

147 FERC ¶ 61,165
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Gulf States Louisiana, L.L.C.	Docket Nos. ER14-1640-000
Entergy Louisiana, LLC	ER14-1641-000
Entergy Mississippi, Inc.	ER14-1642-000
Entergy New Orleans, Inc.	ER14-1643-000
Entergy Texas, Inc.	ER14-1644-000 (consolidated)

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF AMENDMENTS,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES, AND
CONSOLIDATING PROCEEDINGS

(Issued May 30, 2014)

1. On April 1, 2014, pursuant to section 205 of the Federal Power Act (FPA),¹ Entergy Services, Inc. (Entergy) submitted on behalf of the five Entergy Operating Companies² that are currently parties to the Entergy System Agreement, tariff amendments to include energy costs under certain power purchase agreements (PPAs) in Service Schedule MSS-3 of the Entergy System Agreement at a lower price than is currently paid under those PPAs.³ In this order, we accept Entergy's proposed tariff

¹ 16 U.S.C. § 824d (2012).

² The applicable Entergy Operating Companies in this proceeding are: Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy Texas, Inc. (Entergy Texas) and Entergy New Orleans, Inc. (Entergy New Orleans) (collectively, Operating Companies).

³ The Entergy System Agreement Service Schedule MSS-3 is on file with the Commission in the eTariff database of each Operating Company that is a party to the System Agreement. As such, Entergy filed the proposed tariff amendments separately in each docket referenced above. According to Entergy, the filings are identical in all respects. Entergy Transmittal at 1.

amendments for filing and suspend them for a nominal period, to become effective May 31, 2014, as requested, subject to refund, and consolidate them and establish hearing and settlement judge procedures, as discussed below.

I. Background

2. Entergy and five of the Entergy Operating Companies are currently parties to the Entergy System Agreement (System Agreement).⁴ The System Agreement is a rate schedule on file at the Commission that allows participating Operating Companies to plan, construct, and operate their generation and bulk transmission facilities as a single, integrated electric system. Entergy states that after 2015 the Entergy System will include only four of the Entergy Operating Companies, i.e., Entergy Gulf States Louisiana, Entergy Louisiana, Entergy Texas, and Entergy New Orleans.

3. In Opinion No. 480, the Commission found that rough production cost equalization on the Entergy system had been disrupted.⁵ Opinion Nos. 480 and 480-A approved a numerical bandwidth of 11 percent of the Entergy system average production cost in order to maintain the rough equalization of production costs among the Operating Companies (bandwidth remedy).⁶ The Commission also required that annual bandwidth filings be made to determine any necessary payments among the Operating Companies. In its compliance filing implementing the directives of Opinion Nos. 480 and 480-A, Entergy included in Service Schedule MSS-3 the formulas for implementing the bandwidth remedy (bandwidth formula).⁷

⁴ Entergy Arkansas, Inc. withdrew from the System Agreement effective December 18, 2013 and is not a party in this proceeding. Entergy Mississippi is authorized to withdraw from the System Agreement on November 7, 2015. *See Entergy Servs., Inc.*, 129 FERC ¶ 61,143 (2009), *reh'g denied*, 134 FERC ¶ 61,075 (2011), *aff'd sub nom. Council of the City of New Orleans v. FERC*, 692 F.3d 172 (D.C. Cir. 2012), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FERC* (U.S. May 13, 2013) (No. 12-852).

⁵ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g*, *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 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, sub nom. Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁶ Opinion No. 480, 111 FERC ¶ 61,311 at P 44.

⁷ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007).

4. Service Schedule MSS-3 serves two separate and distinct functions. The first function includes a methodology for pricing energy exchanged among the Operating Companies as a result of the least-cost single system dispatch of System resources to serve System load. The second function contains the formula to calculate the annual bandwidth remedy payments and receipts.

A. Power Purchase Agreements

5. Entergy states that Entergy Gulf States Louisiana is a public utility under the FPA that owns and operates generation, transmission, and distribution facilities, and provides electricity in 18 of the 64 parishes in the state of Louisiana and is subject to the state regulatory jurisdiction of the Louisiana Public Service Commission (Louisiana Commission).⁸

6. Entergy states that Rain CII Carbon LLC (Rain) is the owner of an existing calcined petroleum coke facility in Sulphur, Louisiana, which generates 36.4 megawatts (MW) (gross) of power through a waste heat recovery project. A small portion of the electricity generated by the project is used to meet on-site requirements for the calcining plant, with the remainder deliverable under a proposed long-term PPA with Entergy Gulf States Louisiana. The Rain facility was certified by the Commission as a qualifying facility (QF) pursuant to the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA).⁹ Entergy states that Entergy Gulf States Louisiana sought and received approval from the Louisiana Commission to enter into a 20-year PPA with Rain (Rain PPA) for the purchase of 28 MW of baseload capacity, capacity-related benefits, energy, other electric products and environmental attributes.¹⁰

