

139 FERC ¶ 61,100
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket No. EL07-52-001

v.

Entergy Corporation
Entergy Services, Inc.
Entergy Louisiana, LLC
Entergy Arkansas, Inc.
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Gulf States, Inc.

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued May 7, 2012)

1. On May 31, 2007, the Commission denied a complaint¹ by the Louisiana Public Service Commission (Louisiana Commission) against Entergy Services, Inc. (Entergy)² and the Entergy Operating Companies (Operating Companies)³ seeking changes to Service Schedule MSS-3 of the Entergy System Agreement (System Agreement).⁴ The

¹ *Louisiana Public Service Comm'n v. Entergy Corp.*, 119 FERC ¶ 61,212 (2007) (MSS-3 Order).

² Entergy is a wholly-owned subsidiary of Entergy Corporation.

³ At the time the Commission issued the order denying the complaint, the Operating Companies were Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. At the end of 2007, Entergy Gulf States, Inc. was split into Entergy Texas, Inc. and Entergy Gulf States Louisiana, LLC.

⁴ The System Agreement is the contract among the Operating Companies and Entergy Services, Inc. which provides for the joint planning, construction, operation and maintenance of the generation, transmission, and other facilities for the Operating Companies and for a sharing of the costs and benefits of joint planning, construction,

(continued...)

Louisiana Commission seeks rehearing of the MSS-3 Order that denied: (1) the removal of interruptible load from the load responsibility ratio (demand ratio) used for allocating fixed production costs to the Operating Companies in the bandwidth formula portion of Service Schedule MSS-3; and (2) the re-pricing of the Vidalia⁵ replacement energy to be based on the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies.⁶ In addition, the Louisiana Commission claims that the dismissal of its complaint was discriminatory and inconsistent with prior Commission decisions regarding Entergy's Service Schedule MSS-3. For the reasons discussed below, we grant rehearing on the interruptible load issue and deny rehearing on the re-pricing of the Vidalia replacement energy and the Louisiana Commission's argument of discriminatory treatment.

operation and maintenance. There are seven service schedules attached to the contract that provide formulas for such sharing of costs and benefits. Service Schedule MSS-3 (Exchange of Electric Energy Among the Companies) governs the exchange and pricing of energy among the Entergy Operating Companies. Service Schedule MSS-3 also includes a rough production cost (or bandwidth) formula to maintain production costs within a specified band among the Operating Companies. The formula compares the system average production cost allocated to each Operating Company, as calculated in section 30.13, to each Operating Company's actual production costs, as calculated in section 30.12; and generally, if there are production cost deviations exceeding plus or minus 11 percent, then one or more Operating Companies may be required to make payments or receive payments as a means of roughly equalizing production costs.

⁵ The Vidalia Hydroelectric Plant (Vidalia) is a run-of-the-river hydroelectric plant in Louisiana.

⁶ Each Operating Company, including Entergy Louisiana, Inc. (Entergy Louisiana), purchases from Service Schedule MSS-3 on an hourly basis. If an Operating Company purchased energy from Service Schedule MSS-3 each hour of the year (or 8,760 hours) in proportion to the system average company purchases in each hour, its average annual Service Schedule MSS-3 rate would equal the system's average annual Service Schedule MSS-3 rate. Otherwise, its average annual Service Schedule MSS-3 rate would be different from the system's average annual rate. This rate represents the average rate paid for all of the Operating Companies' purchases from the exchange under Service Schedule MSS-3 during the year. The Louisiana Commission refers to this rate as "the average MSS-3 rate." To avoid confusion and to provide clarity, we will refer to this rate as "the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies."

I. Background

A. The MSS-3 Complaint and Related Proceedings

2. On April 3, 2007, the Louisiana Commission filed a complaint (MSS-3 Complaint),⁷ arguing that the Commission should require Entergy to remove interruptible load from the system monthly coincident peaks (i.e., the 12 CP load data) used to allocate each Operating Company's share of the system's fixed production costs in the bandwidth formula. The Louisiana Commission also argued that Vidalia re-pricing should be based on the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies rather than the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3.⁸

3. The interruptible load argument stems from the Opinion Nos. 468 and 468-A⁹ proceedings and the Opinion Nos. 480 and 480-A¹⁰ proceedings. The Vidalia argument stems from the Opinion Nos. 480 and 480-A proceedings. As such, we will provide a brief history of both proceedings leading up to the Louisiana Commission Filing the MSS-3 Complaint.

⁷ Louisiana Commission, Complaint, Docket No. EL07-52-000 (filed Apr. 3, 2007).

⁸ This rate reflects Entergy Louisiana's purchases from the exchange. The Louisiana Commission refers to this rate as the "ELL MSS-3 rate." To avoid confusion and provide clarity, we will refer to this rate as "the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3."

⁹ *Louisiana Public Service Comm'n v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004), *reh'g denied*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005), *Louisiana Public Service Comm'n v. FERC*, 482 F.3d 510 (D.C. Cir. 2007), *order on remand*, 120 FERC ¶ 61,241 (2007), *order on reh'g*, 124 FERC ¶ 61,275 (2008) (among other things, finding that interruptible load should not be included in the peak loads used to allocate production capacity costs in Service Schedule MSS-1 (Reserve Equalization) because Entergy can interrupt service for interruptible load customers at system peak and therefore avoid incurring production capacity costs to serve the interruptible loads).

¹⁰ *Louisiana Public Service 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), *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 Public Service Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011) (adopting the bandwidth formula to equalize the allocation of costs among the Operating Companies in Service Schedule MSS-3).

