

149 FERC ¶ 61,246
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Louisiana Public Service Commission

Docket No. EL11-65-001

v.

Entergy Corporation
Entergy Services, Inc.
Entergy Louisiana, LLC
Entergy Arkansas, Inc.
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Gulf States Louisiana, L.L.C.
Entergy Texas, Inc.

ORDER DENYING REHEARING

(Issued December 18, 2014)

1. On June 6, 2012, the Louisiana Public Service Commission (Louisiana Commission) requested rehearing of an order¹ denying in part a complaint filed by the Louisiana Commission under section 206 of the Federal Power Act (FPA)² against Entergy Corporation, Entergy Services, Inc. and the Entergy Operating Companies (Operating Companies)³ (collectively, Entergy). In the May 7 Order, the Commission

¹ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 139 FERC ¶ 61,102 (2012) (May 7 Order).

² 16 U.S.C. § 824e (2012).

³ Prior to 2007, the Operating Companies were Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. At the end of 2007, Entergy Gulf States, Inc. was split into Entergy Texas, Inc. and Entergy Gulf States Louisiana, L.L.C..

denied the Louisiana Commission's request seeking a ruling that the out-of-period expenses and revenues for refunds and surcharges required under the Commission's interruptible load decisions in Docket No. EL00-66 must be removed from the annual bandwidth remedy calculations under Service Schedule MSS-3 of the Entergy System Agreement (System Agreement) for bandwidth calculations performed for calendar years 2007 and 2008. Instead the Commission found that Service Schedule MSS-3 does not provide for the exclusion of out-of-period revenues and expenses. The Commission also ruled that a request by the Louisiana Commission for relief for potential future refunds concerning interruptible loads in Docket No. EL00-66-017 was premature. The Commission held that part of the complaint in abeyance pending the outcome of the paper hearing in Docket No. EL00-66-017. The Louisiana Commission requests rehearing of the Commission's rulings. For the reasons discussed below, we deny the Louisiana Commission's request for rehearing and we will continue to hold in abeyance the Louisiana Commission's request for prospective relief for potential refunds associated with Docket No. EL00-66-017.

I. Background

A. Procedural Background

2. A detailed procedural history of this proceeding is provided in the May 7 Order.⁴ Briefly, in 1995, the Louisiana Commission filed a complaint against Entergy in Docket No. EL95-33-000 alleging that, due to changed circumstances, the allocation of capacity costs on Entergy's system had become unjust and unreasonable. It argued that the System Agreement should be changed to exclude interruptible load from the calculation of peak load responsibility used to allocate capacity costs because Entergy's system was not designed or built to serve interruptible loads during peak periods. While the Commission initially dismissed the complaint, it subsequently established hearing procedures, consolidated the proceeding with related proceedings in Docket Nos. ER00-2854-000 and EL00-66-000, and ultimately issued Opinion Nos. 468 and 468-A.⁵ The Commission found that Entergy should exclude interruptible load from the computation of peak load responsibility used for allocating costs and revenues in Service Schedules MSS-1 (Reserve Equalization) and MSS-5 (Distribution of Revenue from Sales Made for

⁴ See May 7 Order, 139 FERC ¶ 61,102 at PP 3-12.

⁵ *La. Pub. Serv. Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004), *reh'g denied*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005).

the Joint Account of All Companies) of the System Agreement, and costs associated with joint account purchases.

3. Subsequently, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued an opinion remanding to the Commission the finding in Opinion Nos. 468 and 468-A that Entergy was required to remove interruptible load from the computation of peak load responsibility in calculating charges for the Entergy System over a 12-month phase-in period starting on April 1, 2004.⁶ The court found that interruptible load should be removed immediately starting on April 1, 2004. The court also rejected the Commission's argument that it was prohibited by FPA section 206(c)⁷ from ordering refunds for the refund effective period in 1995-1996, and remanded the refund issue to the Commission for further consideration.⁸ In an order on remand, the Commission directed Entergy to remove interruptible load from the computation of charges for the Entergy System starting on April 1, 2004 and refund to Entergy Louisiana's customers an amount reflecting the difference between what Entergy had charged based on Opinion Nos. 468 and 468-A and what it would have charged had Entergy immediately removed all interruptible load from the computation of peak load responsibility starting on April 1, 2004. The Commission also ordered refunds for the 15-month refund effective period in 1995-1996.⁹ Subsequently, Entergy calculated the refunds and surcharges associated with the immediate removal of interruptible load starting on April 1, 2004 and reflected those amounts through its Intra System Bill in 2007, and calculated the refunds and surcharges associated with the 15-month period (1995-96) and reflected those amounts through its Intra System Bill in 2008. The Commission subsequently reconsidered and reversed the Remand Order's direction to provide refunds for the 15-month refund period in 1995-1996.¹⁰ Before addressing the merits of the rehearing requests related to the Remand Order, on October 6, 2011, the Commission established a paper hearing in Docket No. EL00-66-017,¹¹ to review briefs

