Commission also asks the Commission to summarily find that the updated service lives should be used in the 2010 bandwidth calculation, pursuant to the final determination in Opinion No. 505. It argues that in Opinion No. 505, the Commission found that Entergy's nuclear depreciation rates are unjust and unreasonable, and that no party has sought rehearing of this determination.¹² The Louisiana Commission states that it has attached updated depreciation studies recently completed by Entergy, and that these studies provide the minimum adjustments that should be made to depreciation expense inputs. The Louisiana Commission states that the Commission should summarily adopt these studies for the 2010 bandwidth calculations, but should

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* at 5 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 143-47).

require that they be revised to reflect the “Average Life Group” procedure traditionally used by the Commission rather than the “Equal Life Group” procedure proposed by Entergy.¹³ The Louisiana Commission states that these revised rates should also be made effective for the 2009 bandwidth calculation and, to the extent required by law in light of the Commission’s recent rulings, retroactively to the 2007 bandwidth calculation.¹⁴

10. The Louisiana Commission states that the Commission should summarily adopt the adjustments proposed by the Louisiana Commission to the new depreciation studies, which are required to ensure that the depreciation inputs are just, reasonable and unduly discriminatory. The Louisiana Commission states that these adjustments are fully supported in the attached testimony and exhibits. Alternatively, the Louisiana Commission states that if a material dispute of fact is raised concerning the reasonableness of the adjustments, the Commission should summarily approve the use of the new studies with the ALG procedure for 2010 and set the other issues for hearing.¹⁵

III. Notice and Responsive Pleadings

11. Notice of the Complaint was published in the *Federal Register*, 75 Fed. Reg. 18,495 (2010), with interventions and protests due on or before April 20, 2010. Notices of intervention were filed by the Mississippi Public Service Commission and the Arkansas Public Service Commission (Arkansas Commission). Timely motions to intervene were filed by the Council of the City of New Orleans, Louisiana; Ameren Services Company, as Agent for Union Electric Company; Louisiana Energy Users Group; and Arkansas Electric Energy Consumers, Inc. Occidental Chemical Corporation (Occidental) filed a motion to intervene one day out of time.

12. On April 20, 2010, Entergy filed an answer to the Complaint and the Arkansas Commission filed an answer and protest opposing the Complaint. On April 30, 2010, the

¹³ *Id.* at 5 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 172 n.205). Equal Life Group (ELG) depreciation is based on the concept that the units of a plant with a “mass property” account do not retire at once, but rather in a dispersed manner over a period of many years. The alternative to ELG is the Average Life Group (ALG) which assumes that all units of plant in a given vintage have a common life span and therefore a common remaining life. The Louisiana Commission states that the ALG method of computing depreciation rates is currently employed by almost all major gas or electric utilities and is the procedure accepted by the Commission. *See* Complaint, Exhibit LC-6 at 5-6.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 6.

Louisiana Commission filed a response to the answers of Entergy and the Arkansas Commission.

IV. Entergy's Answer

13. Entergy states that the Louisiana Commission's proposal to amend language in Service Schedule MSS-3 would fundamentally alter the nature of the bandwidth formula and the annual bandwidth proceedings and should therefore be denied.¹⁶ Entergy states that the Louisiana Commission's proposal would inappropriately expand the scope of the annual proceedings by turning them into the equivalent of annual litigated rate cases.¹⁷ Entergy states that under the current structure of the bandwidth remedy, Entergy is required to use the *actual* depreciation expense incurred by the Entergy Operating Companies and recorded in FERC Form 1 filings, which is the retail regulator-approved depreciation expense for the portion of the assets providing retail service, in order to determine whether and by how much any of the Energy Operating Companies is outside the 11 percent bandwidth established by the Commission.¹⁸ In order to prevail on its Complaint, Entergy states, the Louisiana Commission must demonstrate that there is some reason why hypothetical depreciation rates should be used and that it is no longer just and reasonable to use *actual* production costs in the bandwidth calculation.¹⁹

14. Entergy states that the bandwidth formula is a formula rate that derives rates annually based on costs and other data recorded in the Entergy Operating Companies' annual FERC Form 1 filings.²⁰ While parties can raise assertions of imprudence and can challenge whether a cost is recorded in the correct account, Entergy states that they are otherwise limited in the annual bandwidth proceedings to questioning whether Entergy has properly applied the bandwidth formula.²¹ Entergy states the parties have disputed whether the language in the bandwidth formula permits the Commission to require the use of something other than the depreciation rates approved by the retail regulators for production plant that is subject to the state retail regulators' jurisdiction.²² However,

¹⁶ Entergy's Answer at 4.

