

139 FERC ¶ 61,102
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. EL11-65-000

v.

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

ORDER ON COMPLAINT

(Issued May 7, 2012)

1. On September 27, 2011, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint under section 206 of the Federal Power Act,¹ and Rule 206 of the Commission's Rules of Practice and Procedure² against Entergy Corporation, Entergy Services, Inc., and the Entergy Operating Companies³ (collectively, Entergy) seeking a ruling that the out-of-period expenses and revenues for refunds and surcharges required in 2007 and 2008 under the Commission's interruptible load decisions in Docket No. EL00-66, but relating to the period prior to the institution of the bandwidth remedy in 2006, must be removed from the annual bandwidth remedy calculations under Service

¹ 16 U.S.C. § 824e (2006).

² 18 C.F.R. § 385.206 (2011).

³ The six Entergy Operating Companies are Entergy Louisiana, LLC (Entergy Louisiana), Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C., and Entergy Texas, Inc. (collectively, Operating Companies).

Schedule MSS-3 of the Entergy System Agreement⁴ for test-years 2007 and 2008 because the inclusion of these costs and revenues distorts the rough equalization calculation for the test years and renders the resulting rates unjust and unreasonable inasmuch as the inclusion of these amounts in the bandwidth calculations has the effect of largely reversing the Commission's interruptible load decisions. The Louisiana Commission also argues that the inclusion of unjust and unreasonable cost inputs in a formula tariff may be corrected at any time after they are discovered and relief is sought. Further, the Louisiana Commission argues that, if the Commission does not find that the 2008 refunds and surcharges must be removed from the bandwidth calculation because they relate to a pre-bandwidth period, then any future reversal of these refunds and surcharges should be reflected in the bandwidth calculation in the year in which the refunds and surcharges were initially made (and included in the bandwidth calculation), rather than the year in which the reversal is made.

2. We will deny the Louisiana Commission's complaint with respect to refunds and surcharges required in 2007 and 2008 and included in the bandwidth calculations for the 2007 and 2008 test years. As to the portion of the Louisiana Commission's complaint that relates to prospective adjustments to the Service Schedule MSS-3 bandwidth calculations that may be necessitated to account for refunds and surcharges that may be ordered in the future as a result of reconsideration of the Commission's interruptible load decisions, we find this issue is not yet ripe for consideration and will hold that part of the complaint in abeyance, as discussed below.

I. Background

3. In 1995, the Louisiana Commission filed a complaint against Entergy in Docket No. EL95-33-000 alleging 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. While the

⁴ The System Agreement, a Commission approved tariff, is the contract among the Operating Companies and Entergy Services, Inc., which provides for a sharing of the costs and benefits of the joint planning, construction, operation and maintenance of the generation, transmission, and other facilities of the Operating Companies. 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 equalization (or bandwidth) formula to maintain production costs within a specified band among the Operating Companies.

Commission initially dismissed the complaint,⁵ it subsequently established hearing procedures and consolidated the proceeding with those in Docket Nos. ER00-2854-000 and EL00-66-000. The hearing proceedings resulted in the issuance of an initial decision,⁶ along with two Commission opinions (Opinion Nos. 468 and 468-A) that addressed the exceptions to the initial decision.⁷ These Opinions ordered the exclusion of interruptible load from the computation of peak load responsibility used for allocating costs and revenues in Service Schedules MSS-1 (Reserve Equalization) and MSS-5 (Distribution of Revenue from Sales Made for the Joint Account of All Companies) of the System Agreement, and costs associated with joint account purchases.

