

142 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER08-1056-005

ORDER ON COMPLIANCE FILING

(Issued January 3, 2013)

1. On December 6, 2011, Entergy Services, Inc. (Entergy)¹ filed a compliance filing as required by Opinion No. 514.² Opinion No. 514 addressed rates filed by Entergy on behalf of the Entergy Operating Companies (Operating Companies),³ implementing for the second time the Commission's bandwidth remedy as provided for in Opinion Nos. 480 and 480-A.⁴ In this order, as discussed below, we accept Entergy's compliance filing.

¹ The generation and bulk transmission systems of all the Entergy Operating Companies are collectively referred to as the Entergy System.

² *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011) (Opinion No. 514).

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

⁴ *Louisiana 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*,

(continued...)

I. Background

2. On May 30, 2008, Entergy made its second annual bandwidth filing, implementing the bandwidth remedy for calendar year 2007. On July 29, 2008, the Commission issued an order establishing hearing and settlement procedures to examine evidence pertaining to the underlying production costs from which Entergy calculated its filing.⁵ On May 21, 2009, the parties to this proceeding filed a partial settlement agreement that resolved several, but not all, of the issues that had been raised regarding Entergy's second annual bandwidth filing. This settlement required Entergy to file a bandwidth recalculation report reflecting the adjustments resolved by the parties. On August 24, 2009, the Commission approved the settlement.⁶ On February 12, 2010, Entergy submitted the bandwidth recalculation report (February 2010 Report) on behalf of the Operating Companies to implement the settlement, resulting in certain revisions to the bandwidth formula and results. Entergy states that the February 2010 Report forms the basis for calculating all subsequent Commission-ordered adjustments to the second annual bandwidth calculation.⁷

3. A hearing was held in this proceeding in 2009, and the Presiding Judge issued an Initial Decision on September 10, 2009.⁸ On October 7, 2011, the Commission issued Opinion No. 514.

4. In Opinion No. 514, the Commission affirmed in part and reversed in part the Presiding Judge's findings. As relevant here, the Commission reversed the Presiding Judge's finding that Entergy used an appropriate methodology to allocate bandwidth receipts among Entergy Texas and Entergy Gulf States Louisiana, as well as to Entergy Gulf States Louisiana wholesale jurisdictions.⁹

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), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011).

⁵ *Entergy Servs., Inc.*, 124 FERC ¶ 61,101 (2008).

⁶ *Entergy Servs., Inc.*, 128 FERC ¶ 61,181 (2009).

⁷ Entergy Compliance Filing at 2.

⁸ *Entergy Servs., Inc.*, 128 FERC ¶ 63,015 (2009) (Initial Decision).

⁹ Opinion No. 514, 137 FERC ¶ 61,029.

5. Entergy used a three-step method for calculating 2007 bandwidth payments for Entergy Texas and Entergy Gulf States Louisiana, the two new Operating Companies resulting from the split of Entergy Gulf States, Inc. as of January 1, 2008. The first step was to determine whether, based on the 2007 test year, any Operating Company exceeded the +/- 11 percent bandwidth threshold, and, if so, how much of a change in production costs would be necessary to bring all the Operating Companies within the bandwidth. According to Entergy, this first step revealed that Entergy Gulf States was to receive a payment of \$189.8 million.¹⁰

6. In step two, Entergy calculated the portion of payments to be received by Entergy Gulf States Louisiana's wholesale customers using an energy allocator. In step three, Entergy allocated the remaining balance of Entergy Gulf States' 2007 production costs between Entergy Texas and Entergy Gulf States Louisiana using an energy allocator for variable production costs and a demand allocator for fixed production costs in the same manner prescribed by section 30.12 of Service Schedule MSS-3.¹¹

7. In Opinion No. 514, the Commission ruled that Entergy's step two calculation of carving out the wholesale portion of Entergy Gulf States Louisiana's load by using an energy allocator was inconsistent with Service Schedule MSS-3.¹² The Commission found that section 30.12 of Service Schedule MSS-3 requires that fixed production costs be allocated among the Operating Companies using demand and that variable production costs be allocated among Operating Companies using an energy allocator. The Commission noted that Service Schedule MSS-3 does not require a separate carving out of the wholesale requirements customers' load using only an energy allocator. The Commission accordingly directed Entergy to modify its methodology by eliminating its proposed second step.¹³

II. Entergy's Compliance Filing

8. Entergy states that, as required by Opinion No. 514, Entergy has revised the methodology to allocate the Entergy Gulf States' bandwidth receipts between Entergy Texas and Entergy Gulf States Louisiana to eliminate step two of the originally proposed

¹⁰ See Opinion No. 514, 137 FERC ¶ 61,029 at P 123.