⁶ *La. Pub. Serv. Comm'n v. FERC*, 482 F.3d 510 (D.C. Cir. 2007).

⁷ 16 U.S.C. § 824e(c).

⁸ *La. Pub. Serv. Comm'n v. FERC*, 482 F.3d at 516.

⁹ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 120 FERC ¶ 61,241 (2007) (Remand Order), *reh'g denied*, 124 FERC ¶ 61,275 (2008).

¹⁰ *La. Pub. Serv. Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, 135 FERC ¶ 61,218, at PP 20-25 (2011).

¹¹ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 137 FERC ¶ 61,018 (2011).

and reply briefs from the parties before reaching a final decision on whether to impose refunds for the 15-month period.

4. In addition, in response to a separate complaint filed by the Louisiana Commission in Docket No. EL01-88-000, the Commission issued Opinion Nos. 480 and 480-A,¹² finding that rough production cost equalization had been disrupted on the Entergy System and approving a numerical bandwidth of +/- 11 percent of the Entergy System average production cost to restore the rough equalization of production costs among the Operating Companies.¹³ The Commission stated that the bandwidth would be implemented prospectively and would be effective beginning in calendar year 2006, and that any equalization payments would be made beginning in 2007 after the full calendar year of data for 2006 became available.¹⁴ Entergy is required, by June 1 of each year, to make a compliance filing implementing the bandwidth formula using the prior calendar year's production costs.¹⁵

¹² *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006) (Compliance Order), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011), *order on reh'g*, 146 FERC ¶ 61,152, *order on compliance*, 146 FERC ¶ 61,153 (2014).

¹³ Opinion No. 480, 111 FERC ¶ 61,311 at PP 1, 145, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 at PP 15, 46.

¹⁴ Opinion No. 480-A, 113 FERC ¶ 61,282 at PP 53-54; *Entergy Servs., Inc.*, 117 FERC ¶ 61,203, at P 43 (2006).

¹⁵ Entergy has submitted annual bandwidth filings each year starting with its first annual bandwidth filing in 2007 (based on calendar year 2006 data) and most recently in 2014 its eighth bandwidth filing (based on calendar year 2013 data). As detailed in the May 7 Order, the Commission set the first, second, and third annual bandwidth filings for hearing and issued opinions on exceptions to initial decisions in those proceedings. The Commission has also set for hearing the fourth, fifth, sixth, and seventh bandwidth filings. The hearing on the fourth annual bandwidth filing was conducted in March 2014 and an initial decision was recently issued in that proceeding. *Entergy Services, Inc.*, 148 FERC ¶ 63,015 (2014). The Commission held the hearings on the fifth, sixth, and seventh annual bandwidth filings in abeyance pending action on the annual updates from prior years in order to prevent the re-litigation of issues that are the subject of other proceedings pending before the Commission. The Commission is concurrently issuing

(continued ...)

5. Entergy's re-billings for interruptible load refunds and credits affected the revenues the Operating Companies recorded in FERC Account 447 and the purchased power expenses recorded in FERC Account 555¹⁶ used in the inputs to the bandwidth formula in the 2007 and 2008 bandwidth test years.¹⁷ In the 2008 bandwidth calculation filing, which was based on 2007 test year data, Entergy included accounting entries for interruptible load refunds and surcharges that related to the years 2004-05, but which took place in 2007 pursuant to the Commission's interruptible load decisions. Entergy's 2009 bandwidth calculation filing was based on 2008 test year data, and this calculation included refunds and surcharges that related to the years 1995-96 that were required to take place in 2008 pursuant to the Commission's interruptible load decisions.¹⁸ In the 2009 bandwidth proceeding, the Louisiana Commission asked the Commission to exclude the out-of-period revenues and expenses on the grounds that such exclusion would lead to a more reasonable result. In an opinion issued in May 2012 addressing Entergy's third annual bandwidth filing, the Commission affirmed the presiding judge's ruling that Service Schedule MSS-3 does not provide for the exclusion of out-of-period