4. In response to a petition for review of the Commission's Opinion Nos. 468 and 468-A, the United States Court of Appeals for the District of Columbia Circuit, on April 3, 2007, issued an order remanding the matter to the Commission for further proceedings.⁸ One of the issues was whether, in calculating charges for the Entergy system, the exclusion of interruptible load from the computation of peak load responsibility should be accomplished immediately or be phased-in over twelve months. Opinion Nos. 468 and 468-A adopted an approach to remove interruptible load over a 12-month phase-in period starting on April 1, 2004 whereas the court found that interruptible load should be removed immediately starting on April 1, 2004. In an order on remand issued in September 2007, the Commission ordered Entergy to recalculate customers' peak load responsibility to remove interruptible load from the computation of charges for the Entergy system since April 1, 2004 (pursuant to the guidance of Opinion Nos. 468 and 468-A) and refund to Entergy Louisiana's customers an amount reflecting the difference between what Entergy charged (based on Opinion Nos. 468 and 468-A) and what it would have charged had Entergy immediately removed all interruptible load from the computation of peak load responsibility starting on April 1, 2004.⁹ Entergy calculated the interruptible refunds and surcharges associated with the immediate removal of interruptible load through its Intra-system Bill in 2007.

⁵ *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 76 FERC ¶ 61,168 (1996), *reh'g denied*, 80 FERC ¶ 61,282 (1997).

⁶ *Louisiana Public Service Comm'n v. Entergy Corp.*, 96 FERC ¶ 63,002 (2001).

⁷ *Louisiana Public Service Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004), *reh'g denied*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005).

⁸ *Louisiana Public Service Commission v. FERC*, 482 F.3d 510 (D.C. Cir. 2007).

⁹ *Louisiana Public Service Comm'n v. Entergy Corp.*, 120 FERC ¶ 61,241 (2007) (Remand Order).

5. Also in the Remand Order, the Commission directed Entergy to make refunds associated with the fifteen-month period commencing with the refund effective date. To comply with this directive, Entergy calculated the interruptible refunds and surcharges associated with the fifteen-month period (1995-96) and reflected the amounts through its Intra-system Bill in 2008.

6. Before addressing the merits of the rehearing requests related to the Remand Order, on October 6, 2011, the Commission established a paper hearing in Docket No. EL00-66-017,¹⁰ to review briefs and reply briefs from the parties before reaching a final decision on whether to impose refunds for the fifteen-month period.

7. In 2001, the Louisiana Commission filed another complaint against Entergy (in Docket No. EL01-88-000) alleging that the Entergy System was no longer in rough production cost equalization. The complaint was set for hearing,¹¹ and resulted in the Commission's issuance of Opinion Nos. 480 and 480-A in 2005.¹²

8. In Opinion Nos. 480 and 480-A, the Commission found that rough production cost equalization had been disrupted on the Entergy system and approved a numerical bandwidth of +/- 11 percent of the Entergy system average production cost to restore the rough equalization of production costs among the Operating Companies.¹³ The Commission stated that the bandwidth would be implemented prospectively and would be effective beginning in calendar year 2006, and that any equalization payments would be made beginning in 2007 after the full calendar year of data for 2006 became available.¹⁴ Entergy is required, by June 1 of each year, to make a compliance filing implementing the bandwidth formula using the prior calendar year's production costs.

¹⁰ *Louisiana Public Service Comm'n v. Entergy Corp.*, 137 FERC ¶ 61,018 (2011).

¹¹ *Louisiana Public Service Comm'n v. Entergy Corp.*, 98 FERC ¶ 61,135 (2002).

¹² *Louisiana Public Service 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), *order on remand*, 137 FERC ¶ 61,047 (2011).

¹³ Opinion No. 480, 111 FERC ¶ 61,311 at P 1, P 145, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 at P 15, P 46.

¹⁴ Opinion No. 480-A, 113 FERC ¶ 61,282 at P 53-54; *Entergy Services, Inc.*, 117 FERC ¶ 61,203, at P 43 (2006).

9. On May 29, 2007, in Docket No. ER07-956-000, Entergy submitted its first annual bandwidth implementation filing based on calendar year 2006 data (2007 bandwidth calculation). The Commission set the filing for hearing,¹⁵ and an initial decision¹⁶ was issued on September 23, 2008. On January 10, 2010, the Commission issued Opinion No. 505,¹⁷ which affirmed in part and reversed in part the initial decision.