¹¹ A more detailed description of the three-step process can be found in Opinion No. 514. See *id.* PP 123-125.

¹² *Id.* P 187.

¹³ *Id.* P 189.

three-step process. Entergy states that as a result, the revised workpapers reflect: (1) the determination of the bandwidth payments/receipts on a total company basis for Entergy Gulf States and (2) the allocation of those bandwidth payments/receipts between Entergy Texas and both the retail and wholesale jurisdictions of Entergy Gulf States Louisiana such that the resulting disparity for each jurisdiction is the same as that for Entergy Gulf States in total.¹⁴ Entergy states that as a result of the Commission's revisions to its methodology for allocating Entergy Gulf States' payments/receipts, the retail jurisdiction for Entergy Gulf States Louisiana would receive an increase in bandwidth receipts of \$419,000 and Entergy Texas would receive an increase in bandwidth receipts of \$256,000. Entergy states that the wholesale jurisdiction for Entergy Gulf States Louisiana will receive \$675,000 less in bandwidth receipts.¹⁵

9. Entergy states that the recalculations in its compliance filing and the revisions to the bandwidth formula previously ordered by the Commission in Opinion Nos. 505, 506¹⁶ and 509¹⁷ also will result in changes to the bandwidth payments and receipts based on calendar year 2007 data from those as originally filed in this proceeding and re-filed consistent with the partial settlement in Docket No. ER08-1056-003 in the February 2010 Report. Entergy states that within 45 days of the later of a final, non-appealable Commission order on rehearing of Opinion Nos. 505, 506 and 514, Entergy will file a comprehensive bandwidth recalculation report showing the updated payment/receipt amounts based on the 2007 calendar year data in compliance with the Commission orders. Entergy states, moreover, that it will include adjustments to the bandwidth receipts/payments in the first Entergy Intra-System Bill issued following the filing of the bandwidth recalculation report.

10. Entergy states that once this recalculation is complete, Entergy will provide the updated bandwidth payment/receipt amounts to the then-current customers. Regarding the wholesale jurisdictions, Entergy asserts that Entergy and/or the Operating Companies will have a contractual basis to make additional payments to, or require payments from, only the then-current wholesale customers. Entergy states that this prospective treatment

¹⁴ Entergy Compliance Filing at 3.

¹⁵ *Id.* at 4.

¹⁶ *Entergy Servs., Inc.*, Opinion No. 506, 130 FERC ¶ 61,026 (2010) (Opinion No. 506).

¹⁷ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 509, 132 FERC ¶ 61,253 (2010).

of the updated bandwidth payment/receipt amounts is consistent with administrative efficiency and with the manner in which payments are administered at retail.¹⁸

III. Notice of Filing and Responsive Pleadings

11. Notice of Entergy's filing was published in the *Federal Register*, 77 Fed. Reg. 5503 (2012), with comments, protests and interventions due on or before February 3, 2012. The Louisiana Commission filed a timely protest. Entergy filed an answer.

A. Louisiana Commission Protest

12. The Louisiana Commission argues that Entergy should not be permitted to delay adjusting the bandwidth payments until some undetermined date in the future. The Louisiana Commission contends that such a delay is not authorized in Opinion No. 514, and that payments should be made on the Intra-System Bill as soon as possible after the compliance filing is effective. The Louisiana Commission asserts that, contrary to claims made by Entergy, issues pending final resolution in Opinion Nos. 505, 506 and 509 will not change or affect the allocation issue that this compliance filing addresses. The Louisiana Commission states that its rehearing request in this docket does not raise issues related to the allocation issue in the compliance filing. The Louisiana Commission adds that while East Texas Cooperatives filed a request for rehearing on the allocation issue, the filing of a request for rehearing does not stay the Commission's decision or order. It notes that stays are not ordinarily granted absent a request demonstrating significant harm, and that potential risk of pecuniary harm is not the kind of irreparable injury that can support a stay.¹⁹

13. The Louisiana Commission adds that interest should be paid on the amount owed regardless of when the amounts are paid. It argues that the only manner of preventing economic harm resulting from delay is to require that interest be paid on recalculated payments/receipts.

