

136 FERC ¶ 61,057
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER11-3658-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, ESTABLISHING
HEARING PROCEDURES AND HOLDING PROCEDURES IN ABEYANCE

(Issued July 26, 2011)

1. Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies (Operating Companies),¹ submitted for filing rates pursuant to Service Schedule MSS-3 of the Entergy System Agreement (System Agreement) implementing the Commission's decision in Opinion Nos. 480 and 480-A.² In this order, we accept these proposed rates for filing, and suspend them for a nominal period, to become effective June 1, 2011, as requested, subject to refund. While we establish hearing procedures, we hold those procedures in abeyance pending a further Commission order, as discussed below.

I. Background

2. In Opinion Nos. 480 and 480-A, 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 cost in order to maintain the rough equalization of production costs among the Operating Companies and required annual bandwidth implementation filings beginning in June 2007. The Commission stated that the bandwidth would be implemented

¹ The Entergy Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy Texas, Inc. (Entergy Texas), and Entergy New Orleans, Inc. (Entergy New Orleans).

² *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *aff'd in relevant part sub nom. La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

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 stated that future production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26. The detailed breakdown and calculations of the production cost methodology reflected in the values shown in ETR-26 are found in Exhibit ETR-28. In its compliance filing implementing the directives of Opinion Nos. 480 and 480-A, Entergy included the formulas for implementing the rough production cost equalization bandwidth remedy required by Opinion No. 480 in Service Schedule MSS-3.³

3. On May 29, 2007, in Docket No. ER07-956-000, Entergy submitted its first annual bandwidth implementation filing that set forth rates pursuant to Service Schedule MSS-3 of the System Agreement, implementing the Commission's decisions in Opinion Nos. 480 and 480-A (2007 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2007, subject to refund.⁴ The Commission also established hearing and settlement judge procedures, which produced an initial decision that the Commission affirmed in part and reversed in part.⁵ Entergy submitted a compliance filing in response to Opinion No. 505 on March 12, 2010.

4. On May 30, 2008, in Docket No. ER08-1056-000, Entergy submitted its second annual bandwidth implementation filing based on calendar year 2007 data (2008 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2008, subject to refund.⁶ The Commission also established hearing and settlement judge procedures. The parties submitted a partial uncontested settlement⁷ that was certified by the presiding judge on June 19, 2009, and the presiding judge issued an initial decision on the remaining issues on September 9, 2009.⁸

³ *La. Pub. Serv. Comm'n. v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006).

⁴ *Entergy Servs., Inc.*, 120 FERC ¶ 61,094 (2007).

⁵ *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010).

⁶ *Entergy Servs., Inc.*, 124 FERC ¶ 61,101 (2008).

⁷ This partial uncontested settlement was accepted by the Commission on August 24, 2009. *Entergy Servs., Inc.*, 128 FERC ¶ 61,181 (2009).

⁸ *Entergy Services, Inc.*, 128 FERC ¶ 63,015 (2009).

5. On May 29, 2009, in Docket No. ER09-1224-000, Entergy submitted its third annual bandwidth implementation filing based on calendar year 2008 data (2009 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2009, subject to refund.⁹ The Commission also established hearing and settlement judge procedures. The hearing was held in April 2010 and the presiding judge issued an initial decision on August 5, 2010.

6. On May 27, 2010, in Docket No. ER10-1350-000, Entergy submitted its fourth annual bandwidth implementation filing based on calendar year 2009 data (2010 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2010, subject to refund.¹⁰ The Commission also established hearing and settlement judge procedures and, noting the other pending bandwidth-related cases, directed the presiding judge to not allow re-litigation of issues that are the subject of those other proceedings pending before the Commission.