7. Entergy states that Agrilectric Power Partners, LP (Agrilectric) owns a refurbished rice hull-fueled electric generation facility in Lake Charles, Louisiana that is also certified by the Commission as a QF under PURPA. Entergy states that Entergy Gulf States Louisiana sought and received approval from the Louisiana Commission to enter into a 20-year agreement with Agrilectric for the purchase of 8.5 MW of baseload

⁸ Entergy Transmittal at 4.

⁹ *Id.* (citing 16 U.S.C. 2601, *et. seq.*)

¹⁰ *Id.* n.6 (citing Louisiana Commission Order No. U-32557, In re: Application for Approval of a 20-Year Contract with Rain CII Carbon LLC for the Purchase of Capacity and Energy from Sulphur, LA Heat Recovery Project and Request for Timely Treatment (Rain CII Carbon Order)).

capacity, capacity-related benefits, energy, other electric products, renewable and environmental attributes.¹¹

8. Entergy states that in approving the PPAs, the Louisiana Commission determined that resources such as these PPAs met the stated policy objectives set forth in section 2 of the Renewable Energy Pilot Program Implementation Plan approved by the Louisiana Commission's General Order dated December 9, 2010 (Docket No. R-28271 Subdocket B) and recognized that "resources resulting from the [Louisiana Commission]-mandated renewable-specific [request for proposals] may be priced at above-market costs."¹²

B. Entergy's Proposed Tariff Amendments

9. In the instant filings, Entergy seeks authorization to modify its rough production cost equalization bandwidth formula set forth in Service Schedule MSS-3 of the System Agreement to include the Rain PPA and the Agrilectric PPA in the bandwidth formula at a price that is equal to the price of the average annual Service Schedule MSS-3 Exchange Energy Rate paid by Entergy Gulf States Louisiana, i.e., the PPAs would be included at a price that is lower than the price that is paid under the agreements.¹³

10. Entergy states that the proposed amendment is appropriate in order to exclude from the bandwidth calculation certain increased costs resulting from the execution of the PPAs. Entergy argues that it is appropriate to re-price the energy associated with the PPAs so that the costs of these agreements that are "above market" are excluded from the bandwidth formula. Entergy contends that this treatment is consistent with the treatment that the Commission approved for the re-pricing of the Vidalia PPA in Opinion No. 480 for purposes of the bandwidth formula.¹⁴

¹¹ *Id.* at 5 n.10 (citing Louisiana Commission Order No. U-32785, In re: Application for Approval of a 20-Year Contract with Agrilectric Power Partners, LP for the Purchase of Capacity and Energy and Request for Timely Treatment (Agrilectric Power Partners Order)).

¹² *Id.* at 4-5 (citing Rain CII Carbon Order at ordering paragraph 11; Agrilectric Power Partners Order at ordering paragraph 11).

¹³ *Id.* at 5.

¹⁴ *Id.*

11. Entergy states that in accordance with ordering paragraph 11 of the Rain CII Carbon Order and ordering paragraph 11 of the Agrilectric Power Partners Order,¹⁵ it proposes to amend footnote 1 of section 30.12, Actual Production Cost, of Service Schedule MSS-3 to include the following additional adjustment to the amounts used to calculate each Operating Company's production costs:

...and (6) repricing of energy associated with the Rain CII Carbon power purchase contract for [Entergy Gulf States Louisiana] based on the average annual Service Schedule MSS-3 rate paid by [Entergy Gulf States Louisiana], and (7) repricing of energy associated with the Agrilectric power purchase contract for [Entergy Gulf States Louisiana] based on the average annual Service Schedule MSS-3 rate paid by [Entergy Gulf States Louisiana].¹⁶

12. Entergy argues that the proposed amendment to footnote 1 of section 30.12 is just and reasonable because it codifies the treatment recognized by the Louisiana Commission and Entergy Gulf States Louisiana with respect to the increased costs resulting from the entry into the PPAs for renewable resources.

