

122 FERC ¶ 61,277  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Mississippi Delta Energy Agency  
and Clarksdale Public Utilities Commission

v.

Docket No. EL04-99-002

Entergy Services, Inc. and Entergy Operating  
Companies

ORDER DENYING REHEARING

(Issued March 24, 2008)

1. This order denies a request for rehearing by Mississippi Delta Energy Agency and Clarksdale Public Utilities Commission (collectively, MDEA),<sup>1</sup> where MDEA challenges the time period for which interest is assessed under our June 11, 2007 order.<sup>2</sup>

**Background**

2. On May 5, 2004, MDEA filed a complaint against Entergy Services, Inc. and Entergy Operating Companies (collectively, Entergy) under section 206 of the Federal Power Act (FPA).<sup>3</sup> The complaint alleged, among other things, that Entergy failed to classify certain transmission facilities as network upgrades, which would allow MDEA to receive transmission credits for those facilities. MDEA requested that the Commission recognize these facilities as network upgrades and require Entergy to provide MDEA with transmission credits, plus interest, for these facilities.

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<sup>1</sup> The Clarksdale Public Utilities Commission is a member of MDEA, a joint action agency in Mississippi.

<sup>2</sup> *Mississippi Delta Energy Agency, et al. v. Entergy Servs., Inc., et al.*, 119 FERC ¶ 61,269 (2007) (June 11 Order).

<sup>3</sup> 16 U.S.C. § 824e (2000).

3. In the June 11 Order, the Commission granted MDEA's complaint, in part, and found that most of the challenged facilities were network upgrades.<sup>4</sup> However, we noted that our refund authority under section 206 was limited to a 15-month time period beginning on the refund effective date (in this case, 60 days after the complaint was filed).<sup>5</sup> Thus, we ordered Entergy to provide MDEA with transmission credits: (i) for the 15-month time period between July 4, 2004 (the refund effective date) and October 4, 2005; and (ii) on a prospective basis from the June 11 Order.<sup>6</sup>

4. The Commission also granted MDEA's request to receive interest pursuant to 18 C.F.R. § 35.19a(a)(2)(iii). Consistent with our limited refund authority, we determined that interest likewise should be paid "from the refund effective date, July 4, 2004, up to and including October 4, 2005, which is 15 months after the refund effective date," and "on any remaining uncredited amount of the upfront payment for the Optional System Upgrades prospectively from the date of this order."<sup>7</sup>

5. Entergy submitted a refund compliance report on July 26, 2007 (Refund Report). In that report, Entergy noted a refund of \$1,141,928.85 to MDEA, which represented the amount of credits earned between July 4, 2004 and October 4, 2005, plus interest during that time period.

6. MDEA filed a protest to the Refund Report on August 16, 2007. The protest challenged Entergy's decision to provide interest only during the 15-month time period between July 4, 2004 and October 4, 2005. MDEA argued that it should be entitled to interest from July 4, 2004, until the date Entergy refunded the transmission credits (*i.e.*, July 26, 2007). Entergy responded that it complied with the clear language of the June 11 Order.

7. On November 16, 2007, the Commission issued an order accepting the Refund Report,<sup>8</sup> which rejected MDEA's request for interest beyond October 4, 2005. We

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<sup>4</sup> June 11 Order, 119 FERC ¶ 61,269 at P 36-37.

<sup>5</sup> *Id.* P 39 (citing 16 U.S.C. § 824e(b)).

<sup>6</sup> *Id.* P 39-40.

<sup>7</sup> *Id.* P 43.

<sup>8</sup> *Mississippi Delta Energy Agency, et al. v. Entergy Servs., Inc., et al.*, 121 FERC ¶ 61,178 (2007) (Order on Refund Report).

specifically found that Entergy's refund of transmission credits, as well as the payment of interest between July 4, 2004 and October 4, 2005, was consistent with our directive in the June 11 Order.<sup>9</sup>

### **Request for Rehearing**

8. On December 14, 2007, MDEA filed a request for rehearing of the Order on Refund Report. MDEA argues that the Commission erred by not requiring Entergy to pay interest for the period from October 4, 2005, the end of the refund effective period, until the date of the June 11 Order. MDEA agrees that it is not entitled to receive transmission credits which would have otherwise accrued during that period, as the refund effective period had expired; however, it maintains that interest should have continued to accrue. MDEA asserts that the Order on Refund Report fails to distinguish between the Commission's policy on retroactive ratemaking and its policy on paying interest. It further claims that the Commission failed to provide a reasoned basis for its decision in the Order on Refund Report and, thus, abused its discretion.

### **Discussion**

9. We will deny MDEA's request for rehearing. Under section 313(a) of the FPA, a request for rehearing must be filed within 30 days after issuance of a final order in a proceeding.<sup>10</sup> The Commission and federal courts have firmly established that the 30-day time period is jurisdictional and cannot be waived.<sup>11</sup> Thus, we have routinely dismissed filings that are, in essence, untimely requests for rehearing.<sup>12</sup> We will do the same here.

10. In the June 11 Order, we clearly ordered Entergy to refund transmission credits and provide interest on those credits between July 4, 2004 and October 4, 2005.<sup>13</sup> Entergy's Refund Report merely complied with this directive, and provided interest to

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<sup>9</sup> *Id.* P 15.

<sup>10</sup> 16 U.S.C. § 825l(a) (2000).

<sup>11</sup> *See City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (stating that the 30-day time limit "is as much a part of the jurisdictional threshold as the mandate to file for a rehearing"); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-79 (1st Cir. 1978) (same); *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006) (footnote omitted); *New England Power Pool*, 89 FERC ¶ 61,022, at 61,076 (1999).

<sup>12</sup> *Midwest Indep. Sys. Operator, Inc.*, 120 FERC ¶ 61,202, at P 6 (2007); *New York Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,206, at P 3 (2006).

<sup>13</sup> June 11 Order, 119 FERC ¶ 61,269 at P 43.

MDEA during the timeframe established by the Commission. Had MDEA wanted to challenge the Commission's decision regarding interest, it should have filed a request for rehearing of the June 11 Order, which would have been due on or before July 11, 2007. Neither MDEA's protest of the Refund Report nor its current request for rehearing of the Order on Refund Report meets this deadline. Accordingly, we will reject MDEA's request for rehearing as untimely.

The Commission orders:

MDEA's request for rehearing is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.