4. Opinion Nos. 468 and 468-A issued in 2004 and 2005, respectively, are the result of a remand proceeding directed by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit),¹¹ and addressed the interruptible load issue. The issue of whether to include interruptible load for allocating capacity costs under the System Agreement was first raised in a 1995 complaint filed by the Louisiana Commission against Entergy.¹² The Louisiana Commission alleged that due to changed circumstances, the allocation of capacity costs on Entergy's system had become unjust and unreasonable. It argued that the System Agreement should be changed to exclude interruptible load from the calculation of peak load responsibility used to allocate capacity costs because Entergy's system was not designed or built to serve interruptible loads during peak periods. The Commission denied the Louisiana Commission's complaint¹³ and rejected the Louisiana Commission's argument that the Commission violated its earlier precedent under *Kentucky Utilities*¹⁴ and *Delmarva*,¹⁵ i.e., that utilities

¹¹ *Louisiana Public Service Comm'n v. FERC*, 184 F.3d 892 (D.C. Cir. 1999).

¹² Louisiana Public Service Commission, Complaint, Docket No. EL95-33-000 (filed Mar. 15, 1995).

¹³ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 76 FERC ¶ 61,168 (1996), *reh'g denied*, 80 FERC ¶ 61,282 (1997).

¹⁴ *Kentucky Utilities Co.*, Opinion No. 116, 15 FERC ¶ 61,002 (1981) (*Kentucky Utilities*). In *Kentucky Utilities*, the Commission held that under the cost allocation method used by Kentucky Utilities, capacity costs are properly allocable to the other wholesale customers who are provided firm power service. The Commission explained that these customers request delivery of service from Kentucky Utilities whenever and wherever they desire, and Kentucky Utilities is obligated to satisfy these requests. Also, the Commission noted that because these customers may desire energy at system peak, Kentucky Utilities must consider their demands in planning its bulk power facilities. However, the Commission found that this is not true for secondary energy service that Kentucky Utilities was providing City of Paris, Kentucky (Paris) because Kentucky Utilities had the right not to serve Paris during system peak periods. The Commission stated that even though Kentucky Utilities' right to limit service was limited, the right to interrupt enabled Kentucky Utilities to prevent Paris from imposing demand on Kentucky Utilities' system during peak periods, thereby controlling its capacity costs. As such, the Commission held that in these circumstances, the peak responsibility method provides that no demand costs are to be allocated to the customer.

¹⁵ *Delmarva Power & Light Co.*, Opinion No. 185, 24 FERC ¶ 61,199 (1983), *order on reh'g*, Opinion No. 185-A, 24 FERC ¶ 61,380 (1983) (*Delmarva*). The Commission found that the Q tariff loads (Controllable Power Service) are interruptible and should not be included in determining the percentage responsibility of each class under the 12 CP demand cost allocation method for allocating capacity costs.

allocating fixed costs according to peak demand may not include interruptible load in the peak demand allocation, even if such customers took service during system peak.

5. The D.C. Circuit found that the Commission gave no explanation for its departure from the cost causation principles established in *Kentucky Utilities* and *Delmarva*, and therefore, the D.C. Circuit remanded the case to the Commission.¹⁶ The D.C. Circuit explained that the Commission's rationale, namely, that the mere fact that a load may be curtailable does not mean that it should not be considered in the allocation of costs if the power is taken at peak, was not justified because the Commission rejected that rationale in *Kentucky Utilities*.

6. In Opinion Nos. 468 and 468-A, the Commission held that interruptible load should be excluded from the peak demand used to allocate production capacity costs under Service Schedule MSS-1 (Reserve Equalization), because Entergy can curtail interruptible service so that it does not contribute to the system peak, and therefore does not cause Entergy to incur production capacity costs or determine how much Entergy must invest in capacity to meet the system peak. The Commission decided that Entergy's commitment to its interruptible load customers was similar to that of *Kentucky Utilities* and *Delmarva* to their respective customers, e.g., Entergy also had the right to interrupt service for interruptible load customers during system peak periods.

7. In Opinion Nos. 480 and 480-A, the Commission determined that production costs on the Entergy system were no longer roughly equal and directed Entergy to create a bandwidth formula to equalize the allocation of costs among the Operating Companies. The Commission required that future production cost comparisons among the Operating Companies should follow the methodology in Exhibit Nos. ETR-26 and 28, which included interruptible load in the demand ratio used for allocating fixed production costs to the Operating Companies in the bandwidth formula.

8. The Commission also found in Opinion No. 480 that the Vidalia contract was not entered into to benefit the Entergy system as a whole, and found that there were distinguishing factors regarding the Vidalia contract that warranted Vidalia being treated as an Entergy Louisiana-only resource.¹⁷ The Commission stated that the factors it considered to be crucial were: (1) the unusual structure of the Vidalia contract, including the Louisiana Commission's finding of prudence and the guaranteed flow through of costs; (2) the significant cost shifts that would occur if the Vidalia contract were fully reflected; (3) that Vidalia was not built as part of Entergy's overall system planning; and (4) subsequent to the contract being approved, the Louisiana Commission entered into a settlement with Entergy Louisiana under which significant tax benefits flowed through

¹⁶ *Louisiana Public Service Comm'n v. FERC*, 184 F.3d 892 (D.C. Cir. 1999).