10. 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 set the filing for hearing,¹⁸ and an initial decision¹⁹ was issued on September 10, 2009. The parties also submitted a partial uncontested settlement, which was approved by the Commission on August 4, 2009. On October 7, 2011, the Commission issued Opinion No. 514,²⁰ which affirmed in part and reversed in part the initial decision.

11. 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 set the filing for hearing²¹ and the presiding judge issued an initial decision on August 5, 2010.²² On May 7, 2012, the Commission issued Opinion No. 518, which affirmed the initial decision to the extent that the issues had not been rendered moot by Commission decisions in other proceedings.²³

¹⁵ *Entergy Services, Inc.*, 120 FERC ¶ 61,094 (2007).

¹⁶ *Entergy Services, Inc.*, 124 FERC ¶ 63,026 (2008).

¹⁷ *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010), *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

¹⁸ *Entergy Services, Inc.*, 124 FERC ¶ 61,101 (2008).

¹⁹ *Entergy Services Inc.*, 128 FERC ¶ 63,015 (2009).

²⁰ *Entergy Services, Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011).

²¹ *Entergy Services, Inc.*, 128 FERC ¶ 61,091 (2009) (July 2009 Order).

²² *Entergy Services, Inc.*, 132 FERC ¶ 63,005 (2010) (Third Bandwidth ID).

²³ *Entergy Services, Inc.*, 139 FERC ¶ 61,105, at P 1, P 22-25 (2011) (Third Bandwidth Opinion).

12. Entergy's re-billings for interruptible load refunds and credits affected the revenues the Entergy Operating Companies recorded in FERC Account 447²⁴ and the purchased power expenses recorded in FERC Account 555 used in the inputs to the bandwidth formula in the 2007 and 2008 bandwidth test years.²⁵ In the 2008 bandwidth calculation filing, which was based on 2007 test year data, Entergy included accounting entries for interruptible load refunds and surcharges that related to the years 2004-05, but which took place in 2007 pursuant to the Commission's interruptible load decisions. Entergy's 2009 bandwidth calculation filing was based on 2008 test year data, and this calculation included refunds and surcharges that related to the years 1995-96 that were required to take place in 2008 pursuant to the Commission's interruptible load decisions.²⁶ In the 2009 bandwidth calculation hearing, the Louisiana Commission asked the Commission to exclude such out-of-period revenues and expenses on the grounds that such exclusion would lead to a more reasonable result. In the Third Bandwidth Opinion, the Commission affirmed the presiding judge's ruling that Service Schedule MSS-3 does not provide for the exclusion of out-of-period revenues and expenses and that any change to the bandwidth formula must be made through an FPA section 205 or 206 proceeding.²⁷

II. Louisiana Commission's Complaint

13. The Louisiana Commission argues that the Commission should direct Entergy to recompute the Service Schedule MSS-3 bandwidth formula calculations for the 2007 and 2008 test years to remove out-of-period costs and revenues associated with interruptible load refunds and surcharges that took place in 2007 and 2008. The Louisiana Commission argues that the inclusion of these out-of-period costs and revenues distorts the rough production cost equalization calculation for the test years and renders the

²⁴ Account 447 – Revenue credits from revenues from sales for resale to customers outside each Operating Company's Net Area for Production Service. Accounts 447 and 555 are two of the accounts used as inputs in the bandwidth formula under Service Schedule MSS-3 for determining variable production expenses.

²⁵ Complaint, Affidavit of Lane Kollen at 4.

²⁶ The test year data reported in the FERC Form 1s for 2008 included the effects of accounting entries for interruptible load refunds and surcharges that related to the years 1995-96. The refunds and surcharges were ordered pursuant to Commission orders on remand issued in Docket No. EL00-66, *see* Remand Order, 120 FERC ¶ 61,241 (2007), *reh'g denied*, 124 FERC ¶ 61,275 (2008) (currently pending further review in paper hearing, *see* n. 41, *infra*).

