

137 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Entergy Services, Inc.

Docket No. ER10-1350-002

ORDER GRANTING, IN PART, AND DENYING, IN PART,
REHEARING

(Issued October 6, 2011)

1. On August 23, 2010, the Louisiana Public Service Commission (Louisiana Commission) filed a request for rehearing of the Commission's order¹ issued in this proceeding, and in particular a statement by the Commission regarding the scope of the hearing in this docket. For the reasons discussed below, we grant, in part, and deny, in part, the Louisiana Commission's request for rehearing.

I. Background

2. On May 27, 2010, Entergy filed its fourth annual bandwidth filing to implement the Commission's decisions in Opinion Nos. 480 and 480-A.² The Commission accepted and suspended the proposed rates and established hearing and settlement judge procedures. In doing so, the Commission stated that the hearing "should be limited to

¹ *Order Accepting and Suspending Proposed Rates and Establishing Hearing and Settlement Judge Procedures*, 132 FERC ¶ 61,065 (2010) (July 23 Order).

² *Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 173-84 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282, at P 70-76 (2005), *order on compliance filing*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd*, *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

whether Entergy's actual calendar year 2009 formula inputs were correctly applied in the bandwidth calculation."³

II. Request for Rehearing

3. The Louisiana Commission asks whether the Commission's ruling in the July 23 Order is intended to prevent the Louisiana Commission and other parties from challenging the prudence and justness and reasonableness of cost inputs to the bandwidth formula. The Louisiana Commission asserts that the July 23 Order contains a new statement as to limits on the scope of the hearing in the bandwidth dockets; the Louisiana Commission points to the Commission's statement that: "The hearing in this proceeding should be limited to whether Entergy's actual calendar year 2009 formula inputs were correctly applied in the bandwidth formula."⁴ The Louisiana Commission contends that this statement is not only different from the original bandwidth rulings, which according to the Louisiana Commission allowed parties to challenge the prudence and reasonableness of all bandwidth inputs, but is also different from recent rulings finding that actual retail regulator-set depreciation rates could not be challenged in the annual section 205 filings.

4. The Louisiana Commission states that the Commission, in its Order Denying Interlocutory Appeal in Docket No. ER09-1224-001,⁵ ruled that parties in the bandwidth dockets should not be allowed to challenge the reasonableness of cost inputs, because inputs such as depreciation were based upon actual data and the purpose of the annual bandwidth filing is to apply the specified formula using actual data to determine whether or not there was rough production cost equalization, and not determine what production costs would have been if different depreciation rates had been in effect for the relevant period.⁶ The Louisiana Commission also states that the Commission ruled in Opinion No. 505 that the purpose of the bandwidth formula is not what production costs would have been if different depreciation rates had been in effect in 2006, but is simply about applying the formula using actual 2006 data.⁷ The Louisiana Commission argues that the

³ July 23 Order, 132 FERC ¶ 61,065 at P 26.

⁴ *Id.*

⁵ *Entergy Servs., Inc.*, 130 FERC ¶ 61,170 (2010) (Interlocutory Order).

⁶ Louisiana Commission Request at 2 (citing Interlocutory Order, 130 FERC ¶ 61,170 at P 20).

⁷ Louisiana Commission Request at 2 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 173).

limitations set forth in these two decisions do not purport to limit any challenges to the prudence of cost inputs used by Entergy, nor do they limit challenges to the inputs in the formula that are not dictated by retail ratemaking decisions. The Louisiana Commission states that it has challenged Opinion No. 505 on the issue of limiting challenges to the prudence of inputs in the formula and does not waver from that challenge. However, the Louisiana Commission asserts that it is important that the Commission clarify that the issue of prudence and any issues relating to the reasonableness of cost inputs that are not actual data approved at the retail level are subject to challenge in this and future bandwidth dockets.

