

156 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER10-1350-006

ORDER ON COMPLIANCE

(Issued September 22, 2016)

1. On February 16, 2016, Entergy Services, Inc. (Entergy) filed a compliance filing as required by Opinion No. 545.¹ Opinion No. 545 addressed rates filed by Entergy on behalf of the Entergy Operating Companies,² implementing for the fourth time the Commission's annual bandwidth remedy as provided for in Opinion Nos. 480 and 480-A.³ That order affirmed in part the Initial Decision in this proceeding,⁴ and required

¹ *Entergy Servs., Inc.*, Opinion No. 545, 153 FERC ¶ 61,303 (2015).

² At the time the Commission issued Opinion Nos. 480 and 480-A, the Operating Companies were Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Louisiana, Inc. (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Gulf States, Inc. (Entergy Gulf States). At the end of 2007, Entergy Gulf States was split into Entergy Texas, Inc. (Entergy Texas) and Entergy Gulf States Louisiana, LLC (Entergy Gulf States Louisiana). Accordingly, the Operating Companies involved with this proceeding are Entergy Arkansas, Entergy Gulf States Louisiana, Entergy Louisiana, Entergy Mississippi, Entergy New Orleans, and Entergy Texas.

³ See *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 44, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, sub nom. *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047, *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152 (2014), *order rejecting compliance filing*, 146 FERC ¶ 61,153 (2014), *order on compliance*, 151 FERC ¶ 61,112 (2015).

that Entergy submit a compliance filing. As discussed below, we accept Entergy's compliance filing, subject to the submission of the subsequent compliance filing required by the order on rehearing of Opinion No. 545,⁵ which is being issued concurrently with this order.

I. Background

2. On May 27, 2010, Entergy made its fourth annual bandwidth filing, implementing the bandwidth remedy for calendar year 2009. On July 23, 2010, the Commission accepted the proposed rates for filing and suspended them for a nominal period, to become effective June 1, 2010, subject to refund.⁶ The Commission also established hearing and settlement judge procedures.⁷ The hearing was held in March 2014 and resulted in the Initial Decision. On December 17, 2015, the Commission issued Opinion No. 545. In Opinion No. 545 the Commission affirmed the Initial Decision with regard to: Entergy Arkansas' accounting for co-owner inventories; the reclassification of casualty loss accumulated deferred income taxes (ADIT) amounts from Account No. 283 to Account No. 282; the proper amortization period for the Waterford 3 sale/leaseback; and the inclusion of storm-restoration contra-securitization accumulated ADIT.⁸ The Commission also directed Entergy Louisiana to revise and refile its FERC Form No. 1s for 2005 through 2009 utilizing a 60-year amortization period for the Waterford 3 sale/leaseback and not the 27.5 year period that was used.⁹ The Commission further ordered Entergy to recalculate the amount of the Waterford 3 sale/leaseback amortization expense that should have been included in the bandwidth calculation for the test years 2005 through 2008 (i.e., the first, second, and third annual bandwidth filings) and to make those refunds, with interest.¹⁰

⁴ *Entergy Servs., Inc.*, 148 FERC ¶ 63,015 (2014) (Initial Decision).

⁵ *Entergy Servs., Inc.*, Opinion No. 545-A, 156 FERC ¶ 61,196 (2016).

⁶ *Entergy Servs., Inc.*, 132 FERC ¶ 61,065, at P 1 (2010).

⁷ *Id.* P 23.

⁸ Opinion No. 545, 153 FERC ¶ 61,303 at PP 53, 79-80, 158-59, 186-89.

⁹ *Id.* P 150.

¹⁰ *Id.*

II. Entergy's Compliance Filing

3. Entergy's compliance filing contains the comprehensive bandwidth recalculation report showing the payment/receipt amounts based on 2009 test year data, including all workpapers. Entergy states that certain of the changes from the May 27, 2010 initial filing are the result of the Commission's orders issued in the first, second, and third annual bandwidth proceedings. Entergy states that, consistent with the orders issued in the first, second, third, and fourth annual bandwidth proceedings, Entergy has performed this recalculation reflecting all of the changes in the methodology used to perform the bandwidth calculations. As pertinent here, Entergy has included interest only with regard to amounts associated with the Waterford 3 sale/leaseback.

III. Notice of Filing and Responsive Pleadings

4. Notice of Entergy's compliance filing was published in the *Federal Register*, 81 Fed. Reg. 9843 (2016), with interventions and protests due on or before March 8, 2016. The Louisiana Public Service Commission (Louisiana Commission) filed a protest. Entergy filed an answer to the Louisiana Commission's protest. The Louisiana Commission filed an answer to Entergy's answer.

5. The Louisiana Commission argues that Entergy should have calculated and provided interest on the refunds on all bandwidth payments for the 2010 bandwidth year, i.e., the fourth bandwidth proceeding. The Louisiana Commission contends that Entergy's calculation is unduly discriminatory. It contends that for the three bandwidth years in which Entergy provided for the payment of interest, Entergy Louisiana is the only Operating Company to make refunds.¹¹ It explains that for the fourth year, the 2010 bandwidth year, in which Entergy did not provide for the payment of interest, Entergy Louisiana is the recipient of the largest share of refunds by a substantial amount. The Louisiana Commission therefore notes that Entergy's compliance filing calls for Entergy Louisiana to pay interest of \$3.8 million, yet denies Entergy Louisiana the \$4.9 million in refunds it would have received for interest in the 2010 bandwidth year.