²⁷ Third Bandwidth Opinion, 139 FERC ¶ 61,105 at P 22-25.

resulting rates unjust and unreasonable, and has had the effect of reversing the Commission's prior decisions regarding interruptible load.

14. The Louisiana Commission states that the interruptible load refunds and surcharges that took place in 2007 and 2008 affected the revenues Entergy recorded in Account 447 and the purchased power expenses recorded in Account 555 in the applicable test year, but were attributable to periods before the bandwidth remedy was applied. The Louisiana Commission argues that including these refunds and surcharges in the bandwidth calculations for test years 2007 and 2008 had the effect of improperly reducing the production costs of Entergy Louisiana in those calculations.

15. The Louisiana Commission states that Commission precedent holds that unjust and unreasonable costs recovered through the operation of a formula rate tariff may be corrected at any time after a complainant discovers them and seeks relief.²⁸ The Louisiana Commission adds that, in Docket No. ER09-1224, the proceeding addressing Entergy's third annual bandwidth implementation filing, the presiding judge ruled that the reasonableness of reflecting the interruptible load refunds and surcharges in the test year data could not be considered in an annual bandwidth implementation proceeding, and therefore the Louisiana Commission seeks to correct the inputs through this section 206 filing.²⁹

16. The Louisiana Commission also seeks a ruling that, to the extent that the decision that produced refunds in 2008 in the interruptible load proceeding is reversed, the effect of the reversal should be excluded from the bandwidth calculations because the rebillings will relate to a period prior to institution of the bandwidth formula and it is unjust and unreasonable to include them in the bandwidth calculations. Alternatively, the Louisiana Commission states that such reversal should be reflected in the bandwidth calculations for the 2008 test year when the refunds and surcharges were first reflected, unless the Commission orders the removal of the 2008 refunds and surcharges altogether.

III. Notice of Filing and Responsive Pleadings

17. Notice of the Louisiana Commission's complaint was published in the Federal Register, 76 Fed. Reg. 61,686 (2011), with interventions or protests due on or before October 17, 2011. Entergy filed an answer to the complaint. Union Electric Company

²⁸ Complaint at 2 (citing *American Electric Power Service Corp.*, 124 FERC ¶ 61,306, at P 35 (2008) (*AEP Order*); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 112 (2009) (*Pioneer Order*); and *Public Utilities Commission of the State of California v. FERC*, 254 F.3d 250 (2001)).

²⁹ Complaint at 3 (citing *Entergy Services, Inc.*, 139 FERC ¶ 61,105).

filed a timely motion to intervene. The Mississippi Public Service Commission filed a notice of intervention. The Arkansas Public Service Commission (Arkansas Commission) filed a notice of intervention and a protest. On November 3, 2011, the Louisiana Commission filed an answer to Entergy's Answer and the Arkansas Commission's protest.

18. Entergy states that, while the Louisiana Commission requests refunds of past period costs, it ignores that Commission policy allows refunds for prior periods in limited circumstances. Entergy states that the Commission allows challenges to an error discovered after-the-fact in a formula input or when the formula is violated. Entergy maintains that neither of these situations is present here. Entergy argues that the authorities relied upon by the Louisiana Commission to support retroactive relief are not applicable. Entergy asserts that the *AEP Order* and *Pioneer Order* address formula rates where the inputs are not subject to formal review until a party taking service under the formula rate files a complaint upon discovery of misapplication of the formula rate, and that the bandwidth formula is, by contrast, subject to formal review with each annual application of that rate.³⁰ According to Entergy, the Commission has made clear that the annual bandwidth proceedings are the proper forum in which to challenge the inputs to each annual bandwidth calculation.

