

121 FERC ¶ 61,040
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.

Entergy Services, Inc.

Docket No. ER07-541-002

ORDER DENYING IN PART AND GRANTING IN PART REHEARING

(Issued October 18, 2007)

1. On July 27, 2007, Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies,¹ filed a request for rehearing of the June 27, 2007 delegated letter order accepting for filing a Transmission Service Agreement (TSA) between Entergy and NRG Power Marketing, Inc. (NRG).² Particularly, Entergy explains that while it had stated in its original filing that it had not billed NRG for service under the TSA, between the time of its filing and the issuance of the June 27 Letter Order, it billed and NRG paid for services under the TSA. Taking this factual update into consideration, Entergy requests that the Commission confirm that refunds for the time value of revenues collected continue to be inappropriate in this case. As discussed below, the Commission will deny Entergy's request for rehearing and will require time value of revenues refunds. In addition, NRG³ filed a request for rehearing asking the Commission to remove an incorrect reference to AEP and to address the status of Entergy's billing of NRG and the attendant refund obligation of Entergy. As discussed below, we will grant NRG's rehearing request.

¹ The Entergy Operating Companies are: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana LLC, Entergy Mississippi, Inc. and Entergy New Orleans, Inc.

² See *Entergy Services, Inc.*, Docket Nos. ER07-541-000 and ER07-541-001 (June 27, 2007) (unpublished delegated letter order) (June 27 Letter Order).

³ The rehearing request is filed collectively by the NRG Companies, including: Bayou Cover Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, Big Cajun II Unit 4 LLC, NRG Sterlington Power LLC and NRG Power Marketing, Inc.

Background

2. On February 14, 2007, Entergy, on behalf of the Entergy Operating Companies, filed a mutually-executed long-term firm point-to-point TSA between Entergy and NRG. At that time, Entergy stated that it had not billed and NRG had not paid for any service under the proposed TSA. It also requested waiver of the Commission's 60-day prior notice requirement, seeking a January 1, 2007 effective date. The proposed TSA was accepted for filing in the June 27 Letter Order, and made effective, after 60 days' notice, April 16, 2007. The June 27 Letter Order further stated that "[b]ecause Entergy has not billed and [NRG]^[4] has not paid for services under the TSA, any refunds for the time value of revenues collected without Commission authorization is not appropriate in this case."

Requests for Rehearing

3. Entergy explains that, although it had not billed NRG for service under the TSA at the time it made the February 14, 2007 filing, between the time of that filing and the issuance of the June 27 Letter Order designating an April 16, 2007 effective date for the TSA, Entergy billed and NRG paid for services under the TSA.

4. Entergy requests that the Commission conclude that time value of revenues refunds remain inappropriate in this case because it had not billed and NRG had not paid for any services under the TSA at the time Entergy filed the original application on February 14, 2007. Entergy further argues that it is warranted and equitable that time value of revenues refunds are not appropriate in this case because NRG did not protest the filing, nor affirmatively request refunds, despite the fact that NRG filed an intervention in the previous proceeding on March 7, 2007.

5. NRG points out that the June 27 Letter Order regarding the TSA between Entergy and NRG makes reference to AEP in its statement that, "[b]ecause Entergy has not billed and AEP has not paid for any services under the TSA, any refunds for the time value of revenues collected without Commission authorization is not appropriate in this case."⁵ While NRG acknowledges that this most likely was the result of administrative error, NRG asks that the Commission clarify the June 27 Letter Order by removing the inaccurate sentence referencing AEP. Due to the fact that the June 27 Letter Order made specific reference to the status of Entergy's billing of AEP, NRG argues that the June 27 Letter Order does not accurately address the status of Entergy's billing of NRG.

⁴ As stated below, the Commission erroneously made reference to AEP in the June 27 Letter Order. Here, we replace the reference to AEP with a reference to NRG.

⁵ June 27 Letter Order (emphasis added).

6. NRG also argues that the June 27 Letter Order erred in that Entergy billed and NRG paid for service under the TSA prior to the effective date of the TSA. NRG states that the June 27 Letter Order did not provide any guidance regarding the impact, if any, on billing and payments made prior to the April 16, 2007 designated effective date. Therefore, NRG asks the Commission to clarify the impact of the April 16, 2007 effective date on any service under the subject TSA.

Discussion

7. We will deny Entergy's rehearing request and grant NRG's rehearing request with respect to Entergy's refund obligation. The Commission's practice is to require the utility to refund the time value of revenues collected for the time period the rate was collected without Commission authorization.⁶ The finding in the June 27 Letter Order that a refund of the time value of revenues collected was not appropriate was explicitly predicated upon Entergy's statement that it had not billed and NRG had not paid for services under the TSA. Entergy now states that it billed and NRG paid for service under the TSA between the time it made the February 14, 2007 filing and the issuance of the June 27 Letter Order. According to Entergy, service commenced prior to the April 16, 2007 effective date designated in the June 27 Letter Order; therefore, the amounts collected for service prior to April 16, 2007 were not authorized by the Commission. Entergy's factual update puts it squarely within the Commission's practice to order a refund of the time value of revenues collected.

8. Moreover, Entergy's argument that time value of revenues refunds are not appropriate because NRG did not protest the filing or affirmatively request refunds lacks merit. The ordered refunds are within our remedial authority under section 205 of the Federal Power Act (FPA)⁷ and equitable under Entergy's circumstances. Whether or not a party protested the filing or actually suffered any harm is irrelevant to our inquiry here. The injury being remedied by refunds for late filing is not merely redress for the customer but particularly "the Commission's ability to enforce FPA section 205's requirement that there be prior notice and that the rates charged be just and reasonable at the time they are being charged."⁸

⁶See, e.g., *Carolina Power & Light Co.*, 84 FERC ¶ 61,103, at 61,522 (1998), *order on reh'g*, 87 FERC ¶ 61,083, at 61,356 (1999) (*Carolina Power*); see also *Southern California Edison Company*, 98 FERC ¶ 61,304, at 62,302 & n.10 (2002); *Florida Power & Light Company*, 98 FERC ¶ 61,276, at 62,151 & n.32 (2002).

⁷ 16 U.S.C. § 824d (2000).

⁸ *El Paso Electric Co.*, 105 FERC ¶ 61,131, at P 21 (2003) (footnote omitted) (*citing Carolina Power*, 87 FERC ¶ 61,083 at 61,356 (1999)).

9. Accordingly, we will direct Entergy to refund to NRG, within 30 days of the date of this order, the time value of revenues collected, calculated pursuant to section 35.19a of the Commission's regulations,⁹ for the entire period that the rate was collected without Commission authorization.¹⁰ We also will direct Entergy to file a refund report with the Commission within 15 days of the date refunds are made.

10. We will also grant NRG's rehearing request with respect to a reference to AEP in the June 27 Letter Order. As NRG surmises, the reference was in error. Accordingly, the reference to AEP should be replaced with a reference to NRG.

The Commission orders:

(A) Entergy's request for rehearing is hereby denied, as discussed in the body of this order.

(B) Entergy is hereby ordered to make time value of revenues refunds to NRG within 30 days of the date of issuance of this order, and to file a refund report with the Commission within 15 days thereafter.

(C) NRG's request for rehearing is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

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

⁹ 18 C.F.R. § 35.19a (2007).

¹⁰ We note that the Commission limits the application of the time value formula to an amount that permits the public utility to recover its variable costs. *See, e.g., Carolina Power*, 87 FERC at 61,357.