14. The Louisiana Commission argues that, although it does not protest the recalculation of bandwidth payments and receipts to Entergy Texas and Entergy Gulf States Louisiana, it notes that Entergy also included an allocation between Entergy Gulf States Louisiana retail and Entergy Gulf States Louisiana wholesale customers. The Louisiana Commission contends that the Commission has not exercised jurisdiction to

¹⁸ Entergy Compliance Filing at 4.

¹⁹ Louisiana Commission Protest at 3 (citing *Nantahala Power & Light*, 21 FERC ¶ 61,274 (1982)).

allocate amounts paid or received among jurisdictions within a single Operating Company. The Louisiana Commission explains that the Commission has jurisdiction over wholesale rates and services under the FPA, but that jurisdiction extends “only to those matters which are not subject to the regulation by the states.”²⁰ It adds that the Federal Power Act extends to sales “of electric energy at wholesale,” which means “a sale of electric energy to any person for resale.”²¹

15. The Louisiana Commission explains that the allocation of payments or receipts of an Operating Company for the purpose of determining the retail cost of services is not within this Commission’s jurisdiction, and that individual retail jurisdictions are not “persons” or “public utilit[ies].” It adds that there are no electric power sales between the wholesale and retail jurisdictions of Entergy Gulf States Louisiana. The Louisiana Commission argues that, accordingly, there is no basis for the Commission to assert jurisdiction to allocate costs to a retail jurisdiction. The Louisiana Commission argues that retail regulators have always made the allocations to the retail jurisdiction using allocation factors they deem appropriate.²²

16. The Louisiana Commission argues that the Commission has previously declined to exercise jurisdiction over the intra-company allocations of Entergy’s bandwidth payments and receipts.²³ The Louisiana Commission argues that in Opinion No. 514, the Commission determined that it had jurisdiction over allocation between Operating Companies, but not within a single Operating Company.²⁴ It contends that the Commission has jurisdiction to determine the costs includable in wholesale tariffs, but traditionally has left it to the states to first make retail allocations. The Louisiana Commission also argues that the Commission may decline to exercise whatever jurisdiction it has over intra-company cost allocations and leave these decisions to the States.²⁵

²⁰ Louisiana Commission Protest at 5 (citing 16 U.S.C. § 824(a)).

²¹ *Id.* (citing U.S.C. § 824(d)).

²² *Id.* at 6.

²³ *Id.* (citing, e.g., *Entergy Servs., Inc.*, 119 FERC ¶ 61,191, at P 6 (2007) and *Entergy Servs., Inc.*, 127 FERC ¶ 61,126, at P 25 (2009)).

²⁴ *Id.* at 8 (citing Opinion No. 514, 137 FERC ¶ 61,029 at P 154).

²⁵ *Id.* (citing *New York v. Federal Energy Regulatory Comm’n*, 535 U.S. 1, 1027 (2002)).

B. Entergy Answer

17. Entergy responds that the Louisiana Commission's requested relief – that payments and receipts flow to the Operating Companies immediately, and that the Commission require interest on the payments/receipts when they are distributed – is not appropriate. Entergy contends that the distribution of bandwidth payments and receipts on a comprehensive basis in one Intra-System Bill would be more efficient. Entergy adds that the Commission has repeatedly stated that the bandwidth remedy does not involve refunds and has rejected the Louisiana Commission's request for interest on multiple occasions.²⁶ Entergy argues that there is no reason to allow interest in this instance.

