

121 FERC ¶ 61,178
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.

Mississippi Delta Energy Agency
and Clarksdale Public Utilities Commission

v.

Docket No. EL04-99-001

Entergy Services, Inc. and Entergy Operating
Companies

ORDER ON REFUND REPORT

(Issued November 16, 2007)

1. In this order, the Commission accepts for filing a refund report submitted by Entergy Services, Inc. (Entergy Services), as agent for the Entergy Operating Companies (collectively, Entergy),¹ in compliance with the Commission's June 11, 2007 order,² which describes the refunds owed to Mississippi Delta Energy Agency (MDEA), Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale),³ and the Public Service Commission of Yazoo City, Mississippi (Yazoo City).

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

² *Mississippi Delta Energy Agency and Clarksdale Public Utilities Commission v. Entergy Services, Inc. and Entergy Operating Companies*, 119 FERC ¶ 61,269 (2007) (June 11 Order).

³ Clarksdale, along with Yazoo City, is a member of MDEA, a joint action agency in Mississippi.

I. Background

2. On May 5, 2004, MDEA and Clarksdale (collectively, MDEA) filed a complaint against Entergy requesting that the Commission: (1) determine that certain facilities are network upgrades; (2) order Entergy to modify the facilities charge incurred by MDEA under its Interconnection and Operating Agreement (IA) to eliminate the direct assignment of certain construction oversight costs associated with network facilities; (3) order Entergy to pay interest on funds paid for certain facilities classified as Optional System Upgrades under the IA; and (4) order Entergy to grant MDEA and Clarksdale as-available point-to-point transmission service from the generation plant associated with the facilities charge at no additional cost for as long as MDEA pays the facilities charge.

3. In the June 11 Order, the Commission granted in part and denied in part MDEA's complaint. First, the Commission found that the contractual provisions of the IA allow either party the unilateral right, under sections 205 and 206 of the Federal Power Act (FPA),⁴ to file an application with the Commission requesting a change in the rates, charges, or terms and conditions of service provided in the IA.⁵ Thus, we evaluated the IA based on the just and reasonable standard of review. Next, the Commission explained that the IA does not involve a standard generator interconnection agreement because the generator does not connect directly to Entergy's system. Instead, the Commission determined that this case involves "a transmission dependent utility embedded within Entergy's system [and] is a system-to-customer arrangement to which our rules prohibiting 'and' pricing apply."⁶ We found that, with the exception of certain metering facilities, all of the facilities at issue in the complaint were network upgrades to Entergy's transmission system.⁷ Thus, we directed Entergy to file a revised IA and provide MDEA with transmission credits, plus interest, during the appropriate refund periods.⁸ The

⁴ 16 U.S.C. §§ 824d and 824e (2000).

⁵ June 11 Order, 119 FERC ¶ 61,269 at P 25.

⁶ *Id.* at P 27.

⁷ *Id.* at P 36-37.

⁸ In the June 11 Order, we applied our precedent on the four distinct periods for calculating transmission credit refunds, which terminate when the network upgrade costs have been repaid through the transmission credits. In sum, we determined that credits owed to MDEA should be calculated as follows: (1) for period 1, from commercial operation until July 4, 2004 (the refund effective date), any credits that would have been earned are not recoverable, and interest on those credits will not be paid; (2) for period 2, from July 4, 2004, through and including October 4, 2005, the credits earned are recoverable, and Entergy must pay MDEA credits for this 15-month period with interest ;

(continued)

Commission also directed Entergy to file a compliance report, within 15 days after making the required payment.

4. Further, the Commission found that Entergy must provide MDEA with interest, calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii) (2007), on any amounts paid for the Optional System Upgrades that have not yet been credited (*i.e.*, from the refund effective date, July 4, 2004, up to and including October 4, 2005, and any remaining uncredited amount of the upfront payment for the Optional System Upgrades, prospectively from June 11, 2007).⁹ The Commission also directed Entergy prospectively to eliminate from the Dedicated Facilities Charge the costs associated with network upgrades, including any construction oversight costs.¹⁰ Finally, the Commission dismissed as moot MDEA's request for an allowance for point-to-point transmission service.¹¹

5. On July 11, 2007, in Docket No. ER07-1145-000, Entergy filed its revisions to the IA between Entergy and MDEA which: (1) reclassified certain of the transmission interconnection-related facilities as network upgrades; (2) provided credits for network upgrades; and (3) eliminated from the Dedicated Facilities Charge the assessment of construction oversight costs and expenses associated with owning, maintaining, repairing,

