

154 FERC ¶ 61,013  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket No. EL11-65-002

v.

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

ORDER DENYING REHEARING

(Issued January 8, 2016)

1. On December 18, 2014, the Commission issued an order finding, *inter alia*, that the bandwidth formula contained in Service Schedule MSS-3 of the Entergy System Agreement, which requires the use of revenues and expenses recorded in the FERC Form No. 1's applicable accounts for each test year, does not provide for the exclusion of out-of-period costs.<sup>1</sup> On January 20, 2015, the Louisiana Public Service Commission (Louisiana Commission) filed a request for rehearing of the December 2014 Order, arguing that the Commission erred in finding that when the relief sought by a party requires modification of the bandwidth formula, such relief is only available prospectively from the filing of a complaint, per the requirements of section 206 of the

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<sup>1</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, 139 FERC ¶ 61,102 (2012) (May 2012 Order), *order on reh'g*, 149 FERC ¶ 61,246 (2014) (December 2014 Order).

Federal Power Act (FPA).<sup>2</sup> For the reasons discussed below, we deny the Louisiana Commission's request for rehearing.

## **I. Background**

2. A detailed procedural history of this proceeding which concerns, *inter alia*, whether out-of-period expenses and revenues for refunds and surcharges required under the Commission's interruptible load decisions in Docket No. EL00-66 must be removed from annual bandwidth remedy calculations for test years 2007 and 2008, is provided in the May 2012 Order.<sup>3</sup> In the December 2014 Order, as pertinent here, the Commission ruled that the Louisiana Commission had failed to provide sufficient support for its arguments in favor of retroactive refunds.<sup>4</sup> The Commission explained that the relief requested by the Louisiana Commission regarding interruptible load refunds and surcharges involves a challenge to the bandwidth formula itself, for which retroactive relief is not available under section 206 of the FPA. The Commission explained that the refunds and surcharges at issue did not involve an error in implementing the bandwidth formula for the 2007 and 2008 test years or Entergy having included an expense that the Commission had not previously reviewed for justness and reasonableness, for which retroactive refunds are allowed. The Commission found that contrary to the Louisiana Commission's arguments, the Commission did not preclude a challenge to, or remedy to, unjust and unreasonable cost inputs to the bandwidth formula, but only found that where such a challenge amounts to a challenge to the formula itself, the relief sought requires modification to the formula, and such relief is only available prospectively.

## **II. Request for Rehearing**

3. The Louisiana Commission contends that in the December 2014 Order the Commission denies the Louisiana Commission any remedy for the inclusion of unjust and unreasonable cost inputs into the bandwidth formula. It contends that the Commission determined the bandwidth formula may only be modified through FPA section 206 proceedings and that such changes can provide relief only on a prospective basis.<sup>5</sup> The Louisiana Commission contends that this ruling is another change to the

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<sup>2</sup> December 2014 Order, 149 FERC ¶ 61,246 at P 19.

<sup>3</sup> May 2012 Order, 139 FERC ¶ 61,102 at PP 3-12.

<sup>4</sup> December 2014 Order, 149 FERC ¶ 61,246 at P 18.

<sup>5</sup> Louisiana Commission Request for Rehearing at 2 (citing December 2014 Order, 149 FERC ¶ 61,246 at P 18).

Commission's rulings, which have effectively prevented review of the justness and reasonableness of the inputs to the bandwidth formula.

4. The Louisiana Commission explains that, initially, the Commission stated that it created the annual proceedings to allow "the Commission and all interested parties the opportunity to analyze all production-related costs of each of the Entergy Operating Companies to make sure all such costs are just and reasonable and properly incurred."<sup>6</sup> The Louisiana Commission contends that the Commission then reversed itself in a later order and acknowledged that its prior rulings "could be interpreted as suggesting that parties had the opportunity in Entergy's annual bandwidth filings to challenge the reasonableness of any cost inputs" to the formula, but said that those statements "did not benefit from experience in addressing these annual bandwidth filings."<sup>7</sup> The Louisiana Commission contends that in the Order Denying Interlocutory Appeal the Commission stated that the only focus in the bandwidth proceedings is whether Entergy "correctly applied the actual [FERC Form No. 1] data and depreciation rates for its annual bandwidth filings."<sup>8</sup>

5. The Louisiana Commission contends that Commission policy on formula rates makes clear that ratepayers can be protected from unjust and unreasonable cost inputs pursuant to FPA section 206. It argues that the Commission has ruled that parties can contest cost inputs into a formula rate whenever the inappropriate costs are discovered.<sup>9</sup> It also argues that the Commission has stated 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. . . ."<sup>10</sup> The Louisiana Commission argues that, nevertheless, in the December 2014 Order the Commission ruled that a party may not challenge the cost inputs to the bandwidth formula in any proceeding. It argues that

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<sup>6</sup> Louisiana Commission Request for Rehearing at 2-3 (quoting *Ark. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,223, at P 47 (2007)).

<sup>7</sup> *Id.* at 5 (citing *Entergy Servs., Inc.*, 130 FERC ¶ 61,170, at P 20 (2010) (Order Denying Interlocutory Appeal)).

<sup>8</sup> *Id.* (citing Order Denying Interlocutory Appeal, 130 FERC ¶ 61,170 at P 20).

<sup>9</sup> *Id.* at 7 (citing *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 17 (2008)).