orders setting the eighth bandwidth filing for hearing and reinstating hearing procedures previously held in abeyance on issues concerning the fifth, sixth, and seventh annual bandwidth filings, reinstating hearing procedures previously held in abeyance addressing a complaint filed by the Louisiana Commission in May 2010 against Entergy concerning the existing bandwidth formula, and consolidating all of these proceedings for the purpose of hearing and settlement judge procedures. *See La. Pub. Serv. Comm'n*, 149 FERC ¶ 61,244 (2014) and *La. Pub. Serv. Comm'n*, 149 FERC ¶ 61,245 (2014).

¹⁶ *See* Entergy System Agreement, § 30.12. ("PURP = Purchased Power Expense Recorded in FERC Account 555, but excluding payments made pursuant to Section 30.09(d) of this Service Schedule" and "RC = Revenue Credits resulting from revenue received from customers outside the Company's Net Area for Production Service recorded in FERC Account 447, but excluding receipts received pursuant to Section 30.09(d) of this Service Schedule").

¹⁷ Complaint, Affidavit of Lane Kollen at 4.

¹⁸ The refunds and surcharges were ordered pursuant to Commission orders on remand issued in Docket No. EL00-66. *See* Remand Order, 120 FERC ¶ 61,241. The refunds for the 1995-96 period were subsequently denied. *La. Pub. Serv. Comm'n and the Council of the City of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211 (2013) (Refund Order).

revenues and expenses and that any change to the bandwidth formula must be made through an FPA section 205 or 206 proceeding.¹⁹

B. The May 7 Order

6. In the May 7 Order, the Commission addressed a complaint filed by the Louisiana Commission seeking a ruling that out-of-period expenses and revenues for refunds and surcharges required in 2007 and 2008 under the Commission's interruptible load decisions in Docket No. EL00-66, but relating to the period prior to the institution of the bandwidth remedy in 2006, must be removed from the annual bandwidth remedy calculations for test years 2007 and 2008. The Louisiana Commission argued that this was necessary because the inclusion of these costs and revenues would distort the rough production cost equalization calculation for the 2007 and 2008 test years and render the resulting rates unjust and unreasonable. The Louisiana Commission also sought relief for potential future refunds and surcharges that may be ordered in the interruptible load proceeding pending in Docket No. EL00-66-017.

7. The Commission denied the complaint to the extent it sought retroactive relief for past refunds and surcharges, finding that the Louisiana Commission sought a modification to the Service Schedule MSS-3 bandwidth formula that is not permitted retroactively under FPA section 206.²⁰ The Commission stated that the bandwidth formula does not provide for the exclusion of out-of-period revenues and expenses. The Commission explained that because Service Schedule MSS-3 requires the use of actual costs recorded by each Operating Company on its FERC Form 1 for the previous year, where the actual costs properly recorded on the FERC Form 1s include out-of-period expenses and revenues, those expenses and revenues are properly included in the annual bandwidth calculation.²¹

8. With regard to relief for potential future refunds that might result from the interruptible load proceeding in Docket No. EL00-66-017, the Commission concluded that it was premature at that time to act on the complaint as it relates to such refunds and

¹⁹ *Entergy Serv. Inc.*, Opinion No. 518, 139 FERC ¶ 61,105, at PP 22-25 (2011), *order on reh'g*, 145 FERC ¶ 61,047 (2013), *aff'd*, *La. Pub. Serv. Comm'n v. FERC*, 771 F.3d 903 (2014).

²⁰ May 7 Order, 139 FERC ¶ 61,102 at P 26.