¹⁷ *Id.*

¹⁸ *Id.* at 9.

¹⁹ *Id.*

²⁰ *Id.* at 11.

²¹ *Id.*

²² *Id.* at 6.

Entergy states that the Commission does not have the authority under the FPA to set the depreciation rates used to establish retail rates and, to date, the Commission has not required Entergy to deviate from the depreciation expense recorded in the applicable accounts in the FERC Form 1 filings as approved by the Operating Companies' retail regulators. As a consequence, Entergy states that, in each of its annual bandwidth filings, Entergy has used the actual depreciation expense recorded in the FERC Form 1 filings, which primarily reflects the depreciation expense used to set retail rates.²³

15. Entergy states that it would not be appropriate to initiate a proceeding to investigate the recorded depreciation expenses of these companies at this time.²⁴ With regard to Entergy Arkansas, Entergy states that there is a base rate filing pending before the Arkansas Commission that includes depreciation rates. Entergy states that it would be inappropriate for this Commission to conduct a parallel hearing to address the same depreciation issues.²⁵ With regard to the depreciation expense for Entergy Gulf States Louisiana and Entergy Louisiana, Entergy states that, ironically, the Louisiana Commission is asking this Commission to find that the depreciation expense established by the Louisiana Commission itself is not just and reasonable. Entergy states that the Louisiana Commission's chief complaint with regard to the depreciation expense recorded for these companies that it regulates is that these companies assume 60-year service lives for their nuclear facilities when the Nuclear Regulatory Commission license life for those facilities is only 40 years. Entergy states that extending the service lives of these facilities for retail rate purposes reduces the depreciation expense associated with the facilities, and thus results in a corresponding reduction in retail rates.²⁶

16. Entergy states if the Commission were to rule that the depreciation expense for the Louisiana nuclear facilities should be based on a 40-year life for bandwidth calculation purposes, while at the same time the Louisiana Commission uses a 60-year life, this would create a mismatch between Louisiana retail rates and the bandwidth calculation that would create an artificial advantage for Louisiana retail customers. Entergy states that these customers would pay retail rates calculated on a lower depreciation expense (which reduces retail rates), and then would receive bandwidth

²³ *Id.* at 7.

²⁴ *Id.* at 15.

²⁵ *Id.* at 15-16.

²⁶ *Id.* at 17.

payments calculated on the assumption of a higher depreciation expense (which increases the bandwidth payments).²⁷

17. Entergy states that the Commission should reject the Louisiana Commission's arguments that the Commission should summarily adopt depreciation studies that the Louisiana Commission attached to its complaint, including the Louisiana Commission's proposed adjustments to the new depreciation studies. Entergy states that the primary premise supporting the Louisiana Commission's motion for summary disposition is that, because of Opinion No. 505, there is now a final determination that Entergy's nuclear depreciation rates are based on incorrect service lives and are therefore unjust and unreasonable. However, Entergy states that Opinion No. 505 did not provide any final determinations, but found that any ruling on the validity of the recorded depreciation expense would have to be made in a complaint proceeding such as this one.²⁸ Entergy states that the Louisiana Commission's assertions regarding changes that should be made to the updated depreciation studies are littered with factual allegations that Entergy contests. To the extent that the Commission does not reject the Louisiana Commission's complaint, it must establish a hearing to consider the issues it raises with regard to depreciation expense.²⁹

18. Entergy states that to the extent the Commission determines that some relief is merited based on the Complaint, such relief cannot be implemented retroactively. Entergy states that the relief cannot be made effective for the 2009 bandwidth calculation, cannot require the restatement of 2008 FERC Form 1s or the recomputation of bandwidth receipts and payments for the 2008 test year. Entergy also states that such relief cannot be made retroactive to the 2007 bandwidth filings. Instead, Entergy states that any relief must be granted on a prospective basis only.³⁰

V. Other Responsive Pleadings

19. The Arkansas Commission states that the Complaint fails to establish sufficient grounds to modify Service Schedule MSS-3 by: (1) selectively replacing its reliance on the actual depreciation expense and decommissioning cost, as reported in the annual FERC Form 1 reports of the Operating Companies, with use of imputed, hypothetical expenses and costs; and (2) establishing hypothetical depreciation and decommissioning

²⁷ *Id.*

²⁸ *Id.* at 18.