<sup>10</sup> *Id.* (quoting *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 35 (2008) (*AEP*)).

under that ruling, parties can only secure prospective, after-the-fact relief by seeking changes to the bandwidth formula, changes that can only be applied prospectively.<sup>11</sup>

6. The Louisiana Commission argues that the December 2014 Order conflicts with statutory notice requirements. It argues that the Commission has ruled that retail regulators may revise retail depreciation rates and distort wholesale cost allocations with impunity because an aggrieved party can never change rates once they are assessed.<sup>12</sup> The Louisiana Commission also argues that denying advance notice of rate changes and holding they will not be subject to retroactive correction conflicts with FPA section 205(d) and that the shift in burden, requiring a party to show that the formula and the inputs are unjust and unreasonable, violates FPA section 205(e).<sup>13</sup>

7. In addition, the Louisiana Commission argues that the Commission's ruling is an unexplained departure from its policy on formula rates. It contends that the Commission effectively ruled that in adopting the formula, the Commission preapproved all future depreciation inputs established by retail regulators regardless of unduly discriminatory distortions of the wholesale cost allocation. The Louisiana Commission adds that the Commission's decision is also an arbitrary change of procedure. It argues that it relied on the Commission's determination that unjust and unreasonable inputs should be reviewed in annual bandwidth proceedings. It contends that, after the fact, the Commission precluded that path to a remedy and barred retroactive relief under FPA section 206.<sup>14</sup>

### **III. Commission Determination**

8. We reject the assertion that December 2014 Order denied the Louisiana Commission the ability to obtain a remedy in the bandwidth proceedings. The Louisiana Commission asserts that the Commission changed its interpretation of what could be litigated in bandwidth proceedings in orders issued in dockets in 2010. However, the Commission fully explained why the change was made in those dockets.<sup>15</sup> In fact, the Commission has consistently held since its opinion on the first bandwidth proceeding that

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 8.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *See, e.g., Entergy Servs., Inc.*, Opinion No. 514-A, 142 FERC ¶ 61,013, at P 16 (2013) (“[T]he Commission has thoroughly and repeatedly explained how and when parties may challenge a component of the bandwidth formula”).

challenges to the reasonableness of the methodology in the bandwidth formula has to be made in an FPA section 206 filing.<sup>16</sup>

9. The Louisiana Commission is also mistaken in its allegation that the December 2014 Order is inconsistent with Commission precedent with respect to when formula rate inputs to the bandwidth formula can be challenged. The Louisiana Commission's argument about the types of errors that would trigger retroactive relief under a formula rate misstates the Commission's precedent. In *AEP*, which the Louisiana Commission itself cites, the Commission stated that when there is a formula rate, "errors in the inputs or to the implementation of the formula" can be raised and applied retroactively.<sup>17</sup> However, the issue in this proceeding is the justness and reasonableness of what the formula provides. This proceeding does not concern an error in the inputs or the implementation of the formula implementation, which can be raised and applied retroactively. In this case, the interruptible load refunds and surcharges "were required by the Commission as part of the just and reasonable rate adopted under [FPA] section 206,"<sup>18</sup> were properly reported in the appropriate accounts in the FERC Form No. 1, and were properly included in the bandwidth calculation.

10. In addition, we disagree with the Louisiana Commission's argument that the Commission's rulings conflict with notice requirements by barring evaluation of the reasonableness of cost inputs to the bandwidth formula. To the contrary, our rulings in this proceeding are consistent with our precedent and FPA section 206. The bandwidth formula was accepted by the Commission as just and reasonable in the Opinion No. 480

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<sup>16</sup> See *Ark. Pub. Serv. Comm'n v. Entergy Corp.*, 137 FERC ¶ 61,030, at P 23 (2011) ("If parties believe that the methodology in Service Schedule MSS-3 with respect to depreciation expenses should be changed, they should file a separate section 206 complaint (or, in the case of Entergy, a section 205 filing"); *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at P 172 (2010) ("Any changes to the bandwidth formula require a section 205 or 206 filing"); Opinion No. 514-A, 142 FERC ¶ 61,013 at P 15 ("In Opinion No. 514, the Commission fully explained the basis for its determination that challenges to the reasonableness of components of the bandwidth formula must be made through either a section 205 or 206 proceeding. . . .").

<sup>17</sup> *AEP*, 124 FERC ¶ 61,306 at P 35.

<sup>18</sup> May 2012 Order, 139 FERC ¶ 61,102 at P 27.

compliance orders.<sup>19</sup> Accordingly, challenges to the bandwidth formula itself must be made in accordance with section 206 of the FPA,<sup>20</sup> which does not allow changes in rates to be made prior to the refund effective date established by the Commission.

11. The Louisiana Commission is incorrect in contending that the Commission's findings in the December 2014 Order conflict with sections 205(d) and section 205(e) of the FPA. If the Louisiana Commission were challenging the implementation of the formula or alleging errors in the inputs, the requirements of section 205 of the FPA would apply and Entergy would bear the burden of implementing its formula correctly. However, in this proceeding, the Louisiana Commission is challenging the bandwidth formula itself and thus bears the burden under FPA section 206 to show that inclusion of out-of-period costs in the bandwidth formula is unjust and unreasonable or unduly discriminatory or preferential.

12. We also disagree that the Commission's ruling was an arbitrary change of procedure. To the contrary, as noted above, the Commission has repeatedly explained when and under what circumstances a party can challenge a component of the bandwidth formula.<sup>21</sup> Contrary to the Louisiana Commission's arguments, in the December 2014 Order, the Commission did not preclude a challenge to, or remedy for, unjust and unreasonable cost inputs to the bandwidth formula. Instead, the Commission found only that where such a challenge amounts to a challenge to the formula itself, and the relief sought requires modification to the formula, such relief is only available prospectively from the filing of a complaint, per the requirements of section 206 of the FPA.

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<sup>19</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *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).

<sup>20</sup> Entergy may propose changes to the bandwidth formula under section 205 of the FPA.

<sup>21</sup> *See supra* n.15.

The Commission orders:

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

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.