

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Louisiana Public Service Commission Docket No. EL01-88-002

v.

Entergy Services, Inc.

ORDER GRANTING REHEARING

(Issued August 16, 2005)

1. On June 17, 2005, the Arkansas Public Service Commission (Arkansas Commission), the Mississippi Public Service Commission (Mississippi Commission) and the Council of the City of New Orleans (New Orleans) (jointly, Retail Regulators) filed a request for limited rehearing¹ in response to *Louisiana Public Service Commission v. Entergy Services, Inc.*, Opinion No. 480 (Opinion No. 480),² issued on June 1, 2005. In that order, the Commission determined, *inter alia*, that the Louisiana Commission had not carried its burden in arguing for a change in Service Schedule MSS-1 from the current load responsibility factor of a 12 coincident peak (CP) to a 4 CP. The Retail Regulators request rehearing of the Commission's decision to allow the issue to be raised again in Docket No. ER05-696-000. In this order, we grant the Retail Regulators' request for rehearing.

Background

2. In Opinion No. 480, the Commission held that the Louisiana Commission had failed to demonstrate that use of a 12 CP allocator is no longer just and reasonable.³ The Louisiana Commission had argued for a change in Service Schedule MSS-1 from the

¹ In this order, the Commission is addressing only the June 17, 2005 request for limited rehearing. Other requests for rehearing or clarification of Opinion No. 480 will be addressed at a later date.

² 111 FERC ¶ 61,311 (2005).

³ Opinion No. 480 at P 91.

current load responsibility factor of a 12 CP to a 4 CP. Service Schedule MSS-1 is designed to allocate costs for maintaining the reserve responsibility capacity among the Entergy Operating Companies. The issue was whether to measure this based on the rolling average of the monthly CPs for the twelve previous months (12 CP), or only the average of the monthly CPs for the four summer months of June-September (4 CP). In Opinion No. 480, the Commission held that the Louisiana Commission had failed to demonstrate that the use of a 12 CP allocator is no longer just and reasonable, and found that no evidence supports the need to modify Service Schedule MSS-1 under the System Agreement at this time.⁴

3. However, the Commission added in P 92 of that order that:

We note that issues pertaining to Service Schedule MSS-1 in Docket No. ER05-696 have recently been set for hearing and settlement judge procedures. The allocator factor for MSS-1 has not been raised in Docket No. ER05-696-000. However, Docket No. ER05-696-000 will investigate issues related to the specific function (reserve or load-following) of gas and oil-fired units and how these units' costs will be reflected in the MSS-1 billing. Therefore, the issue of the appropriate allocator factor, whether a 12 CP, 4 CP or other methodology can be explored in that forum.⁵

Request for Rehearing

4. The Retail Regulators filed a request for rehearing. First, they argue that the cost allocation issue is subject to rehearing and appeal in the instant docket, and that dual track litigation would not be appropriate. Second, they argue that the Commission has proposed to transfer the allocation issue to an unrelated docket which is now in settlement negotiations and that such a transfer could have major adverse effects on the settlement discussions. They argue that there is no justification to allow the Louisiana Commission to litigate this issue in an unrelated section 205 proceeding. They note that the Louisiana Commission previously filed a section 206 complaint proceeding alleging that the 12 CP allocation is unjust and unreasonable, and that in that proceeding the Commission rejected the Louisiana Commission's attempt to switch Entergy Services, Inc. from a 12 CP to a 4 CP method on the basis that the Louisiana Commission had not carried its

⁴ *Id.*

⁵ *Id.* at P 92.

burden of proof.⁶ They further note that in Opinion No. 480, the Commission also addressed the 12 CP issue based on the existing evidentiary record and similarly found that the Louisiana Commission had failed to meet its burden of proof.⁷ The Retail Regulators argue that allowing the Louisiana Commission to litigate the issue again would disrupt the settlement proceeding in Docket No. ER05-696-000, and give the Louisiana Commission a “third bite at the apple.”⁸

5. The Retail Regulators further contend that because the same allocator is currently used in four other rate schedules, the Commission’s determination in Opinion No. 480 could have unexpected impacts throughout the System Agreement. They argue that a change in allocator would affect the other rate schedules without any evidence as to whether that result is just, reasonable, and not unduly discriminatory.

6. The Retail Regulators urge the Commission to act on this issue promptly because of the effect it may have on the litigation and settlement proceedings in Docket No. ER05-696-000. They explain that that proceeding was initiated by a narrow proposal as to the allocation of costs among the Entergy Operating Companies of new gas-fired plants that are being acquired. Retail Regulators express concern that the Commission’s ruling will transform a narrowly focused inquiry into an expansive litigation proceeding concerning virtually the entirety of the System Agreement cost allocations.⁹ The Retail Regulators further contend that the Commission should correct Opinion No. 480 by deleting paragraph 92 in its entirety.¹⁰ However, the Retail Regulators request that, if the Commission allows the Louisiana Commission to litigate the cost allocation issue again, the Commission should clarify that the Louisiana Commission would have a section 206 burden of proof in any such proceeding.

⁶ Arkansas Commission, Mississippi Commission and New Orleans Request for Rehearing at 3 (citing *Louisiana Public Service Commission v. Entergy Services, Inc.*, 76 FERC ¶ 61,168 at 61,955 (1996), *reh’g denied*, 80 FERC ¶ 61,282 (1997), *rev’d on other grounds*, 184 F.3d 892 (1999)).

⁷ *Id.* at 4 (citing Opinion No. 480 at P 91).

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ *Id.* at 5.

Discussion

A. Procedural Matters

7. The Retail Regulators filed a timely request for rehearing. Entergy filed an answer characterized as a “statement of support”. The Louisiana Commission also filed an answer. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed and will, therefore, reject them. The Retail Regulators filed a notice of admission by party opponent, to which the Louisiana Commission filed an answer. Because parties seeking rehearing are not permitted to file later, supplemental pleadings to their requests for rehearing, we will reject the Retail Regulators’ notice and the Louisiana Commission’s response.¹¹

B. Docket No. ER05-696-000

8. We agree with the Retail Regulators that we were in error in stating in paragraph 92 that the issue of the appropriate allocator factor can be explored in the ongoing proceeding in Docket No. ER05-696-000. We explicitly found in Opinion No. 480 that the Louisiana Commission had failed to meet its burden of proof and, based on the evidentiary record, we concluded that a change from a 12 CP to a 4 CP method was not appropriate, *i.e.*, the Louisiana Commission had not shown that the existing 12 CP method was unjust and unreasonable, nor had it shown that a 4 CP method was just and reasonable. The Louisiana Commission had a full opportunity to present all of its arguments on this matter in this proceeding, and to allow it another opportunity to raise this same issue in an another proceeding involving a single, different issue would be unfair to the parties to that proceeding and would only serve to disrupt that proceeding.¹² Accordingly, we will grant the Retail Regulators’ request for rehearing.

¹¹ See *CMS Midland, Inc.*, 56 FERC ¶ 61,177 at 61,623 (1991); *Public Service Company of New Hampshire*, 56 FERC ¶ 61,105 at 61,403 (1991).

¹² We note that the Louisiana Commission did not raise this issue in its protest in Docket No. ER05-696-000. See Louisiana Commission Protest, Docket No. ER05-696-000 (April 1, 2005) and Louisiana Commission Amended Protest, Docket No ER05-696-000 (April 15, 2005).

The Commission orders:

The Retail Regulator's request for rehearing is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.