

120 FERC ¶ 61,241
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission
and the Council of the City of New Orleans

v.

Docket No. EL00-66-007

Entergy Corporation

ORDER ON REMAND

(Issued September 20, 2007)

1. In response to a petition for review of the Commission's orders issued earlier in this proceeding,¹ the United States Court of Appeals for the District of Columbia Circuit, on April 3, 2007, issued an order remanding the matter to the Commission for further proceedings.² At issue was whether, in calculating charges for the Entergy system,³ the exclusion of interruptible load from the computation of peak load responsibility should be accomplished immediately or phased-in over twelve months. The court found that this should be accomplished immediately. Also at issue was whether the Commission was empowered to order refunds under the specific circumstances presented in this proceeding. The court found that the Commission could order refunds in these circumstances.

¹ *Louisiana Public Service Commission v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004), *reh'g denied*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005).

² *Louisiana Public Service Commission v. FERC*, 482 F.3d 510 (D.C. Cir. 2007) (Remand Order).

³ The Entergy system is comprised of Entergy Services, Inc. and its various public utility operating companies, i.e., Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Gulf States, Inc. (Operating Companies).

2. In this order, consistent with the court's findings on the issues, the Commission will direct Entergy to: (1) file a compliance filing that recalculates customers' peak load responsibility to remove interruptible load from the computation of charges for the Entergy system (since April 1, 2004)⁴ within 30 days of the date of issuance of this order and (2) make refunds to Entergy's Louisiana customers reflecting the difference between what Entergy charged (based on Opinion Nos. 468 and 468-A) and what it would have charged had Entergy at that time immediately removed all interruptible load from the computation of peak load responsibility.

Background

3. Entergy's System Agreement consists of seven Service Schedules, which allocate costs among the Operating Companies. These are: MSS-1 (Reserve Equalization); MSS-2 (Transmission Equalization); MSS-3 (Exchange of Electric Energy Among the Companies and Rough Production Cost Equalization); MSS-4 (Unit Power Purchase); MSS-5 (Distribution of Revenue from Sales Made for the Joint Account of all Companies); MSS-6 (Distribution of Operating Expenses of the System Operation Center); and MSS-7 (Merger Fuel Protection). Certain of the system costs are allocated among the Operating Companies in proportion to the load each Operating Company places on the system at the time of the system peak. This proportionate cost responsibility of each Operating Company is called its "Responsibility Ratio."

4. Each Operating Company's Responsibility Ratio is calculated by determining that Operating Company's load responsibility (Company Load Responsibility) as a proportion of the total load responsibility for the combined Operating Companies. The Company Load Responsibility is the average of the Operating Companies' twelve monthly loads coincident with the system's monthly peak load hour for the twelve-month period ending with the month prior to its application. Thus, each Operating Company's Load Responsibility historically has been determined using a "rolling" average of that Operating Company's contribution to the system's monthly peak over the preceding twelve months.⁵

5. In Opinion Nos. 468 and 468-A, the Commission directed Entergy to exclude interruptible load from the calculation of peak load responsibility under Service Schedule MSS-1

⁴ See Opinion No. 468-A, 111 FERC ¶ 61,080 at P 16.

⁵ *Id.* at P 3.

(Reserve Equalization) and Service Schedule MSS-5 (Distribution of Revenue from Sales Made for the Joint Account of all Companies).⁶ In Opinion No. 468, the Commission concluded that, consistent with the System Agreement, this should be accomplished over a twelve-month period.⁷ In addition, the Commission concluded that, in this instance, it was not authorized by the Federal Power Act (FPA) to order refunds.⁸

6. As noted above, in the Remand Order, the court determined that the Commission, having found that it was not just and reasonable to allow Entergy to consider interruptible load in assigning cost responsibility (i.e., in determining Load Responsibility and the Responsibility Ratio), could not delay implementation of that decision over a 12-month phase-in period.⁹ The court also determined that the Commission had authority to order refunds.

Discussion

A. Immediate and Full Removal Of Interruptible Load From Load Responsibility

7. The court has found that rates should be calculated that immediately remove all interruptible load from the computation of Load Responsibility and the Responsibility Ratio. Consistent with the court's decision on this issue, we direct Entergy to file a compliance filing, within thirty days of the date of issuance of this order, which recalculates Load Responsibilities and Responsibility Ratios to immediately eliminate all interruptible load from the computation of charges, and which includes all workpapers explaining the calculations.

B. Refunds

8. The court has found that the Commission may order refunds. When the

⁶ *Id.* at P 15-17; Opinion No. 468, 106 FERC ¶ 61,228 at P 63, 77.

⁷ Opinion No. 468, 106 FERC ¶ 61,228 at P 60-77.

⁸ *Id.* at P 82-89.

⁹ 482 F.3d at 518.

Commission reviewed the presiding judge's findings on this issue in his Initial Decision,¹⁰ we reversed his finding ordering refunds based on our finding that, in the circumstances presented, refunds were precluded by section 206(c) of the FPA.¹¹ However, given the court's finding that the Commission may, in these circumstances, order refunds, we will reverse our prior determination and adopt the presiding judge's finding in the ID that refunds are appropriate, based on his analysis of the relevant testimony, because we believe that his reasoning provides a rational basis for a refund consistent with the court's remand.

9. Moreover, given the court's finding that rates properly should have been calculated based on the immediate removal of all interruptible load from the computation of Load Responsibility and the Responsibility Ratio, we will, at this time, direct Entergy to make refunds within 30 days of the date of issuance of this order, reflecting the differences between what Entergy charged (based on Opinion Nos. 468 and 468-A) and what it would have charged had Entergy at that time immediately removed all interruptible load from the computation of Load Responsibility and the Responsibility Ratio. In addition, we direct Entergy to file a refund report describing its computations and the refunds it makes pursuant to this order, to be filed within sixty days of the date of issuance of this order.

The Commission orders:

(A) Entergy is hereby directed to make a compliance filing to remove interruptible load from the computation of peak load responsibility since April 1, 2004, within 30 days of the date of issuance of this order.

(B) Entergy is hereby directed, within 30 days of the date of issuance of this order, to make refunds as discussed above, and to file a refund report, within 60 days of the date of issuance of this order.

By the Commission.

¹⁰ *Louisiana Public Service Commission v. Entergy Corp.*, 96 FERC ¶ 63,002 (2001) (ID).

¹¹ See Opinion No. 468, 106 FERC ¶ 61,228 at P 82-84.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.