

121 FERC ¶ 61,044
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. ER07-525-002

ORDER DENYING REHEARING

(Issued October 18, 2007)

1. On July 30, 2007, Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies,¹ filed a request for rehearing of the Commission's June 29, 2007 order Accepting and Suspending Proposed Rate Schedule and Establishing Hearing and Settlement Judge Procedures.² Particularly, Entergy explains that while it had stated in its original filing that it had not billed American Electric Power Service Corporation (AEP) for service under the Transmission Service Agreement (TSA), between the time of its filing and the issuance of the June 29 Order, it billed and AEP paid for services under the TSA. Taking this factual update into consideration, Entergy requests that the Commission confirm its finding in the June 29 Order that refunds for the time value of revenues collected continue to be inappropriate in this case. As discussed below, the Commission will deny the request for rehearing and will require time value of revenues refunds.

Background

2. The underlying proposed rate schedule is described in detail in the June 29 Order. Briefly, on February 7, 2007, Entergy, on behalf of the Entergy Operating Companies,

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 *Entergy Services, Inc.*, 119 FERC ¶ 61,341 (2007) (June 29 Order).

filed a proposed mutually-executed long-term firm point-to-point TSA between Entergy and AEP.³ At that time, Entergy stated that it had not billed and AEP 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 due to contract negotiations and the delayed execution of the agreement. The Commission's June 29 Order accepted the proposed TSA for filing, suspended it for a nominal period, and made it effective April 9, 2007, subject to refund.⁴ It also established hearing and settlement judge procedures. The Commission further stated that "[b]ecause Entergy has not billed and AEP has not paid for services under the TSA ... a refund of the time value of revenues collected without Commission authorization is not appropriate in this case."⁵

Request for Rehearing

3. Entergy explains that, although it had not billed AEP for service under the TSA at the time it made the February 7, 2007 filing, between the time of that filing and the issuance of the June 29 Order designating an April 9, 2007 effective date for the TSA, Entergy billed and AEP 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 AEP had not paid for any services under the TSA at the time Entergy filed the original application on February 7, 2007.

5. Entergy further argues that it is warranted and equitable that time value of revenues refunds are not appropriate in this case because AEP did not protest the filing, nor affirmatively request refunds, despite the fact that AEP filed an intervention in the previous proceeding on May 23, 2007. AEP filed an answer to Entergy's rehearing request on August 8, 2007.

³ AEP acted as agent for Public Service Company of Oklahoma and Southwestern Electric Power Company in the underlying proceeding.

⁴ In denying Entergy's request for waiver of the Commission's 60-day prior notice requirement, the Commission stated that "[c]ontract negotiations and delayed execution have no bearing on the statutory requirement that utilities provide prior notice of proposed rates, terms and conditions of jurisdictional service." June 29 Order *citing, e.g., Pacific Gas and Elec. Co.*, 107 FERC ¶ 61,224, at P 21 (2004).

⁵ June 29 Order, 119 FERC ¶ 61,341 at P 14.

Discussion

6. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2007), prohibits answers to requests for rehearing. Accordingly, we will reject AEP's answer.

7. We will deny Entergy's rehearing request. 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 Commission's finding in the June 29 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 AEP had not paid for services under the TSA.⁷ Entergy now states that it billed and AEP paid for service under the TSA between the time it made the February 7, 2007 filing and the Commission's issuance of the June 29 Order. According to Entergy, service commenced prior to the April 9, 2007 effective date designated in the June 29 Order; therefore, the amounts collected for service prior to April 9, 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 AEP 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)⁸ 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."⁹

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 June 29 Order, 119 FERC ¶ 61,341 at P 14.

⁸ 16 U.S.C. § 824d (2000).

⁹ *El Paso Electric Co.*, 105 FERC ¶ 61,131, at P 21 (2003) (footnote omitted) (*citing Carolina Power*, 87 FERC at 61,356).

9. Accordingly, we will direct Entergy to refund to its customers, 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,¹⁰ for the entire period that the rate was collected without Commission authorization.¹¹ We also will direct Entergy to file a refund report with the Commission within 15 days of the date refunds are made.

The Commission orders:

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

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

By the Commission.

(S E A L)

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

¹⁰ 18 C.F.R. § 35.19a (2007).

¹¹ 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.