

129 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. OA08-75-002

ORDER DENYING REHEARING

(Issued October 30, 2009)

1. On July 6, 2009, Mississippi Delta Energy Agency and its members, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi (collectively, MDEA) filed a request for rehearing of the Commission's order issued in this docket, challenging what it essentially construes as pre-judgment of pending compliance filings in other dockets.¹ For the reasons discussed below, we will deny MDEA's request for rehearing.

I. Background

2. On July 13, 2007, Entergy filed with the Commission in Docket No. OA07-32-000, its compliance filing (July 13, 2007 Compliance Filing) as required by Order No. 890,² which the Commission accepted, subject to further filings, on August 6, 2008.³ The July 13, 2007 Compliance Filing included Entergy's revised Criteria Manuals,⁴ which were initially conditionally accepted by the Commission in Docket No. ER05-

¹ *Entergy Services, Inc.*, 127 FERC ¶ 61,219 (2009) (June 3, 2009 Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

³ *Entergy Services, Inc.*, 124 FERC ¶ 61,148 (2008) (August 6, 2008 Order).

⁴ Entergy's Criteria Manuals include Attachment C (Methodology to Assess Available Transfer Capability), Attachment D (Methodology for Completing a System Impact Study), and Attachment E (Transmission Service Request Criteria) to its Open Access Transmission Tariff (OATT).

1065-004.⁵ However, the Commission stated in the August 6, 2008 Order that it was premature to make a finding on whether the Criteria Manuals complied with Order No. 890. Instead, the Commission ordered Entergy to make a compliance filing once Entergy completed the stakeholder process, allowing parties to comment on the Criteria Manuals. The Commission also ordered Entergy to file informational reports with the Commission regarding the delay in completing its Order No. 890 requirements.⁶ Therefore, the August 6, 2008 Order accepted Entergy's compliance filing, effective July 13, 2007, subject to Entergy making those filings.⁷

3. On March 17, 2008, Entergy filed in Docket No. OA08-75-000 proposed revisions to its OATT to comply with Order No. 890-A's requirement that each transmission provider provide a step-by-step modeling study methodology and criteria for adding or eliminating flowgates in its Attachment C. At that time, Entergy explained that it had not yet revised the Criteria Manuals that had been submitted in its July 13, 2007 Compliance Filing because the stakeholder process had not yet concluded. In the June 3, 2009 Order, the Commission accepted Entergy's proposed revisions, effective March 17, 2008, subject to a compliance filing.⁸

4. In the June 3, 2009 Order, the Commission responded to an intervenor's argument that the currently effective Criteria Manuals were those filed on May 18, 2007 in Docket No. ER05-1065-008 in response to the Commission's order in Docket No. ER05-1065-004.⁹ The Commission stated that the intervenor was incorrect, noting that in "Entergy's Order No. 890 compliance proceeding, the Commission accepted, effective July 13, 2007, Entergy's revised Criteria Manuals subject to Entergy making a compliance filing once it has completed the stakeholder process."¹⁰ Thus, the Commission explained, it is these Criteria Manuals "that have been in effect since July 13, 2007."¹¹

⁵ *Entergy Services, Inc.*, 119 FERC ¶ 61,009 (2007).

⁶ August 6, 2008 Order, 124 FERC ¶ 61,148 at P 61-62.

⁷ Entergy made its compliance filing on April 3, 2009 with its revised Criteria Manuals in Docket Nos. ER05-1065-011 and OA07-32-008.

⁸ The Commission stated that it would be premature to make a finding on whether Entergy's Criteria Manuals comply with Order No. 890-A. The Commission also noted that Entergy had filed the Criteria Manuals in Docket Nos. ER05-1065-011 and OA07-32-008, and stated that parties would be able to comment on the Criteria Manuals in those proceedings. June 3, 2009 Order, 127 FERC ¶ 61,219 at P 19.

⁹ *Id.* P 17.

¹⁰ *Id.* P 20; *see also* August 6, 2008 Order, 124 FERC ¶ 61,148 at P 61.

¹¹ June 3, 2009 Order, 127 FERC ¶ 61,219 at P 20.

II. Request for Rehearing

5. MDEA seeks rehearing of the Commission's statement in the June 3, 2009 Order that the Criteria Manuals "have been in effect since July 13, 2007." Specifically, MDEA requests that the Commission clarify that in making this statement the Commission did not intend to impose on the intervenors the burden of proof in challenging one or more provisions of the Criteria Manuals filed by Entergy in Docket Nos. ER05-1065-011 and OA07-32-008. MDEA states that such clarification is warranted to avoid future controversy about whether the Commission's "acceptance" of the Criteria Manuals in the August 6, 2008 Order establishes that the provisions of the Criteria Manuals are just and reasonable, such that parties challenging one or more elements of the Criteria Manuals in Docket Nos. ER05-1065-011 and OA07-32-008 would bear the burden of showing them to be unjust and unreasonable.

III. Discussion

6. The Commission's acceptance of Entergy's July 13, 2007 Compliance Filing in the August 6, 2008 Order was subject to Entergy making further filings, including the compliance filing Entergy made on April 3, 2009 in Docket Nos. ER05-1065-011 and OA07-32-008.¹² As noted above, in both the August 6, 2008 Order and the June 3, 2009 Order, the Commission indicated that it would not act on the Criteria Manuals until Entergy had made the required filings and parties had the opportunity to comment on the Criteria Manuals at that time. Therefore, MDEA's ability to challenge Entergy's filings has not been altered by the June 3, 2009 Order and, accordingly, we will deny rehearing.

The Commission orders:

MDEA's request for rehearing is hereby denied, as explained in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² See supra note 11.