5. Additionally, the Louisiana Commission argues that the ruling here conflicts with this Commission's earlier bandwidth rulings. The Louisiana Commission cites to a 2006 proceeding in which an Arkansas Public Service Commission (Arkansas Commission) complaint alleged that Entergy's production costs in some jurisdictions were excessive and imprudent. In that proceeding, the Commission dismissed the complaint, holding that it was establishing the bandwidth proceedings to permit all interested parties the opportunity to address the prudence and reasonableness of all cost inputs in the formula.⁸ The Louisiana Commission also states that in the course of accepting and suspending the proposed rates in the first bandwidth proceeding, the Commission made clear that the proceeding was established to allow the parties to litigate the reasonableness of all costs in the tariff.⁹ Further, the Louisiana Commission states that in the same order the Commission stated that its decision in the case would be binding on all the states and that the determinations would be based on the underlying cost inputs and the reasonableness thereof, thereby reaffirming its response to the Arkansas Commission.¹⁰ The Louisiana Commission further cites to the Commission's statement in an order on another Arkansas Commission complaint that the authority to determine the payments under the bandwidth remedy necessarily must include the ability to examine the inputs used to calculate depreciation, including nuclear depreciation, decommissioning expenses, and accumulated provision for depreciation and amortization.¹¹

⁸ *Arkansas Public Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,223 (2007) (Arkansas Public Service Commission Order).

⁹ *Entergy Servs., Inc.*, 120 FERC ¶ 61,094 (2007).

¹⁰ *Id.* P 16.

¹¹ *Arkansas Public Serv. Comm'n v. Entergy Corp.*, 128 FERC ¶ 61,020, at P 25 (2009).

6. The Louisiana Commission argues that, with this background, clarification is needed to determine if prudence of cost inputs may be challenged in this docket or future bandwidth proceedings. The Louisiana Commission states that imprudence occurs when it is determined that a utility acted unreasonably when incurring a cost, and that an imprudent cost is an unreasonable cost that violates the just and reasonable standard of the Federal Power Act. The Louisiana Commission then contends that precedent establishes that imprudent costs should not be recovered in wholesale rates. The Louisiana Commission states that in the Arkansas Commission's 2006 complaint the Arkansas Commission alleged that Entergy's practices in allowing access to the transmission system, purchasing power on the wholesale market, and planning generation were not just and reasonable and prudent. The Commission dismissed that complaint, directing that the issues be raised in bandwidth proceedings.¹² The Louisiana Commission asserts that this Commission later distinguished the Arkansas Commission's complaint from depreciation-type issues that now require a section 206 proceeding under the Commission's ruling in Docket Nos. ER07-956-000 and ER09-1224-000.¹³ The Louisiana Commission contends that an unreasonable, imprudent cost that violates the Federal Power Act and harms wholesale customers may be actual formula inputs that are correctly applied in the bandwidth calculation; however, it argues, those costs should not be beyond challenge in the annual section 205 bandwidth dockets.

7. In addition, the Louisiana Commission argues that some of the actual inputs may violate accounting rules, some may improperly count costs for prior periods, or some may be different than the inputs used in Exhibits ETR-26 and ETR-28, which the Commission has required Entergy to follow in some instances in its bandwidth filings. The Louisiana Commission states that clarification is needed to determine whether this Commission intended to allow Entergy to use its actual books and/or Form 1 amounts regardless of whether those actual amounts were unjust and unreasonable, regardless of whether they were approved by retail regulators, and regardless of whether they were imprudent. The Louisiana Commission requests that the Commission clarify the extent that the issues of prudence and any issues relating to the reasonableness of cost inputs that are not actual data approved at the retail level are subject to challenge in this and future bandwidth dockets.

8. On September 7, 2010, the Arkansas Commission filed an answer to the Louisiana Commission's request for clarification.

¹² Arkansas Commission Complaint Order, 119 FERC ¶ 61,223 at P 7-13.

¹³ March 2010 Order, 130 FERC ¶ 61,170.

III. Discussion

A. Procedural Matters

9. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 713(d)(1) (2010), prohibits an answer to a request for rehearing. Therefore, we reject the Arkansas Commission's answer to the Louisiana Commission's rehearing request.