¹⁷ Opinion No. 480, 111 FERC ¶ 61,311 at P 173.

directly to the retail customers of Louisiana. The Commission held that Vidalia was built to benefit Entergy Louisiana and that the production costs of the plant should be attributed to Entergy Louisiana. However, the Commission also recognized that Vidalia does provide a minimal contribution to the system capacity and by setting the Vidalia energy at the average annual rate paid under Service Schedule MSS-3, Entergy Louisiana is deemed to have paid for the purchase of power from all other Entergy resources had it not purchased energy from Vidalia.¹⁸ Thus, the Commission found that “[f]uture production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26, which accounts for Vidalia by re-pricing the energy at the annual MSS-3 rate.”¹⁹

9. After Opinion Nos. 480 and 480-A were issued, Entergy made a compliance filing²⁰ that included a bandwidth formula in Service Schedule MSS-3. As directed in Opinion No. 480, Entergy based the bandwidth formula on the methodology presented in hearing Exhibit Nos. ETR-26 and ETR-28. The Louisiana Commission protested the 480 Compliance Filing, arguing that Opinion Nos. 468 and 468-A required Entergy to remove interruptible load from the 12 CP demand ratio in section 30.13 of Service Schedule MSS-3. The Commission disagreed, finding that Entergy complied with the directive in Opinion No. 480 and followed the methodology in Exhibit Nos. ETR-26 and ETR-28.²¹

10. The Louisiana Commission also protested the 480 Compliance Filing on the Vidalia issue, arguing that, by re-pricing of the production cost from the Vidalia hydroelectric project at the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 rather than the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies, Entergy’s compliance filing conflicted with the Commission’s statements in Opinion Nos. 480 and 480-A. The Commission also rejected this argument, finding that Opinion No. 480 directed the Operating Companies to follow the methodology in Exhibit No. ETR-26, which includes the re-pricing of the Vidalia replacement energy based on the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3.

11. The Louisiana Commission responded to the November 2006 Compliance Order by filing the MSS-3 Complaint. The Louisiana Commission argued that the November

¹⁸ *Id.* P 32.

¹⁹ *Id.* P 33.

²⁰ Entergy Services, Inc., Compliance Filing, Docket No. EL01-88-004 (filed April 10, 2006) (480 Compliance Filing).

²¹ *Louisiana Public Service Comm’n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006) (November 2006 Compliance Order); *reh’g denied*, 119 FERC ¶ 61,095 (2007) (April 2007 Compliance Order).

2006 Compliance Order failed to adopt a proposed revision to Entergy's Filing to bring it into compliance with Opinion Nos. 468 and 468-A, which the Louisiana Commission asserted held that demand-related production costs should not be allocated to interruptible loads in the System Agreement.²² The Louisiana Commission stated that Entergy's method of allocating system fixed production costs in Service Schedule MSS-3 conflicted with and effectively undid this holding in Opinion Nos. 468 and 468-A.

12. The Louisiana Commission also argued that Exhibit No. ETR-26 was developed before Opinion Nos. 468 and 468-A were issued, reiterating that Exhibit No. ETR-26 did not exclude interruptible loads since the Commission had not decided the issue at the time Exhibit No. ETR-26 was developed. The Louisiana Commission also claimed the parties in the Opinion Nos. 480 and 480-A proceeding agreed that the resolution of the interruptible load issue would be the same as that in Opinion Nos. 468 and 468-A, citing to post-hearing briefs and the Administrative Law Judge's (ALJ) Initial Decision to indicate that an agreement existed.²³

13. The Louisiana Commission also sought to reverse the Commission's decision in the November 2006 Compliance Order. It challenged the Commission's finding that Entergy's calculation of production costs for the Vidalia hydroelectric facility based on the average annual rate paid by Entergy Louisiana complied with Opinion Nos. 480 and 480-A. The Louisiana Commission asserted that this finding conflicted with the Commission's statements in Opinion Nos. 480 and 480-A, which provided for pricing the Vidalia energy at the average annual Service Schedule MSS-3 rate – the average paid by all the Operating Companies. The Louisiana Commission argued that the use of the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 artificially lowered the Vidalia replacement cost, because Entergy Louisiana disproportionately purchases from the exchange at off-peak times and has a lower-than-average Service Schedule MSS-3 rate.

14. Additionally, the Louisiana Commission maintained that the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 cannot accurately reflect the cost of replacing the Vidalia output using resources in the exchange. It asserted that to replace Vidalia energy, Entergy Louisiana would have to make substantially more purchases from the exchange, which would have involved different and generally higher prices than the prices paid for energy taken while Entergy Louisiana was also purchasing from Vidalia. The Louisiana Commission argued that Entergy's method of calculating costs for Vidalia is unjust and unreasonable because the energy exchange provides no capacity value to purchasers, but Vidalia provides capacity value to the system, avoiding the need to purchase additional firm resources to meet system peak or to construct

²² MSS-3 Complaint at 2.

²³ *Id.* at 6-8.

additional resources. The Louisiana Commission asserted that the more reasonable proxy for Vidalia replacement energy is the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies, i.e., the rate for all Service Schedule MSS-3 transactions during the year.

B. The MSS-3 Order

15. The MSS-3 Order²⁴ found that the Louisiana Commission had not met its burden under section 206 of the Federal Power Act (FPA) to establish that the current provisions of Service Schedule MSS-3 regarding the inclusion of interruptible load in the system monthly coincident peaks to allocate capacity costs were unjust and unreasonable. The Commission also stated that the Louisiana Commission ignored the fact that Opinion No. 480 directed Entergy to utilize the method in Exhibit No. ETR-26 (which included interruptible load) for purposes of production cost comparisons, and ignored that the November 2006 Compliance Order determined that Entergy complied with that directive. Additionally, the Commission stated that it appeared that the Louisiana Commission did not adequately preserve whatever agreement may have existed between the parties regarding the outcome of the Opinion Nos. 468 and 468-A proceeding controlling the interruptible load issue in the Opinion Nos. 480 and 480-A proceeding.

