

119 FERC ¶ 61,095  
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.

Louisiana Public Service Commission

Docket Nos. EL01-88-005  
EL01-88-006

v.

Entergy Services, Inc.

ORDER ON REHEARING AND COMPLIANCE

(Issued April 27, 2007)

1. On November 17, 2006, the Commission accepted a compliance filing, as modified, filed by Entergy Services, Inc. (Entergy),<sup>1</sup> as required by Opinion Nos. 480 and 480-A.<sup>2</sup> The compliance filing consisted of amendments to the Entergy System Agreement (System Agreement) for the purpose of, among other things, maintaining rough production cost equalization among the five Entergy Operating Companies (Operating Companies).<sup>3</sup> In this order, with one exception, we deny rehearing of the November 2006 Order. With respect to the issue of refunds among the Operating Companies, we defer action until a further order by the Commission. In addition, we accept a compliance filing, as discussed below.

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<sup>1</sup> *Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006) (November 2006 Order).

<sup>2</sup> *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005) (Opinion No. 480), *aff'd*, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A).

<sup>3</sup> Entergy Arkansas, Inc. (EAI), Entergy Louisiana, LLC (ELL), Entergy Mississippi, Inc. (EMI), Entergy Gulf States, Inc. (EGSI), and Entergy New Orleans, Inc. (ENOI).

## I. Background

2. On June 14, 2001, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint in this docket pursuant to section 206 of the Federal Power Act (FPA).<sup>4</sup> The Louisiana Commission alleged that the System Agreement, a rate schedule that includes various service schedules that govern, among other things, the allocation of certain costs associated with the integrated operations of the Entergy system, no longer operated to produce rough production cost equalization.<sup>5</sup>

3. The Commission set the Louisiana Commission's complaint for hearing, and an Initial Decision held in part that the Entergy system was no longer in rough production cost equalization.<sup>6</sup> The presiding judge ordered that a numerical bandwidth of +/- 5 percent deviation from the system average on a rolling three-year basis coupled with an annual bandwidth of +/- 7.5 percent be applied to restore rough equalization (*i.e.*, when the production costs of one Operating Company are above or below the bandwidth, those costs are shared among the other Operating Companies).

4. On June 1, 2005, the Commission issued Opinion No. 480 affirming in part and reversing in part the Initial Decision. The Commission agreed that rough production cost equalization had been disrupted on the Entergy system, but broadened the bandwidth to

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<sup>4</sup> 16 U.S.C. § 824e (2000).

<sup>5</sup> In Opinion Nos. 234 and 292, the Commission applied a standard of "rough production cost equalization" to determine whether the Unit Power Sales Agreement and System Agreement, when taken together, were just and reasonable and not unduly discriminatory. Parties had argued, among other things, that because the Entergy system is highly integrated and generation facilities are planned and operated for the whole system, production costs among the Operating Companies should be "fully equalized," *i.e.*, shared, among the various Operating Companies. The Commission rejected the Louisiana Commission's proposal that full production cost equalization be adopted, finding that doing so was not necessary to remedy undue discrimination, and found instead that "rough equalization" was sufficient. *See Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305 (1985), *reh'g denied*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985), *aff'd in part sub nom. Mississippi Indus. v. FERC*, 808 F.2d 1525 (D.C. Cir. 1987), *rev'd in part and remanded*, 822 F.2d 1104 (D.C. Cir. 1987) (*per curiam*), *order on remand, System Energy Resources, Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh'g denied*, Opinion No. 292-A, 42 FERC ¶ 61,091 (1998), *aff'd sub nom. City of New Orleans v. FERC*, 875 F.2d 903 (D.C. Cir. 1989).

<sup>6</sup> *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 106 FERC ¶ 63,012 (2004) (Initial Decision).

+/- 11 percent, finding that the narrower bandwidth would result in substantial cost shifting and that the rolling three-year bandwidth would be difficult to implement.<sup>7</sup> The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and clarified in Opinion No. 480-A that any equalization payments would then be made in 2007 after a full calendar year of data became available.<sup>8</sup>

5. On April 10, 2006, Entergy submitted a compliance filing to implement the directives of Opinion Nos. 480 and 480-A into its System Agreement. To do so, Entergy proposed to amend certain provisions of one of the service schedules, Service Schedule MSS-3. In the November 2006 Order, the Commission found that Entergy had properly implemented the +/-11 percent bandwidth remedy and had complied with Opinion Nos. 480 and 480-A. However, to alleviate concerns of protestors that combining the bandwidth function with other functions in Service Schedule MSS-3 would be confusing, the Commission directed Entergy to make transparent and separate the different functions in Service Schedule MSS-3. The Commission also directed Entergy to modify its billing procedure so that the preceding year's bandwidth payments would be made within the next calendar year. The Commission required Entergy to submit these revisions in a compliance filing within 30 days of the date of the order.

