

128 FERC ¶ 61,005  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Entergy Services, Inc.

Docket No. ER08-774-002

ORDER DENYING REHEARING

(Issued July 1, 2009)

1. On September 12, 2008, the Louisiana Public Service Commission (Louisiana Commission) requested rehearing of an order<sup>1</sup> accepting and suspending an amendment to the Entergy System Agreement (System Agreement) proposed by Entergy Services, Inc. (Entergy) and establishing hearing and settlement judge procedures. For the reasons discussed below, the request for rehearing is denied.

**I. Background**

2. On April 1, 2008, Entergy submitted for filing an amendment to the System Agreement to more clearly define the Energy Ratio variable that is used to determine average variable production costs of the Entergy Operating Companies (Operating Companies).<sup>2</sup> Entergy stated that the amendment would eliminate any doubt as to the source of certain data used in calculating the rough production cost equalization payments and receipts stemming from the bandwidth remedy established in Opinion Nos. 480 and 480-A.<sup>3</sup> In those two orders, the Commission determined that the Entergy

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<sup>1</sup> *Entergy Services, Inc.*, 124 FERC ¶ 61,163 (2008) (August 15, 2008 Order).

<sup>2</sup> The Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Texas, Inc., and Entergy New Orleans, Inc.

<sup>3</sup> *Louisiana Public Service Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g, Louisiana Public Service Comm'n v. Entergy Servs., Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *aff'd in part and remanded in part, sub nom. Louisiana Public Service Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

System was no longer in rough production cost equalization and adopted a bandwidth remedy. This remedy achieves rough production cost equalization on Entergy's system by not allowing any Operating Company to have production costs that are more than 11 percent above or below the system average production costs. Under the bandwidth remedy, each calendar year, the production costs of each Operating Company are calculated, with payments made by the low cost Operating Company(ies) to the high cost Operating Company(ies) such that, after reflecting the payments and receipts, no Operating Company would have production costs more than 11 percent above the Entergy System average or more than 11 percent below the Entergy System average.<sup>4</sup> In Opinion No. 480, which issued on June 1, 2005, the Commission found that the bandwidth remedy should apply prospectively in calendar year 2006, with the first payments occurring in 2007.<sup>5</sup> Opinion Nos. 480 and 480-A were remanded back to the Commission for further consideration of the Commission's decision to delay implementation of the bandwidth remedy.<sup>6</sup>

3. In the August 15, 2008 Order, the Commission accepted Entergy's proposed amendment for filing, and suspended it for a nominal period, to become effective June 1, 2008, subject to refund.<sup>7</sup> The Commission also established hearing and settlement judge procedures. In addition, the Commission rejected arguments made by the Louisiana Commission that the Commission should only allow Entergy's filing to go into effect prospectively, just as it prospectively applied the bandwidth remedy adopted in 2005 for the first time in the 2006 calendar test period.<sup>8</sup>

4. On December 19, 2008, the Commission issued an order in Docket Nos. ER08-774-000 and ER08-774-001 approving an uncontested offer of settlement filed by Entergy.<sup>9</sup> The settlement agreement resolved the issues set for hearing, and in particular addressed the variable Energy Ratio issue. However, the settlement provided that the effective date of the settlement would be June 1, 2008, subject to the outcome of a request for rehearing filed by the Louisiana Commission in the proceeding at issue here.

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<sup>4</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 136-45.

<sup>5</sup> *Id.* P 145.

<sup>6</sup> *Louisiana Public Service Comm'n v. FERC*, 522 F.3d 378 at 399-400 (Remand Order).

<sup>7</sup> August 15, 2008 Order, 124 FERC ¶ 61,163 at P 19.

<sup>8</sup> *Id.* n.9.

<sup>9</sup> *Entergy Services, Inc.*, 125 FERC ¶ 61,331 (2008).

Entergy stated that if the Louisiana Commission were to prevail, Entergy would revise its tariff sheet (First Revised Sheet No. 48J) submitted by Entergy in Docket No. ER08-774-000 to reflect the new effective date required by the Commission.

## II. Request for Rehearing

5. The Louisiana Commission requests rehearing of the August 15, 2008 Order. It argues that, although it does not oppose the effective date of June 1, 2008 in principle, the Commission's decision to allow a section 205 filing by Entergy to affect bandwidth payments to be paid in the following year, while requiring remedies ordered under section 206 to be delayed for up to two years, is unduly discriminatory. The Louisiana Commission argues that the Commission erred to the extent it treats proposed changes under section 205 and section 206 differently.