¹⁵ Ordering paragraph 11 of the Rain CII Carbon Order states:

The [Louisiana] Commission recognizes that the Renewable Entergy Pilot Program Implementation Plan General Order No. 12-9-10 (R-28271-A Subdocket B) (Corrected) anticipates that resources resulting from the [Louisiana Commission]-mandated renewable-specific [request for proposals] may be priced at above-market costs. To the extent that other retail-mandated above-market renewable resource production costs are excluded and/or re-priced for purposes of the determination of bus bar production costs pursuant to FERC Opinion Nos. 480 and 480-A, the [Louisiana] Commission will not oppose a proposal for such treatment for the Rain 20-Year PPA capacity costs in a FERC proceeding where that issue is considered with the understanding that the Commission is not agreeing to any specific methodology to re-price the Rain 20-Year capacity costs at market and reserves the right to propose alternative methodologies in such a FERC proceeding. Further, the Company and the [Louisiana] Commission agree to use reasonable good faith efforts to reach a mutually acceptable resolution of these issues prior to any FERC filing by the Company on this matter.

Ordering paragraph 11 of the Agrilectric Power Partners Order contains almost identical language.

¹⁶ *Id.* at 6.

13. Entergy requests that the Commission accept the amendments to the System Agreement for filing, effective May 31, 2014, without suspension or hearing.

II. Notice of Filings and Responsive Pleadings

14. Notice of Entergy's filings was published in the *Federal Register*, 79 Fed. Reg. 19,900 (2014), with protests and interventions due on or before April 22, 2014. Notices of intervention in all of the above-referenced dockets were submitted by the Louisiana Commission and the Council of the City of New Orleans. The Public Utility Commission of Texas submitted a notice of intervention solely in Docket No. ER14-1644-000. The Louisiana Commission also filed a protest applicable to all of the above-referenced dockets. On May 12, 2014, Entergy filed an answer to the Louisiana Commission's protest in all of the above-referenced dockets.

A. The Louisiana Commission's Protest

15. The Louisiana Commission argues that Entergy's filing is not in accordance with the Louisiana Commission's orders approving the PPAs, and Entergy has not demonstrated that its proposal will result in just, reasonable, and unduly discriminatory rates.¹⁷ The Louisiana Commission further argues that Entergy's proposed treatment of the pricing of these PPAs under the MSS-3 bandwidth remedy is unjust, unreasonable, and unduly discriminatory because Entergy proposes to reflect these PPAs at a lower price (i.e., the average annual service schedule MSS-3 rate paid by Entergy Gulf States Louisiana) rather than the actual costs incurred by Entergy Gulf States Louisiana's retail ratepayers. The Louisiana Commission states that it consented to the proposed pricing treatment under the condition that retail-mandated above-market renewable resources in other retail jurisdictions are also similarly re-priced under the bandwidth formula.¹⁸

16. The Louisiana Commission states that Entergy has not alleged or demonstrated that other retail jurisdiction renewables have been excluded or similarly re-priced under the bandwidth remedy.¹⁹ In addition, it alleges that Entergy has made no efforts to resolve the issue with the Louisiana Commission, as required by the Louisiana Commission's orders on the PPAs, prior to Entergy's filing in this proceeding.

17. The Louisiana Commission also argues that Entergy provides no support for its requested treatment other than its statement that, "[t]his treatment is consistent with the treatment that the Commission has approved for the re-pricing of the Vidalia [PPA] for

¹⁷ Louisiana Commission Protest at 1-2.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

Purposes of the [b]and width [f]ormula.”²⁰ The Louisiana Commission asserts that Entergy provides no testimony or affidavits supporting the filing, and provides no analysis demonstrating why the pricing should not be at the actual cost. It contends that Entergy’s comparison of the PPAs to the Vidalia PPA is unsupported and that the circumstances surrounding the Vidalia PPA that led the Commission to accept that pricing treatment do not exist for the PPAs at issue here.²¹ Specifically, the Louisiana Commission states that no significant cost shifts will occur as a result of the PPAs; Entergy provided no pricing information regarding the PPAs which consist of 36.5 MW in total; Entergy provided no information on how these PPAs were considered for Entergy’s planning purposes; and there is no special tax settlement of the PPAs as was the case with Vidalia.²²

18. In addition, the Louisiana Commission argues that these PPAs should be treated no differently than any other PPA on the Entergy system.²³ The Louisiana Commission states that the amounts paid are production costs, and under the current terms of the bandwidth remedy, they should be included at actual costs, not at Entergy Gulf States Louisiana’s reduced Service Schedule MSS-3 energy exchange cost. Additionally, even if re-pricing is appropriate, the Louisiana Commission argues that Entergy has not demonstrated that use of Entergy Gulf States Louisiana’s Service Schedule MSS-3 energy exchange cost is just and reasonable. Further, to the extent that the PPAs have pricing that includes capacity cost components that would be reduced to Service Schedule MSS-3 energy exchange cost levels, the Louisiana Commission argues that such pricing may not be appropriate for these capacity components. The Louisiana Commission concludes that Entergy has not provided sufficient information along with its filing for the Louisiana Commission to adequately analyze its Service Schedule MSS-3 energy exchange cost pricing proposal.²⁴

19. The Louisiana Commission contends that Entergy’s request for re-pricing should be denied. In the alternative, if re-pricing is allowed, it argues that Entergy has not demonstrated that the proposed re-pricing methodology is just and reasonable, and therefore, this matter should be subject to discovery and hearing procedures.