6. Requests for rehearing of the November 2006 Order were filed by the Louisiana Commission, the Arkansas Office of the Attorney General (Arkansas AG), the Arkansas Public Service Commission (Arkansas Commission) and Arkansas Electric Energy Consumers, Inc. (AEEC).

7. On December 18, 2006, Entergy filed a compliance filing as required by the November 2006 Order.

## **II. Notice of Filing and Responsive Pleadings**

8. Notice of Entergy's compliance filing was published in the *Federal Register*, 71 Fed. Reg. 78,173 (2006), with comments, protests or interventions due on or before January 17, 2007. The Louisiana Commission filed a one-paragraph protest, stating that it reserves and raises on rehearing herein, to the extent that it proves necessary, all issues that it raised on rehearing and in its Petition for Review of Opinion Nos. 480 and 480-A. The Louisiana Commission states that it believes that all of those issues are now before

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<sup>7</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 138-39.

<sup>8</sup> Opinion No. 480-A, 113 FERC ¶ 61,282 at P 54.

the United States Court of Appeals for the D.C. Circuit for decision, but is reserving those issues if it should be found that on appeal that some or all of those issues are not ripe for review until compliance procedures are final.

### **III. Discussion**

#### **A. Requests for Rehearing**

##### **1. Nature of the System Agreement**

###### **a. November 2006 Order**

9. In the November 2006 Order, the Commission stated that while the Commission seeks to avoid undue rate increases to the customers of those Operating Companies that are below the system average, increases may be necessary due to the nature and history of the Entergy System. The Commission stated that the nature of the System Agreement and Operating Companies' participation in the System Agreement dictate that benefits and burdens specific to each Operating Company have to be balanced with what is appropriate for the system as a whole.

###### **b. Request for Rehearing**

10. AEEC argues that the Commission erred in finding that "an individual operating company under the System Agreement is not guaranteed all of the benefits of its specific generation for an infinite amount of time."<sup>9</sup> AEEC contends that various provisions of the System Agreement provide that the System Agreement will run until such time as the agreement is terminated by the mutual agreement of the parties, and that each company will normally own and operate generating capability to supply the requirements of its own customers.<sup>10</sup> AEEC argues that these provisions demonstrate that the plain intention of the System Agreement is for an Operating Company to receive the benefits of the generation it owns.

11. AEEC argues that the Commission has rewritten the System Agreement that has, on the whole, achieved its purpose, *i.e.*, the planning, construction and operation of the electricity generation and transmission of the Operating Companies. It contends that if

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<sup>9</sup> AEEC Request for Rehearing at 4 (*citing* November 2006 Order, 117 FERC ¶ 61,203 at P 20).

<sup>10</sup> AEEC Request for Rehearing at 5 (*citing* System Agreement § 1.01 and 4.01. AEEC also supports its position by citing exhibits presented during the trial in Docket No. EL01-88-000).

the Commission's interpretation of the System Agreement is correct, then it was never a valid contract and is unconscionable. AEEC argues that the Commission's interpretation would deprive Entergy Arkansas of the benefits of its depreciated base-load capacity, awarding those benefits to Louisiana after Entergy Arkansas' ratepayers have paid high front-end costs. AEEC argues that the Commission's finding that an Operating Company is not guaranteed all of the benefits of its generation for an infinite amount of time conflicts with the FPA's scheme of dual regulation. AEEC contends that states have full control over the siting of electric generating plants within their borders. It argues that if the Commission asserts that it can take the benefits of a power plant which the state approves and the ratepayers have an obligation to pay, states will be less likely to approve new generation.

**c. Commission Determination**

12. We deny AEEC's request for rehearing. The Commission was correct to state in the November 2006 Order that an individual Operating Company under the Entergy System Agreement is not guaranteed all of the benefits of its generation for an infinite amount of time. As we have stated repeatedly in this proceeding, by the very nature of the System Agreement and the Operating Companies' participation in the System Agreement, the benefits and burdens specific to each Operating Company have to be balanced with what is appropriate for the system as a whole.<sup>11</sup>

13. The other issues AEEC raises were considered by the Commission in Opinion No. 480-A and are beyond the scope of this compliance filing as they are irrelevant to whether Entergy properly implemented the Commission's directives.<sup>12</sup>

**2. Rate Shock**

**a. November 2006 Order**

14. In the November 2006 Order the Commission found that Entergy had properly implemented the bandwidth remedy and had complied with Opinion Nos. 480 and

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<sup>11</sup> See Opinion No. 480-A, 113 FERC ¶ 61,282 at P 106; November 2006 Order, 117 FERC ¶ 61,203 at P 20.