6. The Louisiana Commission contends that it urged, to be consistent with the Commission's rulings related to section 206 cases in Opinion Nos. 480 and 480-A, that Entergy's filing should only be allowed to go into effect prospectively affecting remedy payments in 2010.<sup>10</sup> It asserts that in Opinion Nos. 480 and 480-A, and in a related bandwidth compliance order,<sup>11</sup> the Commission ruled that changes to the bandwidth remedy may only be made on a prospective basis, and required that any change to the bandwidth remedy be applied for the first time in a future, rather than a past, test period.<sup>12</sup> The Louisiana Commission argues that the reasoning in those orders would require a proposed change in methodology to take effect only for a future calendar year test period, because the Commission applied the remedy adopted in 2005 for the first time in the 2006 test period, with payments and receipts coming in later years.<sup>13</sup>

7. The Louisiana Commission argues that the Commission must prescribe just and reasonable rates to correct unlawful rates. It argues that the Commission should maintain consistency in its determinations regarding the effectiveness of the System Agreement tariff changes. It contends that to remain consistent with its prior rulings the Commission

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<sup>10</sup> Louisiana Commission September 12, 2008 Request for Rehearing at 3.

<sup>11</sup> *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006) (Compliance Order).

<sup>12</sup> *Id.* (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 145; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 54; Compliance Order at P 51).

<sup>13</sup> *Id.* (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 145; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 54).

cannot permit a change in payments and receipts until the bandwidth remedy is applied to data for a prospective calendar year.

### **III. Commission Determination**

8. We will deny the Louisiana Commission's request for rehearing. Entergy properly filed its amendment to the System Agreement pursuant to section 205 of the Federal Power Act (FPA),<sup>14</sup> and the Commission, in accordance with section 205, made it effective after 60 days' notice. Despite the Louisiana Commission's arguments that the Commission should treat remedies under section 205 and 206 the same, section 205 provides public utilities with a statutory right to amend their rates and charges and to propose that, absent waiver, the amendments be made effective after 60 days' notice. In adhering to section 205, the Commission simply cannot and did not change that basic right accorded by the FPA. Accordingly, in the August 15, 2008 Order, the Commission held that the appropriate effective date of Entergy's proposed amendment is June 1, 2008, after 60 days' notice, pending the outcome of hearing and settlement procedures. The Louisiana Commission has not shown – nor has it attempted to show – that the Commission erred in setting an effective date of June 1, 2008. To the contrary, the Louisiana Commission concedes in its rehearing request that it is not opposed to the effective date established in the August 15, 2008 Order.<sup>15</sup> Accordingly, we deny rehearing as to the effective date.

9. Furthermore, we disagree with the Louisiana Commission's argument that the Commission acted inconsistently in its treatment of proposed changes to the System Agreement under sections 205 and 206. In the August 15, 2008 Order, the Commission, acting pursuant to section 205, accepted Entergy's proposed amendment, suspended it for a nominal period, made it subject to refund and established hearing and settlement judge procedures. Any proposed changes found to be just and reasonable could only be made effective prospectively, after 60 days' notice, consistent with section 205.<sup>16</sup> On the other hand, Opinion Nos. 480 and 480-A were the result of a complaint proceeding that was initiated under section 206,<sup>17</sup> where the Commission found that the bandwidth

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<sup>14</sup> 16 U.S.C. § 824d (2006).

<sup>15</sup> See Louisiana Commission September 12, 2008 Request for Rehearing at 2.

<sup>16</sup> The maximum suspension, had it been warranted, would have been a five-month suspension. Under section 205, the Commission has no authority to impose a longer suspension period.

<sup>17</sup> 16 U.S.C. § 824e (2006).

remedy should apply prospectively.<sup>18</sup> Simply put, the statutory requirements of sections 205 and 206 are different and therefore it is not inconsistent for the Commission to impose different effective dates based on whether the filing is made under section 205 or section 206.<sup>19</sup>

The Commission orders:

The Louisiana Commission's request for rehearing is hereby denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>18</sup> In the Remand Order, the court found, *inter alia*, that the Commission had not presented a reasonable explanation for its decision to delay implementation of the bandwidth remedy, and remanded the issue for further proceedings. The Remand Order is still pending before the Commission. However, regardless of what action the Commission takes in response to the court's remand, as discussed above, the requirements for sections 205 and 206 are different, and the Commission acted correctly in accepting Entergy's filing in this proceeding to become effective June 1, 2008.

<sup>19</sup> The Commission has addressed similar arguments raised by the Louisiana Commission in prior orders. See *Entergy Services, Inc.* 119 FERC ¶ 61,190, at P 19, *order on reh'g*, 121 FERC ¶ 61,126, at P 12 (2007).