18. With regard to the Louisiana Commission's jurisdictional arguments, Entergy contends that it is clear that the Commission in Opinion No. 514 asserted jurisdiction over both the allocation among the Operating Companies under Service Schedule MSS-3, as well as between the wholesale and retail jurisdictions of Entergy Gulf States Louisiana and Entergy Texas.²⁷ Entergy argues that the Louisiana Commission cannot be allowed to argue, on the one hand, that the compliance filing uses the appropriate methodology to recalculate the increased payments to Entergy Texas retail and Entergy Gulf States Louisiana retail jurisdictions (which combined equal the reduction to the Entergy Gulf States wholesale jurisdiction) and yet maintain that the Commission has not exercised its jurisdiction to order this exact transaction. Entergy contends that in light of the fact that there is no opposition to the compliance filing methodology or resulting recalculations, the Commission should accept the filing, including the applicable amounts to Entergy Texas retail, Entergy Gulf States Louisiana wholesale and Entergy Gulf States Louisiana retail.

IV. Discussion**A. Procedural Matters**

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answer to the protest because it has assisted us in our decision-making process.

²⁶ Entergy Answer at 4 (citing *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 at P 51, *reh'g denied*, 119 FERC ¶ 61,095 at P 32.

²⁷ *Id.* at 5.

B. Commission Determination

20. We agree with Entergy that filing one comprehensive Entergy Intra-System Bill that recalculates bandwidth remedy payments and receipts resulting from Opinion Nos. 505, 506, and 514 is the most efficient way to proceed. If changes to the bandwidth payments and receipts are calculated independently and separately on a piecemeal basis, Operating Companies may gain or lose bandwidth payments or receipts with each change, causing multiple adjustments to the Intra-System bill and customer bills. Accordingly, we will require Entergy to file within 45 days of the later of a final Commission order on rehearing of Opinion Nos. 505, 506, 509,²⁸ 514, and Docket No. ER12-1881-000, *et al.*,²⁹ a comprehensive bandwidth report showing the updated payment/receipt amounts based on the 2007 calendar year data in compliance with the Commission orders. We decline Entergy's proposal to defer this filing until a *non-appealable* final Commission order, as this would unreasonably delay a timely resolution of the recalculation.

21. With regard to the Louisiana Commission's request for interest payments, we agree that interest is required. Although the Commission stated in a prior order that interest would not be required on bandwidth payments,³⁰ in that order the Commission held that there was no need to require that interest be paid because settlements were being made in a reasonable time period once the calculations are completed. However, we now find that due to the length of time elapsed since the original billings for calendar year 2007 payment/receipt amounts, Entergy is required to calculate interest on the

²⁸ While Entergy did not expressly list this proceeding, we note that the Commission recently issued a decision on Entergy's compliance filing in a related docket, which concerns the addition of Spindletop Regulatory Asset costs to the bandwidth calculation. This finding should also be reflected in Entergy's comprehensive recalculation. *See Entergy Services, Inc.*, 139 FERC ¶ 61,106 (2012).

²⁹ While Entergy did not expressly list this proceeding, we note that concurrent with this order, the Commission is issuing an order regarding Entergy's compliance filing in ER12-1881-000 regarding proposed revisions of section 30.13 of Service Schedule MSS-3 to exclude interruptible load from the demand ratio component of the bandwidth formula. This finding should also be reflected in Entergy's comprehensive recalculation.

³⁰ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,095, at P 32 (2007).

payment/receipt amounts from June 1, 2008 until the date of the Intra-System Bill that will reflect the bandwidth recalculation amounts for calendar year 2007.³¹

22. Lastly, we agree with the Louisiana Commission that Entergy should not have made an allocation of bandwidth payments between retail and wholesale customers of Entergy Gulf States Louisiana as contained in Entergy's filing. The bandwidth remedy provides only for the allocation of payments and receipts among the Operating Companies. Accordingly, while we accept Entergy's allocations between the Operating Companies, we find allocations between wholesale and retail customers are beyond the scope of this compliance proceeding.³²

The Commission orders:

Entergy's compliance filing is hereby accepted, to be effective June 1, 2008, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³¹ Requiring interest in this proceeding is consistent with the Commission's compliance order regarding the first annual bandwidth proceeding. *See Entergy Services, Inc.*, 139 FERC ¶ 61,104 at Ordering Paragraph (C).

³² *See Entergy Power Marketing Corp.*, 75 FERC ¶ 61,282, at 61,903 (1996); *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,160 (1993) ("We have explained in numerous orders that we will not consider arguments raised in a compliance proceeding that are not responsive to the narrow issue of the filing utility's compliance with the explicit directives of the Commission in an earlier order.").