7. On January 20, 2011, as supplemented on February 7, 2011, Entergy filed in the 2010 bandwidth calculation proceeding in Docket No. ER10-1350-000 a motion to strike testimony submitted by the Louisiana Public Service Commission (Louisiana Commission) witnesses on the ground that their testimony re-litigated issues already being considered in other proceedings. On January 28, 2011, the presiding judge issued an order to show cause why that proceeding should not be stayed, pending the issuance of Commission decisions on the previous bandwidth cases. Following initial and reply briefs on the matter, the presiding judge issued an order on March 3, 2011 holding the hearing in Docket No. ER10-1350-000 in abeyance until the Commission rules on the issues pending before it in other proceedings.¹¹

⁹ *Entergy Servs., Inc.*, 128 FERC ¶ 61,091 (2009).

¹⁰ *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 (2010).

¹¹ *Entergy Servs., Inc.*, 134 FERC ¶ 63,018 (2011) (Stay Order). On March 21, 2011, the Louisiana Commission filed a motion to permit interlocutory appeal of the Stay Order with the Presiding Judge, which was denied. On April 7, 2011, the Louisiana Commission filed an Appeal of Presiding Officer's Denial of Motion to Permit Interlocutory Appeal of Order Staying Proceeding. In its appeal to the Commission, the Louisiana Commission argued that the Stay Order likely will cause future, as yet unfiled bandwidth filings also to be stayed. On April 13, 2011, the Chairman, acting as Motions Commissioner, declined to refer the Louisiana Commission's interlocutory appeal to the full Commission.

II. Entergy's Filing

8. On May 27, 2011, Entergy filed its fifth annual bandwidth implementation filing based on calendar year 2010 data (2011 bandwidth calculation) pursuant to section 205 of the Federal Power Act (FPA)¹² to implement the Commission's decisions in Opinion Nos. 480 and 480-A.

9. Entergy states that it calculated the payments and receipts under the Service Schedule MSS-3 bandwidth formula using data as reported in the Operating Companies' 2010 FERC Form No. 1, or such other supporting data as provided for in Service Schedule MSS-3. Entergy states that it has calculated the Actual Production Costs of each Operating Company and the Average Production Costs of the system consistent with the terms and conditions of Service Schedule MSS-3. The system Average Production Costs were then allocated to each Operating Company to obtain each Operating Company's respective allocation of system Average Production Costs. Entergy also states that each Operating Company's allocated Average Production Costs are compared to the Operating Company's Actual Production Costs to determine the dollar and percentage disparity. It states that based on these calculations, Entergy Arkansas will make payments to the other Operating Companies of \$77.4 million.

10. Entergy states that it has calculated the payments/receipts under Service Schedule MSS-3 using the same methodology as in the four previous annual bandwidth proceedings, incorporating the treatment of formula inputs required by Opinion No. 505 and currently pending in its filing to comply with Opinion No. 505. In addition, Entergy states that it has reflected all of the Service Schedule MSS-3-related amendments previously accepted or approved by the Commission. Entergy requests that the Commission accept the proposed rates for filing, effective June 1, 2011, subject to the outcome of the issues previously litigated in bandwidth-related cases currently pending before the Commission. Entergy argues that this would prevent the 2011 bandwidth calculation from proceeding ahead of the currently-stayed 2010 bandwidth filing and the re-litigation of matters already under consideration.

11. Entergy highlights in particular three items contained in the rate calculation involving issues addressed in prior or ongoing bandwidth proceedings that are reflected in its current bandwidth filing.¹³ It states that the proper treatment of these formula inputs will be subject to the outcome of earlier proceedings. First, Entergy states that it has reflected the Accumulated Deferred Income Taxes (ADIT) due to net operating loss carryforwards associated with production-related storm costs recorded in Account No.

¹² 16 U.S.C. § 824e (2006).

¹³ *Id.* at 8.

