

148 FERC ¶ 61,087
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 Services, Inc.

Docket No. ER08-1056-006

ORDER DENYING REHEARING

(Issued July 31, 2014)

1. On January 3, 2013, the Commission issued an order¹ accepting a compliance filing by Entergy Services, Inc. (Entergy)² to comply with Opinion No. 514,³ which addressed rates filed by Entergy on behalf of the Operating Companies⁴ to implement

¹ *Entergy Servs., Inc.*, 142 FERC ¶ 61,011 (2013) (Compliance Order).

² Entergy is a wholly-owned subsidiary of Entergy Corporation that provides operating services to six operating companies (Operating Companies). Entergy Corporation is a public utility holding company that provides electric service through the Operating Companies.

³ *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011), *order on reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013, *order on compliance filing*, 142 FERC ¶ 61,011 (2013).

⁴ At the time the Commission issued Opinion Nos. 480 and 480-A, the Operating Companies were: Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Louisiana, LLC. (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Gulf States, Inc. (Entergy Gulf States). At the end of 2007, Entergy Gulf States was split into Entergy Texas, Inc. (Entergy Texas) and Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana). Accordingly, the Operating Companies involved with this proceeding are Entergy Arkansas, Entergy Gulf States Louisiana, Entergy Louisiana, Entergy Mississippi, Entergy New Orleans and Entergy Texas.

for the second time the Commission's bandwidth remedy⁵ as provided for in Opinion Nos. 480 and 480-A.⁶ Entergy requests rehearing of one aspect of the Compliance Order, arguing that the Commission should not have ordered Entergy to include interest on the recalculation of bandwidth payments and receipt amounts for the period from June 1, 2008 until the date of the Intra-System Bill that will reflect the bandwidth recalculation amounts for calendar year 2007 (interest calculation period). For the reasons discussed below, the request for rehearing is denied.

2. Additionally, consistent with prior orders, we direct Entergy to file a comprehensive bandwidth recalculation report showing all the updated payment/receipt amounts based on the 2006 and 2007 calendar year data in compliance with all bandwidth formula and bandwidth calculation adjustments that the Commission has accepted or ordered for those years.

I. Background

3. In Opinion No. 514, the Commission affirmed in part and reversed in part an initial decision regarding Entergy's second annual bandwidth filing. As relevant to this request for rehearing, the Commission directed Entergy to submit a compliance filing to modify its methodology for allocating bandwidth receipts among certain Operating Companies.⁷

4. On December 6, 2011, Entergy filed a compliance filing as required by Opinion No. 514. In the resulting Compliance Order, the Commission ordered Entergy to calculate and assess interest on the payment and receipt amounts for the interest

⁵ 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.

⁶ *La. 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 compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011).

⁷ Opinion No. 514, 137 FERC ¶ 61,029 at P 189.

calculation period.⁸ The Commission noted that it had stated in a prior order⁹ that interest would not be required on bandwidth payments because settlements were being made in a reasonable time period once the calculations are completed.¹⁰ In the Compliance Order, however, the Commission found that due to the length of time elapsed since the original billings for calendar year 2007 payment and receipt amounts, Entergy was required to calculate interest on the payment/receipt amounts from June 1, 2008 until the date of the Intra-System Bill that will reflect the bandwidth recalculation amounts for calendar year 2007. The Commission noted that requiring interest was consistent with the Commission's compliance order regarding the first annual bandwidth proceeding.¹¹

5. On February 4, 2013, Entergy filed a request for rehearing of the Compliance Order.

II. Request for Rehearing

6. In its request for rehearing, Entergy argues that the Commission should grant rehearing of its decision to order Entergy to include interest on the recalculated bandwidth payments and receipts for the interest calculation period.¹² Entergy acknowledges that the Commission has broad discretion regarding the imposition of interest on remedial payments but contends that the Compliance Order's direction for it to provide interest is inconsistent with prior Commission bandwidth decisions that it says involved analogous remedial payments among the Operating Companies, where, Entergy contends, the Commission exercised its discretion by declining to order interest on those payments.¹³ Entergy states that in its orders accepting the compliance filing that established the bandwidth remedy, the Commission held that bandwidth payments and

⁸ Compliance Order, 142 FERC ¶ 61,011 at P 21.

⁹ *Id.* (citing *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,095 (2007)).

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

¹¹ *Id.* P 21 n.31 (citing *Entergy Servs., Inc.*, 139 FERC ¶ 61,104 at Ordering Paragraph (C)).

¹² Entergy Request for Rehearing at 1-2.

