

137 FERC ¶ 61,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Louisiana Public Service Commission

Docket No. EL01-88-008

v.

Entergy Services, Inc.

ORDER DISMISSING REHEARING

(Issued October 20, 2011)

1. On January 19, 2010, the Louisiana Public Service Commission (Louisiana Commission) and Occidental Chemical Corporation (Occidental) requested rehearing of a Commission order¹ on partial remand in this proceeding that deferred action on a remand² from the United States Court of Appeals for the District of Columbia Circuit. The D.C. Circuit remand concerned the effective date for, and refunds under, a bandwidth remedy ordered by the Commission³ to restore rough production cost equalization among Entergy Corporation's six Operating Companies.⁴ For the reasons discussed below, the request for rehearing is dismissed.

¹ *Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc.*, 129 FERC ¶ 61,238 (2009) (Order on Partial Remand).

² *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

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

⁴ The five Operating Companies involved in this proceeding are, at the relevant times for filing pursuant to the first bandwidth calculation: Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana LLC (Entergy Louisiana), Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy New Orleans). In 2007, Entergy Gulf States was split into Entergy Texas, Inc.

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Background

2. In response to a petition for review of the Commission's orders issued earlier in this proceeding,⁵ the United States Court of Appeals for the District of Columbia Circuit, on April 15, 2008, issued an order remanding the matter in part to the Commission for further proceedings.⁶ 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 had not provided a sufficient rationale for denying refunds in the circumstances of this case. Also at issue was whether the Commission impermissibly delayed the implementation of the bandwidth remedy. The court found that the Commission had not presented a reasonable explanation for its decision to delay implementation of the bandwidth remedy, and accordingly granted the Louisiana Commission's petition for review and remanded the issue for further proceedings.

3. On December 19, 2009, the Commission issued the Order on Partial Remand, which deferred action until a paper hearing on similar refund issues in Docket Nos. EL00-66-013 and EL95-33-009 (Opinion No. 468 Proceeding⁷) was completed. On August 13, 2010, the Commission issued an order that addressed the paper hearing in the Opinion No. 468 Proceeding.⁸ Subsequently, on October 20, 2011, in an order issued concurrently with the instant order, the Commission issued its order on remand in this proceeding.⁹

and Entergy Gulf States Louisiana, LLC, which subsequently serve load in their respective states, but that reorganization is not relevant to this proceeding, which pertains to the 2006 bandwidth payment.

⁵ Opinion No. 480, 111 FERC ¶ 61,311, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282, *aff'd in part and remanded in part, sub nom. Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁶ *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁷ See *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004), *reh'g denied*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005).

⁸ *Louisiana Pub. Serv. Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, 132 FERC ¶ 61,133 (2010), *order granting reh'g in part and denying reh'g in part*, 135 FERC ¶ 61,218 (2011).

⁹ *Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc.*, 137 FERC ¶ 61,047 (2011) (Order on Remand). In the Order on Remand, the Commission invoked its equitable discretion to deny refunds for the 15-month refund period, but the Commission
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Requests for Rehearing

4. The Louisiana Commission and Occidental¹⁰ request rehearing of the Order on Partial Remand. They argue that deferring action on the court's remand until the Opinion No. 468 Proceeding is resolved impermissibly delays the remedy in this proceeding. They contend that, when the Commission finds a rate unjust and unreasonable, it may not leave that unlawful rate in place by delaying a remedy. The Louisiana Commission and Occidental argue that the FPA requires an immediate remedy for unjust and unreasonable rates. The Louisiana Commission and Occidental further contend that relevant precedent establishes that the Commission has a legal duty to impose a remedy for unduly discriminatory rates as promptly as possible.¹¹ They conclude that the court's remand, the FPA, and applicable precedent all leave no discretion to this Commission to further delay the remedy's implementation. They contend that the Commission should implement its remedy as of June 1, 2005.

Commission Determination

5. Subsequent to the filing of the request for rehearing, on October 20, 2011, the Commission issued the Order on Remand in this proceeding. In that order, the Commission, as relevant here, adjusted the remedy's effective date to June 1, 2005, thereby requiring a bandwidth calculation for the seven-month period from June 1, 2005 through December 31, 2005.¹² Because the Commission has addressed the court's remand with respect to the effective date, the Louisiana Commission and Occidental's

subsequently has held that ruling in abeyance pending the resolution of a paper hearing established in *Louisiana Pub. Serv. Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, 137 FERC ¶ 61,018 (2011). In the order on remand, the Commission also found that, consistent with the court's findings on the effective date, the remedy previously ordered by the Commission, i.e., the implementation of the bandwidth formula, should take effect June 1, 2005, the date that the Commission found that the Entergy System's rates were unjust, unreasonable and unduly discriminatory, rather than beginning January 1, 2006, the date that the Commission had earlier ordered.

¹⁰ Rehearing was also requested by Union Electric Company (Union Electric). However, a request for late intervention by Union Electric was rejected in the Order on Remand. Order on Remand, 137 FERC ¶ 61,047, at P 26. Accordingly, Union Electric's request for rehearing does not lie because Union Electric is not a party to this proceeding.

¹¹ Louisiana Commission and Occidental Request for Rehearing at 12 (citing, e.g., *Tennessee Valley Mun. Gas Ass'n v. FPC*, 470 F.2d 446, 453 (D.C. Cir. 1972).

¹² Order on Remand, 137 FERC ¶ 61,047.

arguments that the Commission may not defer action on the court's remand are now moot. Accordingly, the request for rehearing is dismissed.

The Commission orders:

The request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.