

153 FERC ¶ 61,004
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Entergy Services, Inc.

Docket No. ER09-1224-005

ORDER DENYING REHEARING

(Issued October 1, 2015)

1. On October 16, 2013, the Commission issued an order¹ accepting a compliance filing made by Entergy Services, Inc. (Entergy) to comply with Opinion No. 518,² which addressed rates filed by Entergy on behalf of the Operating Companies³ to implement for the third time the Commission's bandwidth remedy as provided for in Opinion Nos. 480 and 480-A.⁴ The Louisiana Public Service Commission (Louisiana Commission)

¹ *Entergy Services, Inc.*, 145 FERC ¶ 61,048 (2013) (Compliance Order).

² *Entergy Services, Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012), *order on reh'g*, 145 FERC ¶ 61,047 (2013) (Order on Rehearing).

³ At the time the Commission issued Opinion Nos. 480 and 480-A, the Operating Companies were: Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. At the end of 2007, Entergy Gulf States was split into Entergy Texas, Inc. and Entergy Gulf States Louisiana, L.L.C. Accordingly, the Operating Companies involved with this proceeding are Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Texas, Inc.

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 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).

requests rehearing of the Compliance Order, arguing that the Commission should not have required Entergy to include 100 percent of casualty loss accumulated deferred income taxes (ADIT) in its bandwidth filing. For the reasons discussed below, the request for rehearing is denied.

I. Background

2. In Opinion No. 518, the Commission affirmed in part, and reversed in part, an initial decision regarding Entergy's third annual bandwidth filing. As required by Opinion No. 518, on July 6, 2012, Entergy filed a compliance filing regarding the net operating loss carry-forward balances recorded in Account No. 190 and casualty loss recorded in Account No. 282. In the resulting Compliance Order, as pertinent here, the Commission found that Entergy was correct to include 100 percent of casualty loss ADIT recorded in Account No. 282 in the bandwidth formula.⁵ The Commission found that Entergy must functionalize the casualty loss ADIT to production based on plant ratios, in accordance with the provisions of the bandwidth formula.⁶ The Commission also ruled that Entergy was correct to include the revised calculations effective for bandwidth payments and receipts based on calendar year 2008.⁷

3. On November 15, 2013, the Louisiana Commission filed a request for rehearing.

II. Discussion

A. Casualty Loss ADIT

1. Request for Rehearing

4. The Louisiana Commission argues that the Commission erred by allowing Entergy to include 100 percent of casualty loss ADIT in the bandwidth calculation.⁸ The Louisiana Commission argues that it is improper to include 100 percent of the casualty loss ADIT in its bandwidth calculations because most of the casualty loss ADIT is not production related. The Louisiana Commission explains that the bandwidth formula is

⁵ Compliance Order, 145 FERC ¶ 61,048 at P 17.

⁶ *Id.*

⁷ *Id.* P 25.

⁸ Louisiana Commission Request for Rehearing at 1.

designed to roughly equalize production costs among the Operating Companies to within a bandwidth of plus-or-minus 11 percent. It further explains that to accomplish this, the bandwidth formula requires the calculation of each Operating Company's production costs according to the provisions of the bandwidth formula to permit comparison of production costs among the companies.⁹ The Louisiana Commission notes that the bandwidth formula includes ADIT as a production cost and defines ADIT as:

Net [ADIT] recorded in FERC Accounts 190, 281 and 282 (as reduced by amounts not generally and properly includable for FERC cost of service purposes, including but not limited to SFAS 109 ADIT amounts and ADIT amounts arising from retail ratemaking decisions) plus Accumulated Deferred Income Tax Credit -- 3 percent portion only recorded in FERC Account 255.¹⁰

5. The Louisiana Commission argues that the Commission correctly stated in the Compliance Order that casualty losses "are represented to be the result of storm damage expenses" but then incorrectly concludes that the storm damage costs "are costs that are generally and properly includable in cost of service."¹¹ The Louisiana Commission argues that although the ADIT is associated with storm damage expenses, the vast majority of the storm damage expenses are from damage to distribution lines and thus are not "generally and properly includable for FERC cost of service purposes." The Louisiana Commission adds that neither distribution lines nor damage to distribution lines are FERC-jurisdictional.

6. The Louisiana Commission contends that inclusion of 100 percent of casualty loss ADIT is inconsistent with Opinion No. 518,¹² which found that Entergy should include in the bandwidth calculation only amounts "that are generally and properly includable for Commission cost-of-service purposes."¹³ The Louisiana Commission contends that Entergy's filing is also inconsistent with the Order on Rehearing, in which the Commission again held that only the casualty loss ADIT associated with casualty losses that are recorded in accounts included in the bandwidth formula should be included in the

⁹ *Id.* P 3.

¹⁰ *Id.* (citing Entergy System Agreement §30.17).

¹¹ *Id.* at 4 (citing Compliance Order, 145 FERC ¶ 61,048 at P 18).

¹² *Id.* (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 88).

¹³ *Id.* at 6 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 88).

bandwidth formula.¹⁴ The Louisiana Commission explains that Entergy's 2009 test year workpapers show that only one percent or less of the casualty loss ADIT is associated with expenses recorded in accounts included in the bandwidth formula. It contends that Entergy included all of the casualty loss ADIT, despite the fact that less than one percent of it was associated with production expenses that were "recorded in accounts included with the formula."