¹³ *Id.* at 4.

receipts do not include interest.¹⁴ It states that in those orders, the Commission ruled that interest on bandwidth payments and receipts is not appropriate because the bandwidth remedy is a “prospective” remedy and, therefore, bandwidth payments and receipts are not refunds.

7. Entergy states that in the Compliance Order, the Commission sought to distinguish those orders denying interest on bandwidth payments and receipts due to the delay in determining the bandwidth payments and receipts in this case.¹⁵ Entergy argues that this distinction ignores the Commission’s reasoning that the prospective nature of the bandwidth remedy means that bandwidth payments are not refunds and, therefore, interest on those payments is not appropriate.

8. Entergy states that even if Commission precedent regarding refunds among the Operating Companies 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 contends, for example, that in Docket No. EL00-66 the Commission required Entergy Services to make refunds among the Entergy Operating Companies to reflect the exclusion of interruptible load in production cost allocations under the System Agreement for two time periods. Entergy notes that in its compliance filing in that proceeding, Entergy Services did not include interest on refunds for either time period and the Louisiana Commission subsequently objected to the lack of interest calculations. Entergy notes that the Commission’s order rejected the Louisiana Commission’s protest, finding instead that Entergy should not include interest on any of the interruptible load refunds.¹⁶

9. Entergy notes that in *Louisiana Public Service Commission v. Entergy Services, Inc.*,¹⁷ 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 Compliance Order is inconsistent with this precedent.

¹⁴ *Id.* at 5 (citing *Entergy Servs., Inc.* 117 FERC ¶ 61,203, at P 51 (2006); *Entergy Servs., Inc.*, 119 FERC ¶ 61,095, at P 32 (2007)).

¹⁵ *Id.* at 6 (citing Compliance Order, 142 FERC ¶ 61,011 at P 21).

¹⁶ *Id.* at 6-7 (citing *La. Pub. Servs. Comm’n v. Entergy Corp.*, 132 FERC ¶ 61,223 at PP 14, 18, *order on clarification*, 133 FERC ¶ 61,213, at P 4 (2010)).

¹⁷ *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 137 FERC ¶ 61,047 (2011).

III. Discussion

10. We will deny Entergy's request for rehearing. The Commission recently rejected similar arguments raised by Entergy in the first annual bandwidth proceeding,¹⁸ and we deny Entergy's request here for similar reasons.

11. Entergy is correct that in orders accepting the compliance filing that established the bandwidth remedy, the Commission held that interest on bandwidth payments and receipts is not appropriate because the bandwidth remedy is a prospective remedy and, therefore, bandwidth payments are not refunds.¹⁹ However, the Commission further held that there was no need to require that interest be paid because settlements were scheduled to be made in a reasonable time period once the calculations are completed. In the instant case, despite the Commission's prior statements regarding the prospective nature of the bandwidth remedy, due to the length of time that has passed between the original settlements made as scheduled per the bandwidth formula and the conclusion of proceedings to resolve all issues concerning those bandwidth calculations, we find that it is appropriate to follow the Commission's general policy and allow interest to be paid to ensure full recovery.²⁰ 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 ..."²¹

12. 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.²² However, in that proceeding, the Commission held that the Louisiana Commission's request for the inclusion of interest was untimely, and made no determination regarding the propriety of

¹⁸ *Entergy Servs., Inc.*, 145 FERC ¶ 61,046 (2013).

¹⁹ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,095, at P 32 (2007).

²⁰ *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.").

²¹ *Id.* at 1268.

²² *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 132 FERC ¶ 61,223 at P 18.

paying interest on bandwidth payments.²³ Entergy also notes in *Louisiana Public Service Commission v. Entergy Services, Inc.*,²⁴ in which the Commission ruled that the bandwidth formula must be made effective on June 1, 2005 (the date of Opinion No. 480) rather than on January 1, 2006 (the effective date determined in Opinion No. 480), the Commission failed to order interest for bandwidth payments and receipts for the seven month period from June 1, 2005 through December 31, 2005. However, in an order on rehearing the Commission ordered Entergy to calculate interest for the seven-month period at issue.²⁵ We note that our holding here is also consistent with other recent orders concerning the bandwidth formula.²⁶ Finally, as Entergy acknowledges in its request for rehearing, the Commission has broad discretion regarding the imposition of interest on remedial payments.²⁷

13. Accordingly, the request for rehearing is denied.

14. The Commission has previously held that Entergy may file one comprehensive bandwidth recalculation report to comply with the Commission's final orders regarding the annual bandwidth calculations pending in numerous dockets.²⁸ This is one of four

²³ *Id.* In a later order, the Commission reversed its decision ordering refunds in the interruptible load proceeding for a different time period in a manner that made the issue of interest on refunds moot for that time period. *See La. Pub. Serv. Comm'n and the City Council of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211, at P 76 (2013).