6. The Louisiana Commission argues that Entergy apparently relies on paragraph 150 of Opinion No. 545, which affirms aspects of the Presiding Judge's ruling requiring refunds for the bandwidth years prior to 2010. It notes that the Commission stated that it agreed with the Presiding Judge that refunds and interest calculated in accordance with section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a, should be required with respect to the correction of Entergy Louisiana's Waterford 3 sale/leaseback amortization expense for those years. The Louisiana Commission argues that because the

¹¹ Louisiana Commission Protest at 2 (citing Entergy Compliance Filing at 9-10).

Initial Decision did not include an interest requirement for all bandwidth year payments, paragraph 150 can only be understood as a reference to the general requirement that interest be paid on refunds in accordance with section 35.19a.

7. The Louisiana Commission also argues that Entergy's calculation of interest also conflicts with the Commission's rulings in the annual bandwidth cases. The Louisiana Commission contends that the Commission has consistently required that interest be paid on bandwidth payments, so that consumers injured by unjust and unreasonable cost allocations can be made whole. It notes that in a recent order, the Commission required that interest be paid on bandwidth payments due for 2005.¹² The Louisiana Commission notes that the Commission has found that the interest requirement is consistent with numerous recent orders regarding interest and the bandwidth formula.¹³

8. Entergy responds that the Louisiana Commission protest does not provide a substantive basis for the rejection of Entergy's compliance filing because it contains no disagreement with regard to any of the quantifications of the adjustments related to Opinion No. 545, or adjustments as a result of other bandwidth-related proceedings. Entergy argues that in Opinion No. 545, the Commission ordered that interest should be calculated and included only with regard to the revision to the amortization period for the Waterford 3 sale/leaseback, and Entergy asserts that this is the calculation that Entergy performed and the calculation that is contained in the compliance filing.¹⁴

9. Entergy disputes the Louisiana Commission's argument that because the Initial Decision did not include an interest requirement, reference to section 35.19a must be a general reference that interest be paid on refunds. It argues that the Commission's directive as to how Entergy was to calculate refunds and interest for the specific issue of Waterford 3 sale/leaseback was straightforward and unambiguous.¹⁵ Entergy also argues that the Louisiana Commission is mistaken in asserting that the Commission has awarded interest in each of the annual bandwidth cases. It notes that in connection with the

¹² Louisiana Commission Protest at 3 (citing *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 153 FERC ¶ 61,033, at P 14 (2015)).

¹³ *Id.* (citing *Entergy Servs., Inc.*, 145 FERC ¶ 61,046, at PP 8-9 (2015)).

¹⁴ Entergy Answer at 4 (citing Opinion No. 545, 153 FERC ¶ 61,303 at P 150).

¹⁵ *Id.* at 5.

third annual bandwidth filing, the Commission did not order inclusion of interest on the recalculated amounts.¹⁶

10. The Louisiana Commission responds that it is not necessary for the Commission to explicitly require interest on 2010 refunds because the Commission's regulations automatically require interest on refunds required under its suspension order. The Louisiana Commission argues that section 35.19(a) provides that a public utility shall refund amounts "found by the Commission in that suspension proceeding not to be justified, together with interest as required in paragraph (a)(2) of this section."¹⁷ It argues that this regulation establishes a default rule that interest is to be included on all refunds required under suspension orders unless the Commission for some reason waives the requirement.

IV. Discussion

A. Procedural Matters

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have assisted us in our decision-making process.

B. Commission Determination

12. We find that Entergy complied with the substantive requirements of Opinion No. 545. However, in the order on rehearing of Opinion No. 545 being issued concurrently with this order, Opinion No. 545-A,¹⁸ the Commission finds that it inadvertently did not include a general requirement to calculate interest on all refunds related to bandwidth payments in this proceeding. Given the significant delay since the June 1, 2010 effective date of the bandwidth payments for the fourth bandwidth filing,¹⁹ the Commission concludes in that order that interest is necessary in order to ensure full

¹⁶ *Id.*

¹⁷ Louisiana Commission Answer at 2.

¹⁸ *See supra* n.5.

¹⁹ *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 at ordering para. (A).

compensation.²⁰ In Opinion No. 545-A, the Commission also requires submission of a compliance filing that: (1) recalculates interest; (2) eliminates any refunds related to the Waterford 3 nuclear plant sale/leaseback for the seven-month period of June 1, 2005 and December 31, 2005; and (3) removes securitized asset Accumulated Deferred Income Tax (ADIT) and contra-securitized asset ADIT from the bandwidth calculation. Accordingly, we accept Entergy's compliance filing, subject to Entergy submitting the subsequent compliance filing required by Opinion No. 545-A that adjusts Entergy's calculations to provide for interest on all bandwidth payments associated with Opinion No. 545, and makes the other adjustments required by Opinion No. 545-A.

The Commission orders:

(A) Entergy's compliance filing is hereby accepted, subject to condition, as discussed in the body of this order.

(B) Entergy is hereby required to make a subsequent compliance filing within 60 days of this order, as discussed in the body of this order and as required by Opinion No. 545-A.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ See *Anadarko Petroleum Corp. v. FERC*, 196 F.3d 1264, 1267 (D.C. Cir. 1999) (“[T]he Commission’s general policy, in effect for many years, requires interest to be paid on various kinds of overcharges.”).