19. As to the Louisiana Commission's arguments concerning the interruptible load refunds and surcharges recorded in the 2007 test period, Entergy argues that the Louisiana Commission's opportunity to challenge those inputs to the bandwidth formula was in the corresponding bandwidth filing (Docket No. ER07-956) and that this window of opportunity has passed. Entergy notes that the Commission has issued a final order on that annual bandwidth calculation and argues that, despite the Louisiana Commission's multiple attempts at relief on this issue, it decided not to challenge the 2007 interruptible load refunds and surcharges at hearing or in a motion for rehearing and must now live with the consequences of that decision. Regarding refunds and surcharges recorded in the 2008 test period, Entergy argues that the presiding judge in Docket No. ER09-1224 (the 2009 bandwidth calculation) has already concluded that Entergy did not violate the terms of the tariff by including interruptible load refunds and surcharges in the bandwidth calculation for the 2008 test period.

20. With regard to the Louisiana Commission's request for prospective relief, Entergy argues that the Louisiana Commission has not satisfied its burden to demonstrate either a tariff violation or to show that the current Bandwidth Formula is unjust and unreasonable.

21. The Arkansas Commission argues that the provisions of the bandwidth formula preclude the type of retroactive remedy that the Louisiana Commission seeks. The

³⁰ Entergy Answer at 11.

Arkansas Commission points to Note 1 of Service Schedule MSS-3, Section 30.12 (Actual Production Cost), which states that “[a]ll Rate Base, Revenue and Expense items shall be based on the actual amounts on the Company’s books for the twelve months ended December 31 of the previous year as reported in the Company’s Form 1...”³¹ The Arkansas Commission also highlights Commission precedent supporting the use of actual Form 1 data, most recently in Opinion No. 514, where the Commission stated that Section 30.12 requires that depreciation expense, as well as all other expense items, be based on the actual amounts on the Company’s books for the twelve months ended December 31 of the previous year as reported in FERC Form 1.³²

22. The Arkansas Commission argues that the Commission in Opinion No. 514 clarified that the use of actual costs is required in the bandwidth production cost calculations unless and until the bandwidth formula is modified pursuant to a filing under FPA section 205 or section 206. The Arkansas Commission argues that, given that the Louisiana Commission’s complaint does not include any proposal to revise the bandwidth formula in Service Schedule MSS-3, the Louisiana Commission must abide by the formula’s requirement to use actual amounts as recorded and reported.

23. As to the Louisiana Commission’s arguments concerning out-of-period bandwidth adjustments that may be necessitated based on the outcome of the pending proceeding in Docket No. EL00-66-017, Entergy and the Arkansas Commission argue that these arguments are speculative and that it is premature to decide these issues here, given that no final determination has been made in Docket No. EL00-66-017 on the refund issue.

IV. Discussion

A. Procedural Matters

24. 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 the timely, unopposed motions to intervene serves to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer or a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Louisiana Commission’s answer and will, therefore, reject it.

³¹ Arkansas Commission Protest at 8, citing the Entergy System Agreement.

³² *Id.* at 8-9 (citing Opinion No. 514, 137 FERC ¶ 61,029 at P 47, among other cases).

B. Substantive Issues

26. As discussed above, the Louisiana Commission is seeking both retrospective relief and prospective relief. We will reject the complaint to the extent it seeks retroactive relief, because what the Louisiana Commission seeks requires a modification to the Service Schedule MSS-3 bandwidth formula and that is not permitted retroactively under FPA section 206. As the Commission found in the third annual bandwidth proceeding,³³ Service Schedule MSS-3 does not provide for the exclusion of out-of-period revenues and expenses. Because Service Schedule MSS-3 requires Entergy to use actual costs recorded by each Operating Company on its FERC Form 1 for the previous year, where the actual costs properly recorded on the FERC Form 1s include out-of-period expenses and revenues, those out-of-period revenues and expenses are properly included in the annual bandwidth calculation. The out-of-period revenues and expenses that the Louisiana Commission challenges in its complaint thus are included in the bandwidth formula under the current MSS-3 bandwidth formula, and an adjustment to the 2008 and 2009 bandwidth calculations to exclude these revenues and expenses would be a retroactive modification of the bandwidth formula in effect in 2008 and 2009.