B. Substantive Matters

10. We will grant, in part, and deny, in part the Louisiana Commission's request for rehearing. We again emphasize, as we did in the Interlocutory Order and in Opinion No. 505, that under Entergy's Service Schedule MSS-3 bandwidth formula, the purpose of the annual bandwidth filings is to apply the specified formula using the required data¹⁴ to determine whether or not there was rough production cost equalization.¹⁵ In other words, the focus of litigation in those annual bandwidth filings is whether Entergy properly implemented the bandwidth formula. The focus is not whether the bandwidth formula is just and reasonable.

11. As we also recently acknowledged, prior to Entergy's annual bandwidth filings, when neither the Commission nor the parties had any experience with such filings, the Commission did make some general statements that could be interpreted as suggesting that parties had the opportunity in Entergy's annual bandwidth filings to challenge the reasonableness of any cost inputs in the Service Schedule MSS-3 bandwidth formula.¹⁶ The Commission explained that such statements, however, were made prior to final

¹⁴ Section 30.12 provides that all rate base, revenue and expense items "shall be based on the actual amounts on the Company's books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company" Entergy Service Schedule MSS-3, section 30.12.

¹⁵ Interlocutory Order, 130 FERC ¶ 61,170 at P 20; Opinion No. 505, 130 FERC ¶ 61,023 at P 171, 173.

¹⁶ Interlocutory Order, 130 FERC ¶ 61,170 at P 20 (citing Arkansas Commission Complaint Order, 119 FERC ¶ 61,223 at P 47 (stating that "[t]he annual section 205 filings thus provide 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"))).

Commission action on the first annual bandwidth filing,¹⁷ i.e., Opinion No. 505, and thus did not benefit from experience in addressing these annual bandwidth filings.

12. In acting on the first annual bandwidth filing in Opinion No. 505, the Commission explained that the purpose of these filings is “to establish the payments and receipts necessary under the bandwidth formula set forth in Service Schedule MSS-3.”¹⁸ Moreover, as the Commission explained in an earlier order, any modifications to the currently effective Service Schedule MSS-3 bandwidth formula¹⁹ must be made through a section 205 or 206 filing:

Any time Entergy seeks to make a change, *e.g.*, a change to return on equity, it must make a section 205 filing with the Commission. Similarly, customers may file section 206 complaints if they seek to make a change, and the Commission may institute a section 206 proceeding on its own motion if it seeks a change.^[20]

Thus, parties, including the Louisiana Commission, are not deprived of the opportunity to raise any issues before this Commission. They just have to raise them in the proper forum — bandwidth filings to raise whether the required formula inputs were correctly applied in the bandwidth calculation and section 206 complaints or section 205 filings to raise whether the formula is just and reasonable.

13. In determining whether Entergy has properly implemented the bandwidth formula using the required data inputs in a bandwidth filing, parties in a bandwidth implementation proceeding may challenge: (1) whether the inputs were calculated consistent with the formula and the applicable accounting rules; (2) conformance with retail regulatory approvals to the extent the formula requires use of values approved by retail regulators; and, (3) in instances where there are details omitted from the accepted Service Schedule MSS-3 formula, with the underlying details included in the

¹⁷ *Id.* n.30.

¹⁸ Opinion No. 505, 130 FERC ¶ 61,023 at P 173.

¹⁹ This would also include any modifications to Exhibits ETR-26 and ETR-28 to the extent those exhibits are still relevant.

²⁰ *Entergy Servs., Inc.*, 117 FERC ¶ 61,203 at P 69.

methodology used in Exhibits ETR-26 and ETR-28.²¹ Further, with respect to whether or not particular costs were prudently incurred, consistent with Opinion No. 505, the Louisiana Commission and other parties may challenge the prudence of cost inputs to the bandwidth formula in this bandwidth proceeding.²²

The Commission orders:

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

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²¹ See Opinion No. 505, 130 FERC ¶ 61,023 at P 133-134 (Affirming the Presiding Judge's finding that the formula in Service Schedule MSS-3 that was previously accepted by the Commission is now the lawful rate, and takes precedence in any conflict with the methodology found in Exhibits ETR-26 and ETR-28, but, however, in instances where there are details omitted from the accepted Service Schedule MSS-3 formula (such as the source of data to use to calculate formula inputs), the underlying details included in the methodology used in Exhibits ETR-26 and ETR-28 control).

²² *Id.* P 9, 51-64.