²⁹ *Id.* at 18-19.

³⁰ *Id.* at 20.

expenses for the bandwidth calculation. The Arkansas Commission states that, having failed to persuade the Commission in the Opinion No. 505 proceeding to abandon use of actual depreciation and decommissioning expenses as reported in the FERC Form 1s, the Louisiana Commission now seeks to achieve the same end by filing a complaint under section 206 of the FPA.³¹

20. Also, the Arkansas Commission states that granting the relief requested in the Complaint would effectively nullify the fundamental purpose of the bandwidth remedy under Opinion Nos. 480 and 480-A, where the Commission required backward-looking use of actual amounts on the Operating Companies' books for the previous year as reported on the FERC Form 1s. The Arkansas Commission states that normally Entergy reports in its FERC Form 1s the depreciation expenses reflecting depreciation rates established by the appropriate state regulator and by the Commission for any wholesale sales by an Operating Company. The Arkansas Commission states that if and when changes to those depreciation rates are approved by a particular state commission, the associated resulting depreciation expenses that are reported in the Form 1 of the affected Operating Company follow in lock-step, consistent with the methodology of Exhibits ETR-26 and ETR-28. The Arkansas Commission states that the terms of the Service Schedule MSS-3 formula reflect this practice and reality.³²

21. The Arkansas Commission states that the vast majority of the depreciation expenses reported in the FERC Form 1s are the depreciation expenses approved by the Operating Companies' retail regulators. Pursuant to section 302(a) of the FPA, the Arkansas Commission states that retail regulators have exclusive authority over the determination of the depreciation rates and expenses associated with providing service at retail. The Arkansas Commission notes that for three Operating Companies (Entergy Louisiana, Entergy Texas and Entergy New Orleans), 100 percent of their production plant is devoted to serving retail customers because they have no wholesale sales customers and for the remaining three Operating Companies, the vast majority of their production plant is devoted to serving retail customers. The Arkansas Commission states that for these latter three Operating Companies (Entergy Arkansas, Entergy Mississippi and Entergy Gulf States Louisiana), an imputed cost for depreciation under the bandwidth formula inexplicably would differ from the applicable Commission-approved depreciation rate for wholesale sales, if the Louisiana Commission were to prevail in its Complaint.³³ This, it contends, is inconsistent with the current tariff, FERC Form 1 and

³¹ Arkansas Commission's Answer at 4.

³² *Id.* at 7.

³³ *Id.* at 8.

the Uniform System of Accounts. Moreover, the Arkansas Commission argues that the use of hypothetical depreciation amounts would conflict with the actual cost methodology found in Exhibits ETR-26 and ETR-28, and would mean that the annual bandwidth calculation would be inconsistent with the method first used to determine that the system was not in rough production cost equalization.³⁴

22. Next, the Arkansas Commission argues that in approving Entergy's filing to comply with Opinion No. 480, the Commission approved the specific elements and components to the bandwidth formula, including the employment of actual depreciation expense amounts reported in the FERC Form 1s.³⁵ The Arkansas Commission states that the Louisiana Commission did not take issue with this finding at the time, and that its Complaint amounts to a collateral attack on the Commission's prior order. The Arkansas Commission further contends that the Complaint collaterally attacks Opinion No. 505, which concluded that Entergy must use actual cost data in calculating production payments under Service Schedule MSS-3.

23. The Arkansas Commission next states that replacing the actual depreciation rates now in effect in Arkansas retail rates with an imputed hypothetical reduced depreciation rate for bandwidth purposes will have the effect of increasing overall costs to Arkansas' retail customers, and that this is not just and reasonable.³⁶

24. The Arkansas Commission states that the Complaint relies on the Commission's policy regarding nuclear depreciation service lives; however, that policy applies to wholesale rate setting and not to the bandwidth proceeding.³⁷ Furthermore, the Arkansas Commission states that deviation from the use of actual, as-reported FERC Form 1 depreciation costs, derived from state-set depreciation rates, would be inconsistent with the Commission's policy set in *American Elec. Power Service Corp.*,³⁸ in which the Commission accepted a proposed formula rate employing actual historical depreciation data from the previous year's Form 1 filing of the American Electric Power Operating Companies as inputs to the formula.