27. The *AEP Order* that the Louisiana Commission cites to support its argument for retroactive relief under formula rates does not apply here. In the *AEP Order*, the Commission explained that its

long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula. [footnote omitted] Indeed, customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.^[34]

The kinds of challenges to inputs or implementation contemplated by the *AEP Order* or by the *North Carolina Order*,³⁵ such as a showing that the reported out-of-period adjustments were for a wrong amount (input challenge) or a showing that recovery is not

³³ 139 FERC ¶ 61,105 at P 43.

³⁴ *AEP Order*, 124 FERC ¶ 61,306 at P 35.

³⁵ *North Carolina Electric Membership Cooperative v. Carolina Power & Light Co.*, 57 FERC ¶ 61,332, at 62,065 (1991) (*North Carolina Order*). In the *North Carolina Order*, the Commission held that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate. Neither of these elements is present here.

allowed for these amounts under the prescribed formula (implementation challenge) are not applicable here. This is not a situation of an error in implementing the bandwidth formula for the 2007 and 2008 test years, as previously explained, nor is it a situation of Entergy having flowed through an expense that the Commission had not previously reviewed for justness and reasonableness. To the contrary, the interruptible load refunds and surcharges were *required* by the Commission as part of the just and reasonable rate adopted under FPA section 206 in the interruptible load proceeding. The Louisiana Commission does not challenge the fact that Entergy properly reported the refunds and surcharges in the appropriate accounts in its FERC Form 1s as a result of Entergy implementing the Commission's orders on interruptible load. Therefore, Entergy has neither misapplied the bandwidth formula under Service Schedule MSS-3 nor charged rates contrary to the filed rate, and it has not flowed through an unreasonable or imprudently incurred expense. Thus, we decline to order adjustments to be made to the bandwidth calculations for the 2007 and 2008 bandwidth test years to undo out-of-period revenues and expenses properly included under the bandwidth formula in effect for that period.

28. To the extent that the Louisiana Commission seeks prospective relief for potential future refunds and surcharges that may be ordered in the interruptible load proceeding pending in Docket No. EL00-66-017, the Commission concludes that it is premature at this time to act on this complaint as it relates to prospective changes to the Service Schedule MSS-3 bandwidth formula, and will instead hold this part of the complaint in abeyance pending the outcome of the paper hearing in Docket No. EL00-66-017.³⁶ Accordingly, the Commission will consider this part of the complaint in a subsequent Commission order.³⁷

³⁶ As noted above, in the proceeding in Docket No. EL00-66-017, the Commission is currently evaluating the parties' briefs and reply briefs addressing whether, as argued by Louisiana Commission in its rehearing request, Commission precedent supports refunds under the circumstances present in that proceeding. *Louisiana Public Service Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, 137 FERC ¶ 61,018, at P 3 (2011).

³⁷ The Commission has discretion to determine the best procedures to address the issues before it. *See, e.g., Tennessee Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) ("The agency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem"); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) ("[T]his court has upheld in the strongest terms the discretion of regulatory agencies to control the disposition of their caseload."); *see also ISO New England, Inc.*, 130 FERC ¶ 61,236, at P 12 n.9 (2010) (citing *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies

(continued...)

The Commission orders:

The Louisiana Commission's complaint is hereby denied in part, with respect to past adjustments for the 2008 and 2009 bandwidth calculations for the 2007 and 2008 test years, and held in abeyance with respect to the portion of the complaint that relates to prospective adjustments, pending further Commission action, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

have broad discretion over the formulation of their procedures)); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578-79 (D.C. Cir. 1992) (the Commission has discretion to mold its procedures to the exigencies of the particular case).