<sup>12</sup> See, e.g., *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321 at 63,160 (1993) (the sole relevant issue in reviewing [a] compliance filing is whether it complies with the directions in the [order]”) (*Delmarva*); accord, *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376 at 62,271 (1997) (The sole purpose of a compliance filing is to make the revisions directed by the Commission”).

480-A.<sup>13</sup> The Commission found that AEEC's arguments concerning the magnitude of any possible rate impacts were beyond the scope of this compliance proceeding.<sup>14</sup> The Commission noted that it has expressed concern about rate impacts at various times during the course of this proceeding, and that in Opinion No. 480 it reversed a narrower bandwidth proposed by the presiding judge on the grounds that it would result in a significant rate shock to below system average companies.

**b. Request for Rehearing**

15. AEEC argues that implementation of the November 2006 Order will result in a rate shock that would dwarf the rate shock possibility that was found to be present in the presiding judge's original remedy in the Initial Decision. AEEC contends that the Commission has previously acted to mitigate serious adverse rate impacts on customers,<sup>15</sup> and should therefore reconsider its rejection of AEEC's rate shock concerns. AEEC argues that the Commission ignores the fact that EAI and EMI bore the majority of the burden of system production costs from the mid 1980s through much of the 1990s. AEEC contends that Louisiana's high production costs are a direct result of ELL's continued reliance on its old, inefficient, generation units, and that this reliance results in an unjust and unreasonable subsidy burden on Arkansas' ratepayers.

**c. Commission Determination**

16. As stated above, in the November 2006 Order we held that AEEC's rate shock concerns were outside the scope of this compliance proceeding. Concerns regarding rate shock were considered by the Commission in Opinion No. 480.<sup>16</sup> Accordingly, we will not address them here as they do not relate to whether Entergy properly implemented the Commission's directives in its compliance filing.

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<sup>13</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 18.

<sup>14</sup> *Id.*

<sup>15</sup> AEEC Request for Rehearing at 3 (*citing, e.g., California Independent System Operator Corp.*, 111 FERC ¶ 61,337 (2005)).

<sup>16</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 139.

3. **Bandwidth Payments From One Year Must Be Made in the Next Calendar Year**

a. **November 2006 Order**

17. In the November 2006 Order, the Commission accepted Entergy's proposal for bandwidth payments to begin in June of every year to implement the preceding year's bandwidth payment as in compliance with Opinion Nos. 480 and 480-A. The Commission stated that implementing the bandwidth remedy billing in June gives Entergy a reasonable amount of time between its Form 1 filing (due in April of each year) and the bandwidth remedy billing. However, the Commission rejected Entergy's billing proposal to allow bandwidth payments to carry over to May 31 of the following year. The Commission found that the proposal was not fully in compliance with Opinion No. 480-A, which required a preceding year's bandwidth payments to be made within the next calendar year. Accordingly, the Commission directed Entergy to make a compliance filing providing that bandwidth payments must be made within the next calendar year (*i.e.*, payments as a result of 2006 data cannot be carried over to 2008).<sup>17</sup>

b. **Requests for Rehearing**

18. The Arkansas AG argues that the Commission should permit Entergy to make 12 equal bandwidth payments over the course of an entire calendar year, starting in June of each year and continuing through the following May. He contends that making all payments between June and December of each year will make the payments larger since the payments will be compressed into seven months. He contends that all bandwidth remedy payments being required within a seven month time frame is likely to be inefficient and may be difficult for Entergy to implement. He explains that the Commission has expressed a preference in other proceedings for payment schedules that spread out the recovery of costs over a longer period in order to mitigate the impacts of rate shock. He notes that in Opinion Nos. 480 and 480-A the Commission expressed a desire to reduce impacts resulting from the bandwidth remedy.<sup>18</sup>

19. The Louisiana Commission argues that due to the availability of computerized programs to provide cost and accounting information, Entergy can and does accumulate the relevant production cost data needed for remedial payments within the first half of January of the following year. The Louisiana Commission argues that approving a delayed remedy cannot be justified by finding that beginning payments in January would

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<sup>17</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 46.