16. The Commission explained that it is appropriate to include interruptible load in Service Schedule MSS-3 because the total production costs of each Operating Company are being calculated, whereas, in contrast, Opinion Nos. 468 and 468-A held that the System Agreement was to be modified to exclude interruptible load from the calculation of peak load responsibility under Service Schedule MSS-1. The Commission stated that nothing in Opinion Nos. 468 and 468-A ties the exclusion of interruptible load from Service Schedule MSS-1 calculations to the exclusion of interruptible load from total production costs calculated for bandwidth payments under Service Schedule MSS-3.²⁵

17. Further, the Commission stated that the Louisiana Commission failed to show that Service Schedule MSS-3 results in unjust and unreasonable rates. The Commission referred to Entergy's answer indicating that Service Schedule MSS-3 includes fixed costs not only for reserve capacity but all of the fixed costs associated with base load capacity on the system. The Commission stated that the Louisiana Commission's arguments did not persuade it to change the result of Opinion Nos. 480 and 480-A.²⁶

²⁴ MSS-3 Order, 119 FERC ¶ 61,212 (2007).

²⁵ *Id.* P 24.

²⁶ *Id.* P 25.

18. With respect to Vidalia, the Commission found that the Louisiana Commission's re-pricing issue is the same as the one it raised in its request for rehearing of the November 2006 Compliance Order. The Commission pointed out that it addressed the Louisiana Commission's arguments in its order on rehearing of the November 2006 Compliance Order,²⁷ and that the Commission stated in both the November 2006 Compliance Order and the order on rehearing that it would accept Entergy's re-pricing of the Vidalia replacement energy based on the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3. As such, the Commission found that those orders were controlling on this Vidalia issue and denied the Louisiana Commission's complaint with respect to this issue.²⁸

19. On July 2, 2007, the Louisiana Commission filed a request for rehearing on both the interruptible load and Vidalia issues.

II. Discussion

A. Interruptible Load

1. Request for Rehearing

20. The Louisiana Commission argues that the Commission rejected the complaint without substantive analysis and without a hearing, and without an explanation for why the bandwidth formula in Service Schedule MSS-3 should include interruptible load when Service Schedule MSS-1 does not. The Louisiana Commission also maintains that the MSS-3 Order denying its complaint reverses and effectively eliminates the remedy of excluding interruptible load established in Opinion Nos. 468 and 468-A.

21. Additionally, the Louisiana Commission argues that there is no reason that Opinion Nos. 468 and 468-A should not apply to the bandwidth formula in Service Schedule MSS-3. It asserts that the Commission has not explained why the bandwidth formula should include interruptible load, noting that the bandwidth formula did not exist and was not included in the System Agreement when Opinion Nos. 468 and 468-A were issued. The Louisiana Commission also argues that cost causation principles apply to all generation on the Entergy system (not just Service Schedule MSS-1 peaking generation) and the rationale in Opinion Nos. 468 and 468-A relates to all capacity on the system.

22. The Louisiana Commission also argues that the Commission erred in disregarding the agreement of the parties in the Opinion Nos. 480 and 480-A proceeding that the Opinion Nos. 468 and 468-A result would properly determine whether interruptible load

²⁷ April 2007 Compliance Order, 119 FERC ¶ 61,095.

²⁸ MSS-3 Order, 119 FERC ¶ 61,212 at P 40.

should be included in the bandwidth remedy adopted in Opinion Nos. 480 and 480-A proceeding. The Louisiana Commission cites to briefs filed by Entergy and the Arkansas Public Service Commission and Mississippi Public Service Commission claiming the parties stated that they agreed that the interruptible load issue in Opinion No. 480 should be controlled by the outcome of Opinion Nos. 468 and 468-A proceedings.²⁹ It also argues the ALJ recognized the agreement in his Initial Decision.³⁰

2. Commission Determination

23. Upon further consideration, we will grant the Louisiana Commission's request for rehearing on this issue. We find that interruptible load should be excluded from the allocation of fixed production costs in section 30.13 of the bandwidth formula in Service Schedule MSS-3.

24. As discussed earlier, the Commission determined in Opinion Nos. 468 and 468-A that interruptible load should be excluded from the peak demand used to allocate production capacity costs under Service Schedule MSS-1. In doing so, the Commission found that Entergy can curtail interruptible service so that it does not contribute to the system peak, and that therefore interruptible load does not cause Entergy to incur production capacity costs or determine how much Entergy must invest in capacity to meet the system peak. Because interruptible load did not contribute to production capacity costs or investment in capacity, the Commission found that it should not be used to allocate production capacity costs under Service Schedule MSS-1. After careful consideration of the arguments raised on rehearing by the Louisiana Commission, we conclude that the rationale behind the decision in Opinion Nos. 468 and 468-A to exclude interruptible load from the peak demand used to allocate production capacity costs under Service Schedule MSS-1 also applies to the allocation of fixed production costs in the bandwidth formula under section 30.13 of Service Schedule MSS-3.

25. Like the calculation in Service Schedule MSS-1, the demand ratio at issue in section 30.13 of Service Schedule MSS-3 allocates production capacity among the Operating Companies in proportion to peak demand. Because the Commission has

²⁹ Louisiana Commission's July 2, 2007 Request for Rehearing at 4 (citing Entergy Initial Brief, Docket No. EL01-88, at 61-62; Arkansas Public Service Commission and Mississippi Public Service Commission Reply Brief, Docket No. EL01-88 at 31).