²¹ *Id.*

surcharges. The Commission held that part of the complaint in abeyance pending the outcome of the paper hearing in Docket No. EL00-66-017.²²

II. Request for Rehearing

9. The Louisiana Commission argues that out-of-period costs should not be included in the annual bandwidth calculation. It contends that the inclusion of out-of-period revenues and expenses for interruptible load refunds and surcharges conflicts with the purpose of the tariff, because it precludes the equalization of production costs to the +/- 11 percent levels in the applicable test years.²³ The Louisiana Commission contends that the Commission ruled in a prior order that out-of-period costs should be excluded from the bandwidth calculation. Specifically, the Louisiana Commission states that the Commission found in an Opinion No. 480 compliance order that annual bandwidth payments based on the prior test year should not be included in an Operating Company's production costs when performing the annual bandwidth calculation (for example, payments made in 2010 to address the 2009 bandwidth calculation should not be included in an Operating Company's 2010 production costs).²⁴

10. The Louisiana Commission notes that Entergy failed to remove out-of-period revenues and expenses pertaining to interruptible loads in its 2008 and 2009 bandwidth filings. The Louisiana Commission states that in test year 2007, there were revisions to the bandwidth calculation associated with removing interruptible load from each Operating Company's responsibility ratio for 2004-05. It further explains that in 2008, similar revisions were made for 1995-96. The Louisiana Commission explains that these revisions resulted from refunds ordered in the interruptible load proceeding in Docket No. EL00-66.²⁵ The Louisiana Commission contends that the result of these adjustments in 2007 was to improperly increase the production costs for Entergy Arkansas, Entergy Gulf States, Entergy Mississippi, and Entergy New Orleans, and to improperly reduce the production costs for Entergy Louisiana for the test year. It contends that the effect of the adjustment for 2008 was to improperly increase the production costs of Entergy

²² *Id.* P 28.

²³ Louisiana Commission Request for Rehearing at 9.

²⁴ *Id.* at 10 (citing Compliance Order, 117 FERC ¶ 61,203 at P 42).

²⁵ *Id.* at 11 (citing *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 106 FERC ¶ 61,228 (2004), *reh'g denied*, 111 FERC ¶ 61,080 (2005) and *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 120 FERC ¶ 61,241 (2007), *reh'g denied*, 124 FERC ¶ 61,275 (2008)).

Arkansas, Entergy Mississippi, and Entergy New Orleans, and to improperly reduce the production costs of Entergy Louisiana, Entergy Gulf States Louisiana and Entergy Texas.²⁶

11. The Louisiana Commission argues that including these out-of-period costs pertaining to interruptible loads in the bandwidth calculation reverses the effect of the prior orders that ordered refunds be paid to Entergy Louisiana. It explains that, hypothetically, if an interruptible load refund order were to require a \$10 payment from Entergy Arkansas to Entergy Louisiana, and Entergy Arkansas were to include that \$10 in its production costs for bandwidth purposes in the same year, it would eliminate a \$10 bandwidth payment.²⁷ The Louisiana Commission argues that because the interruptible load refund orders were issued to make rates just and reasonable for the refund periods in 1995-96 and 2004-05, the application of the bandwidth formula to reverse those refunds cannot be just and reasonable.

12. The Louisiana Commission argues that the May 7 Order precludes a challenge to unjust and unreasonable cost inputs to the bandwidth formula, in violation of applicable precedent and in violation of the FPA, and denies the Louisiana Commission a remedy. The Louisiana Commission further contends that these costs are always subject to review in a section 206 case if the utility is not required to demonstrate their reasonableness when the rates change.²⁸ It contends that because the Commission has refused to review the reasonableness of cost inputs in the annual bandwidth filings, those inputs may be reviewed in a section 206 case. The Louisiana Commission contends that Entergy should be required to remove out-of-period interruptible load refunds and surcharges from the 2007 and 2008 test years and recalculate the payments and receipts due in 2008 and 2009. The Louisiana Commission argues that because the Commission has approved only the bandwidth formula and not the cost inputs into the formula, retrospective relief may be granted without violating the rule against retroactive ratemaking.

13. The Louisiana Commission points to several cases to support its position. It argues that in *American Electric Power Service Corp.*,²⁹ the Commission held that, under formula rates, parties have the right to challenge the inputs to or the implementations of

²⁶ *Id.* at 12.

²⁷ *Id.*

²⁸ *Id.* at 2.