²⁴ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 137 FERC ¶ 61,047 (2011).

²⁵ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,152, at P 42 (2014). *See also La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,153, at P 30 (2014).

²⁶ *See, e.g., Compliance Order*, 142 FERC ¶ 61,011 at P 21. *Entergy Servs., Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103, at P 39 (2012) (directing Entergy to refund to Union Electric all bandwidth payment amounts improperly collected from Union Electric, with interest consistent with section 35.19a of the Commission's regulations); *see also Entergy Servs., Inc.*, Opinion No. 526, 143 FERC ¶ 61,116, at P 92 (2013) (directing Entergy to make refunds with interest in a case involving steam production plant depreciation rates for Services Schedules MSS-1 and MSS-4).

²⁷ Entergy Request for Rehearing at 5.

²⁸ *Compliance Order*, 142 FERC ¶ 61,011, at P 20 (2013). The Commission declined Entergy's proposal to defer this filing until the Commission's final orders

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orders that the Commission is issuing concurrently,²⁹ all related to Entergy's first and second annual bandwidth filings, which cover calendar years 2006 and 2007, respectively. The first annual bandwidth filing gave rise to Opinion No. 505;³⁰ the second annual bandwidth filing, to Opinion No. 514.³¹ Both bandwidth filings spawned numerous complaint and compliance dockets that the Commission has reviewed at length.³² With the concurrent issuance of these four orders, now is the appropriate time for Entergy to recalculate and reallocate the bandwidth payments and receipts among the Operating Companies for these two bandwidth years.³³

became non-appealable, as this would unreasonably delay a timely resolution of the recalculation. *Id.*

²⁹ The four orders being issued concurrently include: *Entergy Services, Inc.*, 148 FERC ¶ 61,085 (2014), *Entergy Services, Inc.*, 148 FERC ¶ 61,086 (2014), *Entergy Services, Inc.*, 148 FERC ¶ 61,087 (2014), and *Entergy Arkansas, Inc., et al.*, 148 FERC ¶ 61,088 (2014).

³⁰ *Entergy Servs., 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), *order granting clarification in part and denying clarification in part*, 145 FERC ¶ 61,045 (2013), *order on reh'g*, 145 FERC ¶ 61,046 (2013).

³¹ *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011), *order on reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013, *order on compliance filing*, 142 FERC ¶ 61,011 (2013).

³² The following proceedings affect both the calendar year 2006 first annual bandwidth-recalculation and the calendar year 2007 second annual bandwidth-recalculation: Docket No. ER07-956, resulting in Opinion No. 505 (and its associated compliance filings in Docket No. ER12-1888-000, *et al.*); Docket No. ER07-682, resulting in Opinion No. 506 (and its associated compliance filings in Docket No. ER13-1673, *et al.*); Docket No. EL08-51, resulting in Opinion No. 509 (and its associated compliance filings in Docket No. ER11-2131, *et al.*); Docket No. EL07-52 (and its associated compliance filings in Docket Nos. ER12-1881, *et al.*). The following proceeding affects just the calendar year 2007 second annual bandwidth-recalculation: Docket No. ER08-1056, resulting in Opinion No. 514.

³³ If the complaint pending in *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Docket No. EL09-61-001, ultimately alters the payments and receipts that the Commission directs Entergy to recalculate and reallocate among the Operating

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15. We therefore order Entergy to file, within 45 days of this order, a comprehensive bandwidth recalculation report showing the updated payments and receipts based on the 2006 and 2007 calendar year data in compliance with all bandwidth formula and bandwidth calculation adjustments that the Commission accepted or ordered, effective as of June 1, 2007 and June 1, 2008, respectively, along with supporting calculations for each adjustment.

16. We further direct Entergy to adjust its first Intra-System Bill issued following the filing of the bandwidth recalculation report, to reflect the bandwidth recalculations for these two bandwidth years, with interest from June 1, 2007 or June 1, 2008, as appropriate, to the date of the Intra-System Bill, in accordance with section 35.19a of the Commission's regulations.³⁴

The Commission orders:

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

(B) Within 45 days of this order, Entergy shall file a bandwidth recalculation report, as described in the body of the order.

(C) Entergy shall adjust its first Intra-System Bill issued following the filing of the bandwidth recalculation report, to reflect the bandwidth recalculation report, with interest, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Companies here, the Commission will require Entergy to make the appropriate adjustment at that time.

³⁴ 18 C.F.R. § 35.19a (2013).