³⁰ *Louisiana Public Service Comm'n v. Entergy*, 106 FERC ¶ 63,012, at P 45 n.15 (2004) ("As all parties agree, the issue of whether interruptible loads should be included in calculating load responsibility ratios will be decided in another proceeding now on appeal before the Commission. *Louisiana Public Service Comm'n v. Entergy Corp.*, Docket Nos. EL00-66-000, EL95-33-002 (consolidated).")

excluded interruptible load from Service Schedule MSS-1 under the theory that it does not contribute to peak demand, the same approach should apply to Service Schedule MSS-3 as well. Although Service Schedule MSS-3 includes production costs for more than peaking capacity units, we note that Opinion No. 468 did not distinguish between base load, intermediate or peaking capacity when considering whether interruptible load should be included in the allocation of production capacity costs. Additionally, Opinion No. 468 did not discuss the manner in which the capacity was priced, i.e., whether the production capacity costs being allocated priced capacity based on the cost of intermediate reserve generating units, as is the case in Service Schedule MSS-1 billings, or on an average system basis.³¹ Therefore, the fact that Service Schedule MSS-3 prices capacity based on an average system basis is not a sufficient reason to distinguish it from Service Schedule MSS-1. In *Kentucky Utilities* and *Delmarva*, the precedent upon which the findings in Opinion No. 468 were based, capacity costs were allocated on an average system basis as section 30.13 of Service Schedule MSS-3 does. Accordingly, we find no basis upon which to distinguish the treatment of interruptible load in the allocation of fixed production costs in section 30.13 of Service Schedule MSS-3 from the precedent in Opinion No. 468, and the earlier precedent upon which Opinion No. 468 was based, and we thus grant rehearing.

³¹ Both Service Schedule MSS-1 and section 30.13 of Service Schedule MSS-3 allocate and price responsibility for non-nuclear production capacity. Under both Service Schedule MSS-1 and section 30.13 of Service Schedule MSS-3, each Operating Company is allocated responsibility for total system non-nuclear production capacity in proportion to its peak load. However, the pricing for such capacity is different under each service schedule. Under Service Schedule MSS-1, each Operating Company bears responsibility first for its owned and purchased non-nuclear capacity toward meeting its peak load share of system non-nuclear capacity and, to the extent that companies are long or short capacity to meet their peak load share, cost responsibility for such capacity is reallocated among the Operating Companies based on the price of system intermediate gas and oil fired units. Under section 30.13 of Service Schedule MSS-3, each Operating Company is allocated its peak load ratio share of total system non-nuclear production capacity based entirely on average system non-nuclear production capacity costs. Nuclear production capacity costs are equalized outside of the System Agreement through a separate mechanism adopted in the mid-1980s in Opinion Nos. 292 and 292-A, and are allocated in that same manner (based on hourly energy demands rather than peak demands) in determining each Operating Company's share of system production capacity costs in the bandwidth formula. See *System Energy Resources, Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh'g denied*, Opinion No. 292-A, 42 FERC ¶ 61,091 (1988), *aff'd sub nom. City of New Orleans v. FERC*, 875 F.2d 903 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990).

26. Because we are granting rehearing for the reasons discussed above, we need not address the Louisiana Commission's argument that the parties in the Opinion No. 480 proceeding agreed that the interruptible load issue in Opinion No. 480 should be controlled by the outcome of Opinion Nos. 468 and 468-A proceedings.

27. Therefore, we grant the Louisiana Commission's request for rehearing, and direct Entergy to make a compliance filing to remove interruptible load from the system 12 CP demand ratio to allocate system average production costs in section 30.13 of Service Schedule MSS-3, and to identify and make all related changes to the bandwidth formula and the System Agreement, including the definitions. These changes that Entergy will make to the bandwidth formula in this proceeding will have a refund effective date of April 3, 2007, the date that the MSS-3 Complaint was filed.

B. Vidalia Pricing

1. Request for Rehearing

28. The Louisiana Commission argues that the production costs for the Vidalia hydroelectric plant should price replacement energy at the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies instead of the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3. It claims that the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies more closely reflects the production cost that would be incurred by Entergy Louisiana if it did not have Vidalia. The Louisiana Commission states that the Commission has already determined that Vidalia should be priced as it is under Exhibit No. ETR-26, i.e., at the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3, but asserts that the Commission has never determined that the Exhibit No. ETR-26 methodology correctly calculated the Vidalia replacement cost (which it defines as the costs of replacing the Vidalia output using resources in the exchange), and the Commission has not provided a reasoned basis to depart from the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies, which the Louisiana Commission avers is the *only* "annual" Service Schedule MSS-3 rate.³²

29. The Louisiana Commission argues that Entergy priced the Vidalia resource incorrectly in Exhibit No. ETR-26, but alleges that the Commission did not realize this mistake until the compliance phase of the Opinion Nos. 480 and 480-A proceedings. Nevertheless, the Louisiana Commission contends that in the Opinion Nos. 480 and 480-A proceedings, the Commission refused to change the Vidalia pricing because the Commission determined that it was not going to alter the outcome regarding Exhibit No. ETR-26. The Louisiana Commission maintains that it provided evidence

³² Louisiana Commission's July 2, 2007 Request for Rehearing at 8.

demonstrating that Vidalia should not be priced differently from other Entergy generation, but that the Commission rejected the complaint without substantive analysis.³³