²⁹ 124 FERC ¶ 61,306 (2008) (*AEP*).

the formula at whatever time they discover errors in inputs to the formula.³⁰ The Louisiana Commission disagrees with the Commission's finding in the May 7 Order that *AEP* is inapplicable to the facts in this case, contending that *AEP* allows challenges to any improper cost input.³¹ The Louisiana Commission adds that in *North Carolina Electric Membership Cooperative*,³² the Commission allowed a complaint challenging the prudence of costs flowed through a fuel clause formula rate where the utility did not misapply or charge a rate contrary to the fuel clause. The Louisiana Commission argues that the prudence of the actual costs was challenged, and the Commission allowed a retrospective look at the cost inputs.

14. The Louisiana Commission argues that the D.C. Circuit approved this approach in *Public Utilities Comm'n of the State of California v. FERC*.³³ It explains that in that case, the petitioner argued that, in order to protect consumers, an independent system operator should be required to make a new section 205 filing to secure approval of the pass-through of costs incurred under new contracts. The Louisiana Commission notes that the court rejected that argument, and instead accepted the Commission's explanation that full retrospective relief could be granted in a section 206 case.³⁴

III. Commission Determination

15. The request for rehearing is denied. As the Commission found in Opinion No. 518 (addressing the 2009 bandwidth proceeding), the bandwidth formula contained in Service Schedule MSS-3 of the System Agreement, which requires the use of revenues and expenses recorded in the FERC Form 1's applicable accounts for each test year, as specified by variables PURP and RC, does not provide for the exclusion of out-of-period costs.³⁵ The Commission upheld this ruling on rehearing, finding that the Louisiana Commission could point to no provision of the bandwidth formula that excludes out-of-

³⁰ *Id.* P 35.

³¹ Louisiana Commission Request for Rehearing at 14.

³² 57 FERC ¶ 61,332 (1991) (*North Carolina*).

³³ 254 F.3d 250 (D.C. Cir. 2001).

³⁴ Louisiana Commission Request for Rehearing at 15 (citing *Public Utilities Comm'n of the State of Cal. v. FERC*, 254 F.3d 250 at 258).

³⁵ Opinion No. 518, 139 FERC ¶ 61,105 at P 43.

period costs³⁶ and the United States Court of Appeals for the Fifth Circuit (Fifth Circuit) recently denied the Louisiana Commission's petition for review of Opinion No. 518.³⁷ The Louisiana Commission has failed to raise any new arguments that would lead us to reconsider that determination.

16. In addition, the Louisiana Commission incorrectly asserts that a prior compliance order provides support for the exclusion of out-of-period costs. In that proceeding, the Commission rejected the Arkansas Public Service Commission's argument that an individual Operating Company's bandwidth payments for a particular year should be included in that Operating Company's production cost calculations in the next year's calculation. The Commission found that such an approach would lead to the possibility that payments could be skipped every other year.³⁸ The Commission found that an Operating Company's bandwidth payment obligation in the second year could be "reduced or canceled out entirely," which would "defeat the purpose of rough production cost equalization."³⁹ The Commission's holding was limited to the issue of how to treat an Operating Company's annual bandwidth payments in the bandwidth calculation for the following year. Further, the bandwidth formula expressly excludes prior-year bandwidth payments and receipts from being included in the bandwidth calculation, unlike the out-of-period revenues/expenses at issue here.⁴⁰

17. Accordingly, the amounts at issue pertaining to interruptible loads were properly recorded in accounts used in the bandwidth formula, and Entergy was required to use them when making the annual bandwidth calculations.

18. We disagree that the cases cited by the Louisiana Commission support its arguments in favor of retroactive refunds. As the Commission explained in the May 7 Order, the kinds of challenges to inputs contemplated by *AEP* and by *North Carolina*,

³⁶ *Entergy Servs., Inc.*, 145 FERC ¶ 61,047 at P 40.

³⁷ *La. Pub. Serv. Comm'n v. FERC*, 771 F.3d 903 (2014).

³⁸ Compliance Order, 117 FERC ¶ 61,203 at P 42.