(3) for period 3, from the end of the 15-month refund effective period until June 11, 2007 (the date of the Commission's order), any credits that would have been earned are not recoverable, and interest on those credits would also not be paid; and (4) for period 4, commencing on the date of the Commission's order (June 11, 2007) until a date 20 years after the date of commercial operation, credits with interest are to be paid until a date 20 years after the date of commercial operation or until the network upgrade costs have been repaid. The Commission stated that if there are periods during which credits were recoverable but MDEA did not receive transmission service, Entergy nevertheless must provide credits for such periods with interest. *Id.* at P 40 (*citing Duke Energy Hinds, LLC v. Entergy Services, Inc.*, 102 FERC ¶ 61,068 (2003), *order on reh'g*, 117 FERC ¶ 61,210 (2006) (*Duke Hinds III*)). *See also Quachita Power, LLC v. Entergy Louisiana, Inc. and Entergy Services, Inc.*, 118 FERC ¶ 61,155, at P 32 (2007), *reh'g denied*, 120 FERC ¶ 61,059 (2007); *Mirant Las Vegas, LLC v. Nevada Power Company*, 118 FERC ¶ 61,034, at P 20 *reh'g denied*, 120 FERC ¶ 61,002 (2007).

⁹ *Id.* at P 43.

¹⁰ *Id.* at P 48.

¹¹ *Id.* at P 51-53.

and replacing certain network upgrade facilities. The Commission accepted Entergy's compliance filing pursuant to delegated authority on August 23, 2007.¹²

II. Entergy's Compliance Report

6. On July 26, 2007, Entergy submitted the compliance refund report in response to the June 11 Order (July 26 Report). Entergy states that, on July 26, 2007, it refunded to MDEA \$1,141,928.85, which represents the credits earned by MDEA that are recoverable during period 2 (July 4, 2004 through October 4, 2005), plus interest. It explains that, rather than paying upfront for the cost of the facilities at issue, MDEA has paid a monthly, Dedicated Facilities Charge. Because MDEA did not pay upfront for the cost of construction of the network upgrade facilities, Entergy states that it calculated the amount of credits earned by MDEA based upon the Dedicated Facilities Charges paid by MDEA during period 2.¹³ Entergy states that, on a prospective basis, the costs associated with the network upgrades have been eliminated from the Dedicated Facilities Charge. Because the costs associated with the network upgrades compose the entirety of the Dedicated Facilities Charge, Entergy states that it has eliminated the Dedicated Facilities Charge as of the date of the June 11 Order.¹⁴

III. Notice and Responsive Pleadings

7. Notice of Entergy's compliance filing was published in the *Federal Register*, 72 Fed. Reg. 45,026 (2007), with interventions or protests due on or before August 16, 2007. MDEA filed a timely protest. Entergy filed an answer on August 31, 2007.

8. MDEA protests Entergy's failure to include interest on refunds calculated for period 2 from July 4, 2004 through October 4, 2005 from the date that such refunds accrued to the date they were paid by Entergy.¹⁵ MDEA acknowledges that Entergy complied with the June 11 Order by refunding the Dedicated Facilities Charge billed to

¹² *Entergy Services, Inc.*, Docket No. ER07-1145-000 (August 23, 2007) (unpublished letter order).

¹³ July 26 Report at 2.

¹⁴ Entergy also explains that it is in the process of determining how much of the Dedicated Facilities Charges relates to the metering facilities (*i.e.*, the direct assignment facilities that are not eligible for credits). Entergy states that it will work with MDEA to determine the cost of the metering facilities and reserves its right to bill MDEA separately for any metering costs to the extent necessary.

¹⁵ MDEA protest at 1.

MDEA during period 2 while not refunding the Dedicated Facilities Charge billed to MDEA during period 3. However, MDEA argues that Entergy inappropriately suspended the calculation of interest during period 3 that is attributable to interest refund obligations that arose during period 2.¹⁶ It explains that, for period 3, Entergy's refund calculations suspend not only the Dedicated Facilities Charge refunds that would have accrued during period 3 but also the accrual of interest on the Dedicated Facilities Charge on refunds that are attributable to period 2.¹⁷ MDEA states that the suspension of refunds during period 3 is consistent with the June 11 Order, but the suspension of interest on refund obligations that arose during period 2 is not. It explains that the interest at issue relates to refund obligations that arose during period 2 and remained unpaid until after the June 11 Order, as distinct from refund obligations (and related interest) that would have accrued during period 3 but for the limitation in FPA section 206.¹⁸

9. MDEA also argues that Entergy's July 26 Report does not include any information regarding refunds or an accounting for interest on credits for Optional System Upgrades. MDEA states that Entergy should submit calculations providing for interest on the credits for Optional System Upgrades and make any appropriate refunds.