30. The Louisiana Commission argues that using the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 does not accurately reflect the cost of replacing the Vidalia output using resources in the exchange because the price Entergy Louisiana paid reflects its exchange energy purchases made *while* it was also taking energy from Vidalia, but if Entergy Louisiana were required to replace Vidalia, it would have to make substantially more purchases from the exchange, and these would have involved different and generally higher prices than prices paid for energy taken while Entergy Louisiana was also purchasing from Vidalia. The Louisiana Commission argues that the selection of Entergy Louisiana's purchases from the exchange has the effect of lowering the Vidalia credit to a sub-normal level, because Entergy Louisiana's purchases occur disproportionately at times when the cost of the exchange is relatively low, but if Entergy Louisiana were to replace Vidalia, it would have to purchase both on and off peak energy since that resource runs in all hours with the flows of the Mississippi River. Also, the Louisiana Commission contends that Vidalia provides capacity value to the system, avoiding the need to purchase additional firm resources, and therefore, in the Louisiana Commission's view, the use of the average annual rate paid by Entergy Louisiana under Service Schedules MSS-3 understates Vidalia's value, and it asserts that the rate is improperly reduced in Exhibit No. ETR-26.

31. The Louisiana Commission states that if Entergy Louisiana did not have Vidalia, its exchange purchases would have risen by as much as 60 percent in 2005. The Louisiana Commission argues that it is not reasonable to assume that the average replacement cost for Vidalia through exchange purchases would have been the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3. The Louisiana Commission argues that, all else being equal, without the Vidalia output, the system would have had to make additional off-system purchases or operate additional higher cost gas-fired generation, which would have likely resulted in higher incremental costs, and using the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 does not reflect any of these impacts.

32. In addition, the Louisiana Commission states that Entergy Louisiana has historically purchased less energy from the exchange than the amount of Vidalia's output. For example, Entergy Louisiana would have needed to increase its exchange purchase by 230 percent to replace the Vidalia output in October 2005 and the increased purchases from the exchange would increase its exchange costs and the costs to other Operating

³³ *Id.* at 3 (citing MSS-3 Order, 119 FERC ¶ 61,212 at P 41).

Companies purchasing from the exchange.³⁴ The Louisiana Commission argues that this would have caused the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 to have increased because the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 was \$52.61 per MWh in 2005, while the average monthly rate paid by Entergy Louisiana under Service Schedule MSS-3 in October 2005 was \$160 per MWh and the average monthly Service Schedule MSS-3 exchange rate for all of the Operating Companies in October 2005 was \$169 per MWh. The Louisiana Commission argues that even this understates the impact, because of the increase in market demand created by the loss of the Vidalia output. According to the Louisiana Commission, it is therefore not reasonable to assume that, without Vidalia, Entergy Louisiana's production costs would have risen by only the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 for its exchange purchases, which were based on the availability of Vidalia. It states that the assumption underlying this treatment does not reflect reality and does not meet the Vidalia re-pricing objective discussed in Opinion No. 480, which is to reflect the cost of energy paid for purchases from "all other Entergy resources had it not purchased energy from Vidalia."³⁵

33. The Louisiana Commission argues that unlike the Entergy Louisiana purchase transactions alone in Service Schedule MSS-3, the Service Schedule MSS-3 transactions for all of the Operating Companies always exceed the Vidalia energy purchases each month. Therefore, the Louisiana Commission contends that the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies is a more appropriate proxy and provides a better hourly distribution of Service Schedule MSS-3 rates during the year than the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3.³⁶

2. Determination

34. We will deny the Louisiana Commission's request for rehearing of the Vidalia re-pricing issue. Opinion No. 480 required Entergy to use Exhibit No. ETR-26, which included the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3, in calculating Vidalia's production costs.³⁷ The Commission explained in detail its rationale for finding that Vidalia is an Entergy Louisiana resource, was not a system resource, and was not planned for the system.³⁸ The Commission also noted that Vidalia

³⁴ *Id.* at 10.

³⁵ *Id.* (quoting Opinion No. 480, 111 FERC ¶ 61,311 at P 32).

³⁶ *Id.* at 11.

³⁷ Opinion No. 480, 111 FERC ¶ 61,311 at P 174; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 73.

³⁸ Opinion No. 480, 111 FERC ¶ 61,311 at P 173-84.

made only a minimal contribution (0.38 percent) to system capacity.³⁹ We note that the purpose of re-pricing Vidalia with a proxy rate is to establish a rate that reflects, as much as possible, what Entergy Louisiana would have paid for the purchase of power from all other Entergy resources had it not purchased energy from Vidalia.

35. The Commission accepted Entergy's Opinion No. 480 Compliance Filing in the November 2006 Compliance Order.⁴⁰ Therefore, in filing the MSS-3 Complaint under section 206 of the FPA, the Louisiana Commission has the burden to show that the current rate – the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 – is unjust and unreasonable. We find that the Louisiana Commission has not met its section 206 burden of proof to provide sufficient evidence to justify its claims.⁴¹

36. The Louisiana Commission attempted to challenge the reasonableness of the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 as a proxy to re-price Vidalia output by providing monthly Service Schedule MSS-3 exchange and Vidalia operating data for 2005 and presenting two line diagrams, one comparing Entergy Louisiana's monthly volumes of energy purchased from the Service Schedule MSS-3 exchange to monthly volumes of energy generated by Vidalia, and one comparing total monthly volumes of energy purchased from the Service Schedule MSS-3 exchange by all of the Operating Companies to monthly volumes of energy generated Vidalia. It asserted that "[t]he average [rate for Entergy Louisiana's MSS-3 exchange purchases] reflects the seasonal pattern of [Entergy Louisiana's] purchases from the exchange,"⁴² and the diagram comparing Entergy Louisiana's monthly Service Schedule MSS-3 exchange purchases to monthly Vidalia generation "demonstrates that the pattern of Vidalia generation, which is being replaced, does not closely follow the pattern of Entergy Louisiana's purchases from the exchange,"⁴³ but the chart comparing total monthly Service Schedule MSS-3 exchange purchases for all of the Operating Companies to monthly Vidalia generation demonstrates that "[t]he seasonal patterns of the two series are more closely aligned."⁴⁴ However, the Louisiana Commission has not explained how this data supports its assertions that the seasonal pattern of Entergy Louisiana's Service

³⁹ *Id.* P 32.

