

145 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER07-956-006

ORDER DENYING REHEARING

(Issued October 16, 2013)

1. On May 7, 2012, the Commission issued an order¹ accepting a compliance filing submitted by Entergy Services, Inc. (Entergy) in response to Opinion No. 505.² Entergy seeks rehearing of one aspect of the May 7 Order, arguing that the Commission should not have required Entergy to include interest on recalculated bandwidth payment and receipt amounts. For the reasons discussed below, the request for rehearing is denied.

I. Background

2. In Opinion No. 505, the Commission implemented for the first time the Commission's bandwidth remedy³ as provided for in Opinion Nos. 480 and 480-A.⁴ In

¹ *Entergy Services, Inc.*, 139 FERC ¶ 61,104 (2012) (May 7 Order).

² *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010), *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103, *order on compliance*, 139 FERC ¶ 61,104 (2012).

³ The purpose of the bandwidth remedy is to roughly equalize production costs among the Entergy Operating Companies. The remedy provides that each calendar year the production costs of each Operating Company are calculated, with payments made by the low cost Operating Company(ies) to the high cost Operating Company(ies) such that, after reflecting the payments and receipts, no Operating Company would have production costs more than 11 percent above the Entergy System average or more than 11 percent below the Entergy System average.

⁴ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 at P 136, *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*

(continued...)

the May 7 Order, the Commission accepted Entergy's filing in compliance with Opinion No. 505. In that order the Commission ruled, *inter alia*, that Entergy must file a comprehensive bandwidth recalculation report showing all the updated payment/receipt amounts based on the 2006 calendar year data as a result of all the revisions to the bandwidth calculations and formula in Opinion Nos. 505, 506, 509 and the order on rehearing in Docket No. EL07-52-001.⁵ The Commission stated that Entergy should include such adjustments in the first Entergy Intra-System Bill issued following the filing of the bandwidth recalculation report. As pertinent here, the Commission also stated that Entergy is required to calculate interest on the payment/receipt amounts from June 1, 2007 until the date of the Intra-System Bill that will reflect the bandwidth recalculation amounts for calendar year 2006.

3. On June 6, 2012, Entergy filed a request for rehearing of the May 7 Order. The Louisiana Public Service Commission (Louisiana Commission) filed an answer.

II. Request for Rehearing

4. Entergy requests rehearing of the Commission's decision to order Entergy to include interest on the recalculated bandwidth payments and receipts. It argues that the Commission's decision to require interest is inconsistent with prior Commission decisions declining to order interest. For example, Entergy argues that in the orders accepting the compliance filing that established the bandwidth remedy, the Commission held that bandwidth payments and receipts should not include interest.⁶ Entergy explains that in those orders, the Commission relied on its broad discretion regarding whether to order interest on remedial payments and determined that it should exercise its discretion and decline to order interest on bandwidth payments.⁷ Entergy explains that in those two compliance orders, the Commission expressly ruled that the bandwidth remedy does

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), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011).

⁵ In subsequent orders, the Commission required Entergy to file within 45 days of the latter of a final Commission order on rehearing of Opinion Nos. 505, 506, 509, 514 and *Entergy Arkansas, Inc.*, 142 FERC ¶ 61,010 (2013). *See, e.g., Entergy Services, Inc.*, 142 ¶ 61,011, at P 20 (2013).

⁶ Entergy Request for Rehearing at 5 (citing *Entergy Services, Inc.*, 117 FERC ¶ 61,203 at P 51 and *Entergy Services, Inc.*, 119 FERC ¶ 61,095 at P 32).

⁷ *Id.*

not involve refunds and, therefore, Commission precedent regarding imposition of refunds was inapplicable to bandwidth payments and receipts.

5. Entergy argues that even if Commission precedent regarding the imposition of refunds were relevant to the issue of whether to order interest on recalculated bandwidth payments and receipts in this case, that precedent also supports a decision to decline to order interest. Entergy explains that in Docket No. EL00-66, the Commission required Entergy to make refunds among the Entergy Operating Companies to reflect the inclusion of interruptible load in production cost allocations under the Entergy System Agreement. Entergy further explains that in a compliance filing submitted in that proceeding, Entergy did not include interest on required refunds. It notes that the Commission rejected a protest submitted by the Louisiana Commission arguing in favor of interest and ruled that Entergy should not include interest on any of the interruptible load refunds.⁸

6. Entergy notes that in *Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc.*,⁹ in which the Commission ordered Entergy to calculate bandwidth payments and receipts for the seven-month period from June 1, 2005 through December 31, 2005, the Commission declined to require Entergy to include interest. Entergy contends that the May 7 Order is inconsistent with this precedent.

III. Discussion

A. Procedural Matters

7. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2013), prohibits answers to a request for rehearing. Therefore, we reject the Louisiana Commission's answer.

B. Commission Determination

8. The request for rehearing is denied. Although the Commission stated in a prior order that interest would not be required on bandwidth payments,¹⁰ in that order the Commission held that there was no need to require that interest be paid because

⁸ *Id.* at 6 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,223 at PP 14, 18, *order on clarification*, 133 FERC ¶ 61,213, at P 4 (2010)).

⁹ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 137 FERC ¶ 61,047 (2011).

¹⁰ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,095, at P 32 (2007).

settlements were scheduled to be made in a reasonable time period once the calculations are completed. In the instant case, due to the length of time that has passed, we find that it is appropriate to follow the Commission's general policy and allow interest to be paid to ensure full recovery.¹¹ As the court explained in *Anadarko Petroleum Corp. v. FERC*, "interest is simply a way of ensuring full compensation. This is why the delay between the time of the customers' injury and the granting of relief is a reason for awarding interest, not denying it"¹²

9. Furthermore, the cases cited by Entergy do not persuade us to alter our prior determination. Entergy argues that the Commission declined to require interest in an ongoing Entergy proceeding regarding interruptible loads.¹³ However, in that proceeding, the Commission held that the Louisiana Commission's request for the inclusion of interest was an untimely, impermissible request for rehearing.¹⁴ The Commission determined that the Louisiana Commission should have made a request for rehearing of a prior order – issued over two years prior to the Louisiana Commission's request -- which was silent on the issue of interest.¹⁵ The Commission made no determination regarding the propriety of paying interest.¹⁶ Our determination here is also consistent with other recent orders concerning the bandwidth formula.¹⁷ Accordingly, the request for rehearing is denied.

¹¹ See *Anadarko Petroleum Corp. v. FERC*, 196 F.3d 1264, 1267 (D.C. Cir. 1999) (“[t]he Commission’s general policy, in effect for many years, requires interest to be paid on various kinds of overcharges.”).

¹² *Id.* at 1268.

¹³ *Louisiana Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 132 FERC ¶ 61,223 at P 18.

¹⁴ *Louisiana Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 124 FERC ¶ 61,275, at P 40 (2008).

¹⁵ *Id.*

¹⁶ In any event, in a later order the Commission reversed its decision ordering refunds in the interruptible load proceeding, so the issue of interest on refunds ultimately became moot. See *Louisiana Pub. Serv. Comm’n and the City Council of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211, at P 76 (2013).

¹⁷ See, e.g., *Entergy Services, Inc.*, 142 FERC ¶ 61,011 at P 21.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.