

158 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Entergy Louisiana, LLC

Docket Nos. ER16-1251-002

Entergy Louisiana, LLC, Entergy Texas, Inc. and
Entergy New Orleans, Inc.

ER13-1508-003

ORDER DENYING REHEARING

(Issued January 13, 2017)

1. On August 31, 2016, the Commission issued an order accepting, subject to condition: (1) two amended power purchase agreements (PPAs) filed by Entergy Services, Inc. (Entergy) on behalf of Entergy Louisiana, LLC (Entergy Louisiana), Entergy Texas, Inc. (Entergy Texas), and Entergy New Orleans, Inc. (Entergy New Orleans) in Docket No. ER16-1251-000; and (2) an informational filing of four additional amended PPAs in Docket No. ER13-1508-000 (collectively, the Amended PPAs).¹ The Amended PPAs are agreements that were previously entered into between the Entergy companies under Service Schedule MSS-4 of the Entergy System Agreement and have been revised to facilitate their transfer to the United Power Sales and Designated Purchases Tariff (MSS-4 Replacement Tariff) upon termination of the Entergy System Agreement.² As relevant here, in the August 31 Order, the Commission dismissed concerns raised by the Louisiana Public Service Commission (Louisiana Commission) regarding the use of a generic return on equity (ROE) in the Amended PPAs, noting that issues concerning the application of ROEs under the MSS-4 Replacement Tariff were pending in the proceeding in Docket No. ER13-1508-001, *et al.*³

¹ *Entergy La., LLC*, 156 FERC ¶ 61,146 (2016) (August 31 Order).

² *See id.* P 2.

³ *Id.* P 17.

2. In its September 30, 2016 request for rehearing, the Louisiana Commission asserts that the Commission erred in finding that the ROE that should apply to the six Amended PPAs was outside the scope of the proceeding, and should reopen the record to consider this issue.⁴ The Louisiana Commission states that the May 12, 2015 Initial Decision in Docket No. ER13-1508-001, *et al.* (Initial Decision) established an ROE only for Entergy Arkansas, Inc. (Entergy Arkansas), and that it would not be appropriate to apply this ROE to the other Entergy Operating Companies.⁵ For the reasons discussed below, we deny the Louisiana Commission's request for rehearing.

Commission Determination

3. The Louisiana Commission argues that the Commission erred in deeming the question of the appropriate ROE in the Amended PPAs to be outside the scope of the instant proceeding, as the Initial Decision in Docket No. ER13-1508-001, *et al.* sets an ROE only for power sales made by Entergy Arkansas.⁶ The Commission, however, has yet to issue an order on the Initial Decision. Such decisions by administrative law judges do not constitute binding Commission precedent.⁷ Thus, the administrative law judge's findings in the Initial Decision do not provide a basis for seeking rehearing here, because the proceeding in Docket No. ER13-1508-001, *et al.* is still ongoing.

4. Regardless of the ultimate outcome of the proceeding in Docket No. ER13-1508-001, *et al.*, we continue to find that the instant proceeding regarding the Amended PPAs is not the appropriate forum for determining the appropriate ROEs to be applied under the MSS-4 Replacement Tariff. The Louisiana Commission's contention that the evidence used to establish the ROE for Entergy Arkansas is stale and should not be applied to the other Entergy Operating Companies due to differences in their financial and regulatory circumstances does not change the fact that the instant proceeding is not the appropriate forum for considering ROEs under the MSS-4 Replacement Tariff.⁸ We note that

⁴ Rehearing Request at 4.

⁵ *See id.* at 2-8.

⁶ *Id.* at 1-2, 4.

⁷ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 156 FERC ¶ 61,221, at P 38 n.69 (2016); *SFPP, L.P.*, 140 FERC ¶ 61,220, at P 259 (2012) (citing *Texas New Mexico Power Co. v. El Paso Electric Co.*, 110 FERC ¶ 61,258, at P 10 (2005); *KeySpan Energy Development Corp. v. New York Independent Sys. Operator, Inc.*, 108 FERC ¶ 61,201, at P 4 (2004)).

⁸ Rehearing Request at 3-4, 7-8.

Entergy's transmittal letter in Docket No. ER16-1251 expressly stated that the filing was intended to take no position on the pending ROE dispute in Docket No. ER13-1508,⁹ which was set for hearing in Docket No. ER13-1508-001, *et al.* Accordingly, we continue to find these issues to be outside the scope of the instant proceeding on the justness and reasonableness of the revisions in the Amended PPAs.

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.

⁹ See Entergy Transmittal Letter, Docket No. ER16-1251-000 at 2 n.5; August 31 Order, 156 FERC ¶ 61,136 at P 2.