⁴⁰ November 2006 Compliance Order, 117 FERC ¶ 61,203 at P 59; April 2007 Compliance Order, 119 FERC ¶ 61,095 at P 47.

⁴¹ *Blumenthal v. FERC*, 552 F.3d at 875, 883 (D.C. Cir. 2009) (affirming FERC finding that complainant's evidence, submitted in the form of summary charts, was insufficiently explained).

⁴² MSS-3 Complaint, Affidavit of Stephen J. Baron at 9.

⁴³ *Id.*

⁴⁴ *Id.* at 10.

Schedule MSS-3 exchange purchases is not correlated with the seasonal pattern of Vidalia generation, in a manner sufficient to meet the Louisiana Commission's burden

under section 206 to demonstrate that the use of the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 to re-price the Vidalia output is unjust or unreasonable.

37. While it is obvious from viewing the diagrams that Entergy Louisiana's Service Schedule MSS-3 exchange purchases are more volatile month-to-month than the output of Vidalia or the Service Schedule MSS-3 exchange purchases of all of the Operating Companies combined, the Louisiana Commission does not explain the relationship between the datasets in the diagrams and tables it provided; the Louisiana Commission does not explain what calculations or statistical analysis it conducted to support its assertions, or to what extent its conclusions are based on merely general observations. And as Entergy demonstrates in its answer, the monthly data that the Louisiana Commission provided could demonstrate just the opposite of what the Louisiana Commission claims that it does. Specifically, Entergy calculates that the volumes of energy purchased by Entergy Louisiana from Vidalia and from the Service Schedule MSS-3 exchange during the peak summer season (June through September) are nearly identical percentages (22 percent) of Entergy Louisiana's annual purchases from Vidalia and the Service Schedule MSS-3 exchange, respectively, while the volume of total Service Schedule MSS-3 exchange purchases for all of the Operating Companies during the peak summer season is 31 percent of the annual Service Schedule MSS-3 exchange purchases for all of the Operating Companies, suggesting that the seasonal pattern of Entergy Louisiana's monthly Service Schedule MSS-3 exchange purchases better reflects the pattern of its purchases from Vidalia.⁴⁵

38. In addition, the Louisiana Commission states that more significantly, though not shown in the monthly data that it presented, the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies reflects an hourly distribution of Service Schedule MSS-3 exchange rates that represents a better proxy for Vidalia replacement costs.⁴⁶ The Louisiana Commission states that, because Vidalia is a run-of-the-river hydro-electric plant that runs following water flows, not peak load requirements, replacing Vidalia output purchases should reflect both on-peak and off-peak purchases from the Service Schedule MSS-3 exchange.⁴⁷ The Louisiana Commission notes that the average annual Service Schedule MSS-3 exchange rate for all of the Operating Companies during 2005 was \$85.09 per MWh, while the average annual rate paid by

⁴⁵ Entergy's May 3, 2007 Answer to MSS-3 Complaint at 12-14.

⁴⁶ MSS-3 Complaint, Affidavit of Stephen J. Baron at 9-10.

⁴⁷ *Id.* at 11.

Entergy Louisiana under Service Schedule MSS-3 for the same period was \$52.61, which, according to the Louisiana Commission, “suggests that [Entergy Louisiana] is purchasing more of its energy from the exchange in lower, off-peak periods, than the System as a whole.”⁴⁸ However, as the Louisiana Commission admits, the data that it has provided does not show the hourly distribution of Vidalia output or Service Schedule MSS-3 exchange purchases to demonstrate hourly correlation between the purchases from Vidalia and the Service Schedule MSS-3 exchange purchases by Entergy Louisiana or by all of the Operating Companies from the Entergy system as a whole.⁴⁹ And the Louisiana Commission’s comparison of the average annual rates paid by Entergy Louisiana and all of the Operating Companies under Service Schedule MSS-3 does not demonstrate that either set of purchases is more or less correlated on an hourly basis with hourly purchases from Vidalia. That comparison could just as easily reflect that total exchange purchases of all the Operating Companies is more skewed toward peak periods than the Vidalia output, rather than that the Louisiana Commission’s exchange purchases are more skewed toward lower-price off-peak periods than the Vidalia output. Accordingly, this data is insufficient to demonstrate that the use of the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 to re-price the Vidalia is unjust or unreasonable.

39. We are also not persuaded by the Louisiana Commission’s argument that the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 does not accurately reflect the costs of additional purchases the system would have had to make, or of operating additional higher cost gas-fired generation, to replace the Vidalia output. The Louisiana Commission has not provided data to support this claim that, without Vidalia, Entergy Louisiana’s increase in exchange purchases would significantly increase the Service Schedule MSS-3 exchange price. Importantly, the Louisiana Commission has not shown what generator(s) or purchases would supply the lost power and at what cost, which would explain how the system’s incremental cost for power and the Service Schedule MSS-3 exchange price would increase and by how much.