³⁹ *Id.*

⁴⁰ See Entergy System Agreement, § 30.12. The PURP variable (purchased power expense) and the RC variable (revenue credits) in § 30.12 exclude receipts and payments, respectively, required to maintain rough production cost equalization pursuant to § 30.9(d) of Service Schedule MSS-3.

such as input challenges or implementation challenges, are not applicable here.⁴¹ As previously explained, the issue here does not involve an error in implementing the bandwidth formula for the 2007 and 2008 test years or Entergy having included an expense that the Commission had not previously reviewed for justness and reasonableness, for which retroactive refunds are allowed. Instead, the interruptible load refunds and surcharges “were required by the Commission as part of the just and reasonable rate adopted under section 206 in the interruptible load proceeding,”⁴² were properly reported in the appropriate accounts in the FERC Form 1, and were properly included in the bandwidth calculation per the definitions of variables PURP and RC.

19. As the Commission found in the May 7 Order, the relief sought by the Louisiana Commission involves a challenge to the bandwidth formula itself (and specifically the definitions of variables PURP and RC), for which retroactive relief is not available under section 206 of the FPA. Contrary to the Louisiana Commission’s arguments, in the May 7 Order, the Commission did not preclude a challenge to, or remedy for, unjust and unreasonable cost inputs to the bandwidth formula, but only found that where such a challenge amounts to a challenge to the formula itself, and the relief sought requires modification to the formula, such relief is only available prospectively from the filing of a complaint, per the requirements of section 206 of the FPA.

20. With regard to the Commission’s determination in the May 7 Order to hold in abeyance the Louisiana Commission’s request for relief for future refunds that might result from the interruptible load proceeding in Docket No. EL00-66-017 pending the outcome of the paper hearing in that subdocket,⁴³ we note that the Commission order that resulted from the paper hearing reaffirmed its prior decision and did not order refunds.⁴⁴ In its Complaint, with respect to the treatment of future refunds, the Louisiana Commission stated that if the Commission reaffirms its decision reversing the refunds, the reversal should be reflected for the bandwidth in the 2008 test year, when refunds and

⁴¹ Nor is the Louisiana Commission’s position supported by the other cases it cited, such as *La. Pub. Serv. Comm’n v. FERC*, 522 F.3d 378 and *Public Utilities Comm’n of the State of Cal.*, 254 F.3d 250, which include language that inaccurate or unjust and unreasonable costs in formula rates may be corrected through an audit, investigation, or section 206 proceeding.

⁴² May 7 Order, 139 FERC ¶ 61,102 at P 27.

⁴³ *See supra* P 8.

⁴⁴ *La. Pub. Serv. Comm’n and the Council of the City of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211.

surcharges were first reflected, to ensure a proper matching of the initial billings and reversals in the bandwidth calculation.⁴⁵ On July 20, 2011 Entergy filed an amended refund report in Docket No. EL00-66-012 to reflect the reversal of the interruptible load payments and receipts (refunds for the 15-month period) through the Intra System Bill that occurred in July 2011. We deny the Louisiana Commission's request to modify the bandwidth calculations for the 2008 test year to reflect the reversal of the refunds and surcharges that were originally billed in 2008. The reversal was billed in 2011 and therefore should be reflected in the actual costs booked in 2011. Reflecting the reversal in the bandwidth calculations for the 2008 test year would require modification to the bandwidth formula, for which retroactive relief is not available under section 206 of the FPA. Instead, the reversal should be reflected in the bandwidth calculation for the 2011 test year in Docket No. ER12-1920-000.

21. In addition, the Louisiana Commission requests that, if the Commission reinstates refunds and surcharges on rehearing of its decision reversing the refund requirement, it ensure that those additional refunds are not reflected in the bandwidth calculations for the test year in which the refunds are made. We note that on December 5, 2014, the D.C. Circuit issued an opinion remanding to the Commission the Refund Order, which was the order that denied refunds for the 1995-96 period.⁴⁶ In light of this recent remand, we will continue to hold in abeyance the Louisiana Commission's request for prospective relief for refunds that might result from the interruptible load proceeding in Docket No. EL00-66-017, pending Commission action on remand of the Refund Order.

The Commission orders:

- (A) The request for rehearing is denied as discussed in the body of this order.

⁴⁵ Louisiana Commission Complaint at 17.

⁴⁶ *La. Pub. Serv. Comm'n v. FERC*, 771 F.3d 903 (2014).

(B) The Louisiana Commission's request for prospective relief for refunds that might result from the interruptible load proceeding in Docket No. EL00-66-017 is held in abeyance, pending Commission action on remand of the Refund Order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.