<sup>18</sup> Arkansas AG Request for Rehearing at 3 (*citing* Opinion No. 480, 111 FERC ¶ 63,111 at P 139 and Opinion No. 480-A, 113 FERC ¶ 61,282 at P 40).

complicate the process and be burdensome to Entergy. The Louisiana Commission argues that Entergy has the ability to do the calculations earlier in the year if the Commission would permit it.

**c. Commission Determination**

20. We deny the Arkansas AG's and Louisiana Commission's requests for rehearing. In Opinion Nos. 480 and 480-A, the Commission ordered that payments and receipts based on the previous year be made fully within the next calendar year. We see no reason why it should be administratively more difficult for Entergy to separate bandwidth payments into seven months rather than twelve months and Entergy has not made that claim. Moreover, we note that the Commission has already mitigated the impact of the remedy in several ways, including adoption of a broader bandwidth than the Initial Decision and provision for payments to be spread over seven months instead of a lump sum yearly payment. Further, having payments commence in June is a reasonable approach as it gives Entergy sufficient time to calculate the payments and does not unduly delay the previous year's bandwidth payments. Contrary to the Louisiana Commission's contention, Entergy's annual Form 1 data is not due until April of each year. Implementing the bandwidth remedy billing in June is appropriate to give Entergy an adequate amount of time between its Form 1 filing and the bandwidth remedy billing. Allowing Entergy to wait until after Form 1 data is due and then requiring payments between June 1 and December 31 is a reasonable means of implementing the bandwidth remedy.

**4. Effective Date of Remedy**

**a. November 2006 Order**

21. The November 2006 Order accepted Entergy's proposal for the payments to become effective for the calendar year 2006, with any equalization payments being made in 2007.

**b. Request for Rehearing**

22. The Louisiana Commission argues that the Commission's orders in this proceeding allow Entergy to unduly delay remedial payments. It states that the November 2006 Order allows Entergy to implement the remedy for the first time, and on a prospective basis, on June 1, 2007. The Louisiana Commission argues that this delay changes the effective date of the remedy from that ordered in Opinion No. 480, which stated that the remedy would be effective for 2006. It argues that the Commission should clarify whether it intends the remedy to commence June 1, 2007 rather than for 2006.

The Louisiana Commission further argues that delaying a remedy until two years after the Commission found Entergy's rates unjust and unreasonable conflicts with precedent.<sup>19</sup>

23. The Louisiana Commission states that the Commission's statement in the November 2006 Order that rough equalization payments are prospective indicates that the remedy would not begin until the payments are made. The Louisiana Commission alleges that such a determination would overrule Opinion No. 480 which made the remedy effective for calendar year 2006 and provided for after-the-fact equalization payments to roughly equalize the costs for that year. The Louisiana Commission argues that statements in the November 2006 Order that the bandwidth payments bring the Operating Companies within the bandwidth on a prospective basis and that payments begin in June of every year to implement the previous year's bandwidth payment are inconsistent and require explanation.

**c. Commission Determination**

24. The Louisiana Commission misunderstands our decision in Opinion Nos. 480 and 480-A. The bandwidth remedy for rough production cost equalization commenced on January 1, 2006. Calculations are made on an annual basis with the first annual calculations occurring for calendar year 2006. Payments will start in June 2007 to reflect the bandwidth remedy implementation that started on January 1, 2006. As we stated in the November 2006 Order:

The correct implementation of the remedy is as follows: Entergy calculates production costs for 2006, payments and receipts for 2006 occur in 2007. In calendar year 2007, production costs are again measured and bandwidth payments and receipts for 2007 would occur in 2008. The bandwidth payments/receipts from 2006 should not be reflected in the 2007 production costs.<sup>20</sup>

25. We disagree with the Louisiana Commission that the prospective nature of the rough equalization payments indicates that the remedy would not begin until the payments are made, and is thus counter to what we said in Opinion No. 480. We also disagree with the Louisiana Commission's argument that there is inconsistency between the requirement that payments resulting from 2006 are to be made in 2007 and the statement that payments would be prospective. This is entirely consistent with our prior orders. The Commission stated in Opinion No. 480 that the bandwidth would be

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<sup>19</sup> Louisiana Commission Request for Rehearing at 3 (*citing Office of Consumers' Counsel, Ohio v. FERC*, 783 F.2d 206 (D.C. Cir. 1986)).