40. We are similarly not persuaded by the Louisiana Commission’s arguments about the fact that Entergy Louisiana has historically purchased less energy from the exchange than the amount of Vidalia’s output. The Louisiana Commission uses October 2005 as an example, noting that it would have increased its exchange purchases by 230 percent to replace the Vidalia output in that month. The Louisiana Commission argues that this would have caused the average cost of Entergy Louisiana’s exchange purchases to increase because the average annual rate paid by Entergy Louisiana was \$52.61 per MWh in 2005, while the average monthly rate paid by Entergy Louisiana under Service

⁴⁸ *Id.*

⁴⁹ *Id.* at 9-10.

Schedule MSS-3 in October 2005 was \$160 per MWh and the average monthly Service Schedule MSS-3 exchange rate for all of the Operating Companies in October 2005 was \$169 per MWh. As a preliminary matter, we note that all of the Operating Companies pay the same Service Schedule MSS-3 exchange rate during each hour reflecting the total volume of purchases of all of the Operating Companies in that hour. As such, the rate that Entergy Louisiana paid for its purchases from the exchange during each hour reflected the cost of the total volume of purchases from the exchange by all of the Operating Companies during that hour, not just Entergy Louisiana's exchange purchases. So even if the Louisiana Commission's suggestion that exchange prices should reflect a volume of exchange purchases that exceeds the Vidalia output in order to serve as a reasonable proxy were valid, the relevant volume of exchange purchases reflected in the prices for Entergy Louisiana's exchange purchases is the total volume of exchange purchases by all of the Operating Companies in the hours that Entergy Louisiana is purchasing from the exchange, and the Louisiana Commission has not provided such data. With respect to the Louisiana Commission's comparison of the average annual rate for Entergy Louisiana's exchange purchases in 2005 to the average rate paid by Entergy Louisiana, and by all of the Operating Companies, for their purchases from the exchange in October 2005, this analysis proves nothing about the reasonableness of the average annual rate paid by Entergy Louisiana for exchange purchases to re-price the Vidalia output. The weighted average annual rate is by definition reflective of the monthly rates and purchase quantities, and it will as likely be above the average rate for purchases in a given month as it will be below the average rate for purchases in a given month.

41. Finally, we are not persuaded by the Louisiana Commission's contention that the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 does not adequately reflect the capacity value that Vidalia provides to the system. The Louisiana Commission does not attempt to quantify the capacity value provided by Vidalia, or demonstrate that the average annual rate paid by Entergy Louisiana under Service Schedule MSS-3 fails to provide compensation for that value.

42. Although the Louisiana Commission argues that the Commission should adopt its proposed alternative proxy price based upon the average annual Service Schedule MSS-3 rate for all of the Operating Companies, we note that the Commission has consistently found that different rate proposals can be just and reasonable, and that more than one method can be correct for calculating rates.⁵⁰ Because the Louisiana Commission has not met its burden under section 206 to show that the existing rate is unjust and unreasonable, we do not need to address the merits of its proposed alternative.

43. Thus, based on the foregoing discussion, the Louisiana Commission's arguments on rehearing have not established that the Vidalia pricing is unjust and unreasonable.

⁵⁰ *International Transmission Company*, 123 FERC ¶ 61,065, at P 20 (2008).

Accordingly, we find that the MSS-3 Order properly denied the relief requested by the Louisiana Commission with respect to the calculation of production costs for Vidalia, and we deny the Louisiana Commission's request for rehearing.

C. Discriminatory Treatment

1. Request for Rehearing

44. The Louisiana Commission argues that the Commission, in dismissing its complaint, acted discriminatorily and inconsistently with past Commission decisions.⁵¹ The Louisiana Commission cites to a specific FPA section 205 filing made by Entergy to change the way production costs are calculated under the Exhibit No. ETR-26 methodology. It states that Entergy made a section 205 filing to revise section 30.12 of Service Schedule MSS-3 to provide that net general and intangible plant be allocated on the basis of labor ratios, not plant ratios as provided in Exhibit No. ETR-26, and the Commission accepted the proposed tariff revisions and established hearing and settlement judge procedures.⁵² It contends that the Commission did not hold that the Entergy amendments at issue in that case must be dismissed because Exhibit No. ETR-26 and the November 2006 Compliance Order are controlling, unlike the Commission's decision in the MSS-3 Order. The Louisiana Commission states that the FPA provides no right to discriminate against section 206 applicants in seeking to change a rate by denying that right without analysis, while allowing a FPA section 205 applicant to change the same rate schedule.⁵³

2. Determination

45. We reject the Louisiana Commission's argument that the Commission has acted in a discriminatory manner in this proceeding. As discussed above, we have reviewed the Louisiana Commission's complaint on the merits, and provided analysis as to why the Commission has accepted or rejected the Louisiana Commission's claims. As such, the Louisiana Commission has no grounds for arguing that the Commission has discriminated against it, and we deny the Louisiana Commission's request for rehearing.

The Commission orders:

(A) The request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

⁵¹ Louisiana Commission's July 2, 2007 Request for Rehearing at 11.

⁵² *Id.* (citing *Entergy Services, Inc.*, 119 FERC ¶ 61,190 (2007)).

⁵³ *Id.* at 12.

(B) The refund effective date established pursuant to section 206(b) of the Federal Power Act is April 3, 2007.

(C) We direct Entergy to make a compliance filing, within 30 days of the date of this order, to remove interruptible load from the system twelve monthly coincident peaks used in the demand ratio to allocate System average production costs in section 30.13 of Service Schedule MSS-3, and to identify and make all related changes to the bandwidth formula and the System Agreement, including the definitions.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.