²⁰ *Id.* at 4 (citing Entergy Transmittal at 5).

²¹ *See id.*

²² *Id.*

²³ *Id.* at 5.

²⁴ *Id.*

B. Entergy's Answer

20. Entergy contends that the Louisiana Commission does not raise a substantive issue with regard to the appropriateness of its proposed amendments. Entergy states that the basis for approval of the PPAs by the Louisiana Commission was not that they were the most economical manner in which Entergy Gulf States Louisiana's resource needs could be met; instead, according to Entergy, these PPAs arose from a Louisiana Commission-required request for proposals and were selected because they were among the more economical qualifying renewable resources that met the stated goals articulated in the Louisiana Commission's Renewable Energy Pilot Program Implementation Plan. Entergy states that the PPAs fulfill the parochial interest of investment and economic development, job creation and job retention, and local quality of life improvement, which are interests that the Louisiana Commission acknowledged may come at a price that is above market relative to traditional capacity and energy products.²⁵

21. Entergy states that acceptance of the Louisiana Commission's argument that the above market renewable resource costs should be fully reflected in the bandwidth formula because only 36.5 MW of above market costs would be included (which the Louisiana Commission argues would not constitute a significant cost shift) would set a bad precedent because, Entergy contends, it has the potential to incent local regulators to undertake various policies that could export costs to other Operating Companies as long as those costs did not meet some threshold amount.

22. Entergy also takes issue with the Louisiana Commission's criticism of its comparison to the Vidalia PPA. Entergy argues that the determinative factors for the treatment of the Vidalia PPA in the bandwidth formula was that the price paid for the resource was above-market, served a stated local purpose, and was approved by the Louisiana Commission.²⁶ Entergy suggests that the same factors are applicable to and support the re-pricing of the PPAs at issue in this proceeding.

23. Entergy also argues that the Louisiana Commission's assertion that Entergy's proposal should be rejected because there has been no demonstration that other jurisdiction's renewable resources have been excluded or similarly re-priced under the bandwidth remedy is unfounded.²⁷ It asserts that the Louisiana Commission is the only retail regulator that has approved the purchase of capacity and energy from a renewable resource at above-market prices and, to date, Entergy Gulf States Louisiana is the only Operating Company that has entered into the purchase of both capacity and energy from

²⁵ *Id.* at 4.

²⁶ *Id.* at 5.

²⁷ *Id.* at 6.

renewable resources at above-market prices because of a retail regulatory requirement. Moreover, Entergy states that there is no other cost incurred by an Operating Company that is similar to Entergy Gulf States Louisiana's long-term PPAs and that requires equal treatment under Service Schedule MSS-3 of the bandwidth formula.

24. Entergy reiterates its argument that the proposed amendment simply codifies the treatment recognized by the Louisiana Commission and Entergy Gulf States Louisiana with respect to the increased costs resulting from the PPAs for renewable resources from the Rain and Agrielectric facilities located in the state of Louisiana.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention serve to make the entities that filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

27. Entergy's proposed tariff amendments to the bandwidth formula raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that Entergy's proposed tariff amendments have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's proposed tariff amendments for filing and suspend them for a nominal period, to become effective May 31, 2014, as requested, subject to refund, and set them for hearing and settlement judge procedures. In light of the common issues of law and fact presented in Docket Nos. ER14-1640-000; ER14-1641-000; ER14-1642-000; ER14-1643-000; and ER14-1644-000, we will consolidate these proceedings for purposes of settlement, hearing, and decision.

28. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603

of the Commission's Rules of Practice and Procedure.²⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁹

29. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Entergy's proposed tariff amendments are hereby accepted for filing and suspended for a nominal period, to become effective May 31, 2014, as requested, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Entergy's proposed tariff amendments, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

²⁸ 18 C.F.R. § 385.603 (2013).

²⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(D) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Docket Nos. ER14-1640-000; ER14-1641-000; ER14-1642-000; ER14-1643-000; and ER14-1644-000 are hereby consolidated for the purposes of settlement, hearing, and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.