2. Commission Determination

7. We deny the Louisiana Commission's request for rehearing. We disagree with the Louisiana Commission's assertion that Entergy erred by including 100 percent of the casualty loss ADIT in the bandwidth calculation. As the Commission explained in the Order on Rehearing, the cause of the casualty loss is directly attributable to storm damages, which are costs that were recorded in accounts included in the bandwidth formula. Because these accounts are included in the bandwidth formula, Entergy has included 100 percent of the casualty loss ADIT in the 2008 bandwidth calculation in accordance with Opinion No. 518. The Louisiana Commission also argues that not all storm damage costs are production related and therefore should not be included in the bandwidth formula. However, in a compliance proceeding, the only issue before the Commission is whether the filing complies with the underlying order.¹⁵ In its compliance filing, Entergy followed the Commission's direction to use a specific ratio for determining net operating loss carry-forwards to be included in the bandwidth calculation. The Commission did not require, and Entergy did not apply, this treatment to casualty loss ADIT. Instead, Entergy used the required production plant ratio to determine the portion of ADIT, which includes casualty loss ADIT, as required by Opinion No. 518. The Commission did not require Entergy to take any further steps to functionalize ADIT for the bandwidth calculation, and we will not require additional steps in this compliance proceeding.

8. We note that the Commission was clear in its discussion in the Order on Rehearing of the distinction between a net operating loss and a casualty loss.¹⁶ It is this distinction that explains differing treatments in bandwidth calculations for ADIT associated with each. As the Commission noted, a net operating loss is borne of many expenses – none

¹⁴ Order on Rehearing, 145 FERC ¶ 61,047 at P 25.

¹⁵ *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,257, at P 14 (2005). *See also Entergy Services, Inc.*, 142 FERC ¶ 61,011, at P 32 (2013).

¹⁶ Order on Rehearing, 145 FERC ¶ 61,047 at PP 23-25.

of which on its own can be inferred to be the root cause of the net operating loss.¹⁷ In contrast, a casualty loss results from expenses that can be traced to specific asset transactions and events. In this instance, ADIT associated with a casualty loss has similar characteristics as other ADIT amounts that result from specific transactions and events. As such, the Commission determined that casualty loss ADIT, which in the instant case is associated with expenses recorded in accounts included in the bandwidth formula, should be treated similar to other non-net operating loss ADIT amounts in bandwidth calculations, and should not be subject to the net operating loss ADIT ratio.

9. We further note that the Louisiana Commission presented arguments on rehearing of Opinion No. 518 contending that the Commission should require Entergy to use the net operating loss ADIT ratio in determining casualty loss ADIT amounts to determine the proportion of expenses attributable to FERC cost-of-service.¹⁸ These arguments were rejected in the Order on Rehearing,¹⁹ and will not be reconsidered here.

B. Effective date

1. Request for Rehearing

10. The Louisiana Commission argues that Entergy should be directed to include casualty loss ADIT in the bandwidth calculation prospectively only, from the date of Opinion No. 518. The Louisiana Commission notes that the Commission declined to address this issue in the Compliance Order because the issue was being addressed on rehearing of Opinion No. 518.²⁰ The Louisiana Commission states that it raises the issue again in this rehearing request in an abundance of caution to ensure that the Louisiana Commission's appeal rights are reserved.²¹

11. The Louisiana Commission contends that Entergy did not include casualty loss ADIT in the rates it filed with the Commission in this case, and did not suggest the inclusion of casualty loss ADIT until months after the Commission ruled in Opinion

¹⁷ *Id.*

¹⁸ Louisiana Commission, Request for Rehearing, Docket No. ER09-1224-003 at 7-8.

¹⁹ Order on Rehearing, 145 FERC ¶ 61,047 at P 20.

²⁰ Louisiana Commission Request for Rehearing at 8 (citing Compliance Order, 145 FERC ¶ 61,048 at P 25).

²¹ *Id.*

No. 505 that net operating loss ADIT should be included in the bandwidth calculation. The Louisiana Commission explains that Entergy first proposed to include casualty loss ADIT at the hearing in this case. The Louisiana Commission explains that in Opinion No. 518, the Commission accepted Entergy's proposal to include casualty loss ADIT. The Louisiana Commission argues that this adjustment cannot have retroactive effect for any period prior to the issuance of the Commission's order.²²

12. The Louisiana Commission argues that under section 205(d) of the Federal Power Act, a change in rates may be effective only after the change is filed by the utility and public notice is provided.²³ It notes that the Commission has required Entergy to make a new section 205 filing each year to establish the annual rates for the bandwidth formula. It notes that in this case, Entergy made a filing on May 29, 2009 and showed casualty loss as excluded from the bandwidth calculation. The Louisiana Commission explains that only after the Commission found in Opinion No. 505 that net operating loss ADIT should be included in the bandwidth calculation did Entergy propose including casualty loss ADIT in the bandwidth calculation in this case.

13. The Louisiana Commission argues that including casualty loss ADIT from the date of Entergy's filing, when Entergy failed to notice the request, would violate the rule against retroactive ratemaking. The Louisiana Commission contends that while the Commission may determine that it is unjust and unreasonable to exclude casualty loss ADIT from the bandwidth calculation, the Commission's ruling can only have prospective effect from the date the order is issued.²⁴

2. Commission Determination

14. The request for rehearing is denied. As the Louisiana Commission notes in its rehearing request, this issue was addressed in the Commission's order on rehearing of Opinion No. 518.²⁵ Accordingly, rehearing is denied for the same reasons given in that order.

²² *Id.* at 11.

²³ *Id.* at 12.

²⁴ *Id.* at 14.

²⁵ *Id.* at 8 (citing Order on Rehearing, 145 FERC ¶ 61,047 at P 29).

The Commission orders:

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

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.