190 in the 2011 bandwidth calculation, as required by Opinion No. 505. Additionally, Entergy states, in recognition of the treatment of this Account No. 190 ADIT associated with the net operating loss carryforwards in Opinion No. 505, it has also reflected the ADIT associated with the production-related storm costs recorded in Account No. 282 (Casualty Loss) in the 2011 bandwidth calculation. Entergy further states that in Opinion No. 505, the Commission did not address whether ADIT associated with the production-related storm costs should be functionalized consistent with all other ADIT amounts or should be directly assigned. Therefore, in its request for rehearing and clarification of Opinion No. 505 Entergy has requested clarification on this issue. Entergy states that, as in its Opinion No. 505 compliance filing, the 2011 bandwidth calculation includes the production-related storm costs in the ADIT amounts that are functionalized. Entergy states that this issue is subject to the outcome of the Opinion No. 505 compliance proceeding that is currently pending before the Commission.

12. Second, Entergy states that in Opinion No. 505, the Commission determined that the appropriate accounting treatment for the Spindletop Regulatory Asset should be to record the amortization in Account No. 501 on Entergy Gulf States Louisiana's books. Entergy states that while the Commission has modified the Spindletop Regulatory Asset accounting to include such amortization in Account No. 501, an account that is included in the bandwidth formula, Opinion No. 505 did not address the treatment of such costs in the bandwidth calculation. Entergy contends that in Opinion No. 505, the Commission explicitly noted that regardless of the accounting for the Spindletop Regulatory Asset, "the issue of whether or not the investment in the Spindletop Regulatory Asset should be included in Entergy Gulf States' production costs, and reflected in the 2006 bandwidth calculation will be decided in Docket No. EL08-51-000."¹⁴

13. Entergy further notes that, upon consideration of the initial decision in Docket No. EL08-51-000,¹⁵ the Commission issued Opinion No. 509 on September 22, 2010.¹⁶

¹⁴ Opinion No. 505, 130 FERC ¶ 61,023, at P 261 (2010).

¹⁵ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 127 FERC ¶ 63,021 (2009).

¹⁶ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 509, 132 FERC ¶ 61,253 (2010). In Opinion No. 509, the Commission reversed the Presiding Judge's finding that costs associated with the Spindletop regulatory asset are not production costs. The Commission ruled that such costs must be included in the bandwidth calculation. The Commission also ruled that the annual amortization of the Spindletop regulatory asset that is booked to Account No. 501 should be included in the bandwidth calculation effective March 31, 2008. Opinion No. 509 further ruled that the return on the unamortized Spindletop regulatory asset is also a production cost that should be reflected in the bandwidth formula effective March 31, 2008, the established refund effective date.

(continued...)

Entergy states that the 2011 bandwidth calculation reflects the Spindletop regulatory asset variable component in Account No. 501 and the Spindletop regulatory asset fixed component in a new formula input introduced in the Opinion No. 509 compliance filing. Entergy argues that, while the change to the formula to include the fixed component is subject to Entergy's Opinion No. 509 compliance filing, including the fixed component in the calculation is consistent with Opinion No. 509.

14. Third, Entergy adds that several proceedings relating to the depreciation components of the bandwidth calculation are pending before the Commission and the depreciation-related inputs are subject to the outcome of those proceedings. It notes that on March 31, 2010, the Louisiana Commission filed a section 206 complaint in Docket No. EL10-55-000 seeking to change the depreciation and decommissioning-related inputs in the bandwidth formula, and that an initial decision has been issued in that proceeding.¹⁷ It further notes that two related depreciation proceedings are being litigated that have potential implications on the bandwidth formula inputs.¹⁸

III. Notice of Filing and Responsive Pleadings

15. Notice of Entergy's filing was published in the *Federal Register*, 76 Fed. Reg. 32,185 (2011), with interventions and protests due on or before June 17, 2011. The Louisiana Commission filed a notice of intervention and protest. The Council of the City of New Orleans, Texas Industrial Energy Consumers, East Texas Cooperatives, and Occidental Chemical Corporation filed motions to intervene. The Arkansas Public Service Commission (Arkansas Commission) filed a notice of intervention and comments. Entergy and the Arkansas Commission filed answers. The Louisiana Commission filed an answer to the answers of Entergy and the Arkansas Commission. The Mississippi Public Service Commission (Mississippi Commission) filed a motion to intervene out-of-time.