10. In response, Entergy states that it properly calculated the interest due to MDEA. It asserts that MDEA completely ignores paragraph 40 of the June 11 Order, which states:

Credits are to be calculated as follows: For the period from commercial operation until July 4, 2004, any credits that would have been earned are not recoverable, and interest on those credits will not be paid. From July 4, 2004, through and including October 4, 2005, the credits earned are recoverable, and Entergy must pay Complainants credits for this period with interest, as discussed above. *From the end of the 15-month refund effective period until the date of the Commission order, any credits that would have been earned are not recoverable, and interest on those credits would also not be paid.*¹⁹

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 3 (comparing to *ExxonMobil Corp. v. Entergy Services, Inc.*, 120 FERC ¶ 61,051 (2007) (*ExxonMobil*)).

¹⁹ Entergy answer at 2 (emphasis added in answer).

11. Entergy states that, in calculating the interest amount, it first computed interest from July 4, 2004 through October 4, 2005 (*i.e.*, during period 2), which is \$41,270. Entergy did not calculate any interest for period 3 from the end of the 15-month refund effective period until the date of the Commission's June 11 Order (October 5, 2005 through June 11, 2007). Entergy resumed the interest calculation on June 12, 2007 through the date of the payment, which is \$14,749, bringing the total interest calculation to \$52,862.²⁰

12. Entergy states that, in *ExxonMobil*, the Commission addressed the exact same issue. There, it states, the Commission found that "Entergy has complied with our instructions by deducting the amount of interest due on the transmission credits for the period from July 16, 2005 through January 19, 2007 (the period from the end of the refund effective period to the date of the Commission's order)."²¹ Thus, Entergy asserts, it performed the same interest calculation here as in *ExxonMobil* and complied with the interest calculation directives in the June 11 Order.

13. Entergy also argues that, contrary to MDEA's allegations, it is not seeking to eliminate interest for Optional System Upgrades. Entergy states that the interest on the Optional System Upgrades totals \$334,378, and that the interest was calculated in the same manner as the calculation of interest for the Dedicated Facilities Charge. Further, it explains that credits reflecting the interest in the amount of \$334,378 on the Optional System Upgrades were added to MDEA's credit balance.²² As a result, Entergy states, MDEA's credit balance as of August 31, 2007 totals \$2,909,317.84. Finally, Entergy states that any and all outstanding credits and interest owed by Entergy to MDEA will be refunded on a going-forward basis as transmission service is utilized by MDEA.

IV. Discussion

A. Procedural Matters

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²³ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer to MDEA's protest because it has provided information that assisted us in our decision-making process.

²⁰ *Id.*

²¹ *Id.* at 3 (*citing ExxonMobil*, 120 FERC ¶ 61,051 at P 21).

²² *Id.* at Exhibit A.

²³ 18 C.F.R. § 385.213(a)(2) (2007).

B. Commission Determination

15. We will reject MDEA's argument that Entergy is not in compliance with the June 11 Order because Entergy has not paid interest in period 3 (October 5, 2005 through June 11, 2007) for refunds incurred during period 2. Rather, we find that Entergy's July 26 Report is consistent with our directives in the June 11 Order and we will accept it. As noted by Entergy, in the June 11 Order, the Commission explained that any credits that would have been earned from the end of the 15-month refund effective period until the date of the Commission order (*i.e.*, during period 3) are not recoverable, and interest on those credits would also not be paid.²⁴ Further, we explained that "for previously approved rates on file such as this one, [our rule against retroactive ratemaking] forbids us from ordering retroactive rate changes; we cannot order a utility to give back to a customer money the utility has already collected under the rate on file."²⁵ We also stated "this filed rate doctrine does not mean that the utility is entitled to continue charging a transmission rate that is contrary to Commission policy."²⁶ Thus, MDEA is mistaken that interest is earned during period 3 for credits used during period 2.

16. Entergy's July 26 Report contains a detailed accounting of how Entergy calculated refunds (including interest) during the appropriate refund periods. Entergy properly deducted the amount of interest due on the transmission credits for the period from October 5, 2005 through June 11, 2007 (*i.e.*, the period from the end of the refund effective period to the date of the Commission's order). Thus, because neither credits nor interest should be paid to MDEA for period 3, we find that Entergy is in compliance with the Commission's directives in the June 11 Order.

17. We are also satisfied that Entergy's explanation of its calculation of interest for the Optional System Upgrades is consistent with the June 11 Order.²⁷ Entergy's August 31, 2007 response, at Attachment A, contains a detailed report of how Entergy calculated the interest for the Optional System Upgrades during period 2 and prospectively from the date of the June 11 Order. We note that MDEA has not contested Entergy's calculations. Therefore, we will accept them.

²⁴ June 11 Order, 119 FERC ¶ 61,269 at P 40.

²⁵ *Id.* at P 31.

²⁶ *Id.*

²⁷ *Id.* at P 43 (*citing Pacific Gas and Electric Company*, 117 FERC ¶ 61,294, at P 56-59 (2006)).

The Commission orders:

Entergy's July 26 Report is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.