³⁴ *Id.* at 12-13.

³⁵ *Id.* at 10-11 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006), *order on reh'g*, 119 FERC ¶ 61,095 (2007)).

³⁶ *Id.* at 13-14.

³⁷ *Id.* at 14 (citing *Entergy Servs., Inc.*, 130 FERC ¶ 61,170, at P 21 (2010)).

³⁸ 120 FERC ¶ 61,205 (2007), *order on reh'g and compliance*, 121 FERC ¶ 61,245 (2007).

25. The Arkansas Commission states that the Complaint should be rejected as deficient. The Arkansas Commission states that the Louisiana Commission does not offer a proposed redline version of the revisions it advances to Service Schedule MSS-3, nor specify them in the Complaint.³⁹

26. The Arkansas Commission further states that, if the Complaint is not rejected outright, the Commission should reject the Louisiana Commission's motion for summary judgment because it does not meet the predicate for lack of material facts in dispute. The Arkansas Commission states that the Louisiana Commission's proposed summary adjustment of Entergy's 2009 depreciation studies raises disputes about methodology that are material to a decision on the merits, and that it disputes whether the proposed use of 2009 depreciation studies, as adjusted, is just and reasonable.⁴⁰ Also, the Arkansas Commission states that the retroactive relief sought by the Louisiana Commission must be denied given that section 206 provides that the refund effective date cannot precede the date when the complaint was filed with the Commission.⁴¹

VI. Discussion

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities filing them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant Occidental's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Section 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Louisiana Commission's response and will, therefore, reject it.

28. Section 206 of the FPA requires a complainant to satisfy a dual burden in order to obtain the relief it seeks in a complaint.⁴² The complainant must establish that the current rate is unjust and unreasonable and then that its alternative rate proposal is just and reasonable.⁴³ Based on our review of the pleadings, we find that the depreciation and

³⁹ *Id.* at 4-5.

⁴⁰ Arkansas Commission's Answer at 14-15.

⁴¹ *Id.* at 16-17.

⁴² 16 U.S.C. § 824e (2006).

⁴³ *See Michigan Electric Transmission Co.*, 116 FERC ¶ 61,164, at P 12 (2006).

decommissioning expenses included in Service Schedule MSS-3 may be unjust, unreasonable, or unduly discriminatory or preferential. We further find that the Louisiana Commission has raised issues of material fact that cannot be resolved on the basis of the record in this proceeding. For this reason, we will deny the Louisiana Commission's motion for summary disposition and establish a trial-type hearing before an Administrative Law Judge to address these factual issues.⁴⁴

29. 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.⁴⁵ 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.⁴⁶ 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.

30. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b), as amended by section 1285 of the Energy Policy Act of 2005,⁴⁷ requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,⁴⁸ we will set the refund effective date at the earliest date possible, i.e., the date of the filing of the complaint, which is March 31, 2010.

⁴⁴ *Cajun Elec. Power Coop. v. FERC*, 28 F.3d at 177.

⁴⁵ 18 C.F.R. § 385.603 (2010).

⁴⁶ 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 and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

⁴⁷ 16 U.S.C. § 824e(b) (2006).

⁴⁸ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

31. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Based on our review of the record, we expect that if this case does not settle, the presiding judge should be able to render a decision within six months of the commencement of hearing procedures or, if the case were to go to hearing immediately, by January 3, 2011. We thus estimate that if the case were to go to hearing immediately we would be able to issue our decision within approximately four months of the filing of briefs on and opposing exceptions, or by June 2, 2011.

The Commission orders:

(A) The Louisiana Commission's motion for summary disposition is hereby denied, as discussed above.

(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, 206 and 309 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 the issues identified in the body of this order. 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 (2010), 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 powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request 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, N.E., 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.

(F) The refund effective date established pursuant to section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005, is March 31, 2010.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.