16. The Arkansas Commission states that it supports Entergy's request to hold the proceeding in abeyance pending determination of issues already before the Commission.

The Commission directed Entergy to make a compliance filing within 30 days of the date of the order to reflect the inclusion of this component. *Id.* P 34-41.

¹⁷ Entergy May 27, 2011 Filing at 9 (citing *La. Pub. Serv. Comm'n v. Entergy Corp.*, 134 FERC ¶ 63,016 (2011)).

¹⁸ Docket No. ER10-2001-000 involves the production depreciation rates used by Entergy Arkansas. Docket No. ER11-2161-000 involves the steam production depreciation rates used by Entergy Texas.

It argues that a stay of the proceeding pending Commission determinations on issues common to multiple dockets is well supported by previous Commission rulings.¹⁹

17. The Louisiana Commission requests that the final determinations concerning issues the Louisiana Commission raised in other bandwidth cases be reflected in this bandwidth filing as well. The Louisiana Commission states that it adopts and raises in its protest all issues it previously raised in Docket Nos. ER07-956-000, ER08-1056-000, ER09-1224-000, and ER10-1350-000, as well as issues that it has raised in complaint dockets related to the bandwidth calculations to the extent that they are relevant to Entergy's application in this docket.

18. The Louisiana Commission states that it anticipates this proceeding will be no different than the previous cases, and that the issues not addressed directly in its protest may be later discovered. The Louisiana Commission requests that: (1) hearing procedures be established; (2) discovery be permitted related to the application in this docket; and (3) the bandwidth remedy payments be re-calculated in accordance with the Louisiana Commission's protest and in compliance with Opinion Nos. 480 and 480-A.

19. The Louisiana Commission also raises four issues that it states were not litigated or are not being resolved in the prior cases: (1) Entergy Arkansas' treatment of Commission-prescribed depreciation rates; (2) Entergy Gulf States' treatment of River Bend depreciation rates; (3) Entergy Arkansas fuel inventory inputs into the bandwidth calculation; and (4) treatment of depreciation rates for the sale-leaseback portion of Waterford 3.²⁰ The Louisiana Commission adds that issues are often uncovered through discovery, and alleges that Entergy has not shown that its filing is just, reasonable and not unduly discriminatory. As a result, the Louisiana Commission argues that a hearing is required to examine the Entergy cost calculation.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R.

¹⁹ Arkansas Commission Notice of Intervention and Comments at 2 (citing *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 132 FERC ¶ 61,104, at P 38 (2010) and *Entergy Services, Inc.*, 134 FERC ¶ 63,018 (2011)).

²⁰ See Louisiana Commission Protest at 3.

§ 385.213(a)(2) (2011), 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 in this proceeding and will, therefore, reject them. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant the late-filed motion to intervene of the Mississippi Commission given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Hearing Procedures

21. Entergy's proposed rates raise issues of material fact that cannot be resolved based on the record before us. These issues of material fact are more appropriately addressed in the hearing ordered below. While we establish hearing procedures on those issues, in order to prevent the re-litigation of issues that are the subject of other proceedings pending before the Commission, we will hold those procedures in abeyance pending a further Commission order.

22. Our preliminary analysis indicates that Entergy's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's proposed rates for filing, suspend them for a nominal period, make them effective June 1, 2011,²¹ as requested, subject to refund, and set them for hearing. While we are setting these matters for a trial-type evidentiary hearing, as noted above, we will hold the hearing in abeyance pending further Commission order.

The Commission orders:

(A) Entergy's proposed rates are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2011, as requested, subject to refund.

(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 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Entergy's proposed rates pursuant to Service Schedule

²¹ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203, at P 10 (2006). See also *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

MSS-3 of the System Agreement implementing the Commission's decisions in Opinion Nos. 480 and 480-A.

(C) The hearing discussed in Ordering Paragraph (B) shall be held in abeyance as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.