<sup>20</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 41.

implemented prospectively and would be effective for calendar year 2006, and we clarified in Opinion No. 480-A that any equalization payments would then be made in 2007 after a full calendar year of data became available.<sup>21</sup> The Louisiana Commission's request is a collateral attack on Opinion Nos. 480 and 480-A and no further clarification is necessary.

26. Regarding the Louisiana Commission's claim that we impermissibly delayed implementing a remedy for two years, in Opinion No. 480 we explained that payments under the bandwidth remedy must be prospective because we are barred by the Federal Power Act's section 206(c) from ordering refunds in this case.<sup>22</sup> However, we note that the permissibility of refunds among Entergy's Operating Companies is pending on remand in another proceeding. *See Louisiana Public Service Comm'n v. FERC*, 2007 U.S. App. Lexis 7596 (D.C. Cir. 2007). The Commission therefore will address the issue of refunds in a subsequent order after it has addressed the remand.

## 5. Implementation of the Bandwidth Remedy

### a. November 2006 Order

27. In the November 2006 Order, the Commission accepted Entergy's proposed implementation of the bandwidth remedy as in compliance with Opinion Nos. 480 and 480-A. The Commission rejected arguments that Entergy's application of the remedy did not comply with the Commission's +/- 11 percent bandwidth remedy.

### b. Request for Rehearing

28. AEEC again argues that Entergy's compliance filing did not provide for a real 22 percent bandwidth and that the Commission should reconsider its approval of the MSS-3 amendment.

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<sup>21</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 145; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 54. In addition, in the November 2006 Order, we stated that it was our intent that rough production cost equalization would be undertaken in the year following the year in which the costs are incurred. We also stressed that *all* payments as a result of calendar year 2006 data must be made entirely in 2007, commencing in June. We have explained how the process of cost equalization would work: Entergy calculates production costs for 2006, payments and receipts for 2006 occur in 2007. November 2006 Order, 117 FERC ¶ 61,203 at P 41, 46.

<sup>22</sup> Opinion No. 480, 111 FERC ¶ 61,203 at P 145.

**c. Commission Determination**

29. We deny rehearing. Contrary to AEEC's arguments, the Commission imposed a +/- 11 percent bandwidth, not a total 22 percent bandwidth. Entergy's filing complied with the Commission's directive and, as it failed to do in its protest in this proceeding, AEEC again fails to show that Entergy's filing does not comply with the Commission's directive.

**6. Inclusion of Interest in Bandwidth Payments**

**a. November 2006 Order**

30. In the November 2006 Order, the Commission decided not to require interest on bandwidth payments.<sup>23</sup> The Commission stated that because there is a necessary delay owing to the need to perform the calculations, and because the Commission is requiring settlements to be made in a reasonable time period once the calculations are completed, there is no need to require that interest be applied to the payments.

**b. Request for Rehearing**

31. The Louisiana Commission argues that rough equalization payments should bear interest from the time costs are incurred by the Operating Companies to the time payments are made. It contends that interest is required to ensure that the economic value of the equalization payments is sufficient to bring the Operating Companies to the required bandwidth for the period for which the remedy applies. The Louisiana Commission further contends that failure to require interest payments cannot be justified because there is a "necessary delay" to perform the payment calculation. It states that the point of interest is to compensate for delay. It argues that the Commission's failure to require interest to compensate for the time value of money is inconsistent with longstanding Commission policy regarding deferred or delayed compensation, citing *Anadarko Petroleum Corp. v. FERC*.<sup>24</sup> The Louisiana Commission states that according to *Anadarko*, the Commission's general policy is to allow interest to be paid on various types of overcharges and that interest is a way of ensuring full compensation.<sup>25</sup>

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<sup>23</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 51.

<sup>24</sup> *Anadarko Petroleum Corp. v. FERC*, 196 F.3d 1264 (D.C. Cir. 1999) (*Anadarko*), *vacated in part on other issues on rehearing*, 200 F.3d 867 (2000), *cert. denied*, 530 U.S. 1213 (2000).

<sup>25</sup> *Anadarko*, 196 F.3d 1264, 1267. (D.C. Cir. 1999).

c. **Commission Determination**

32. We deny rehearing. Opinion No. 480 provided that the payments made under the bandwidth remedy were prospective in nature<sup>26</sup> and did not order interest to be made on any payments. In its request for rehearing, the Louisiana Commission cites *Anadarko* for the proposition that the Commission's general policy is to allow interest to be paid on various types of overcharges. However, a case like *Anadarko*, involving refunds, is not applicable here since we have already held that bandwidth payments are not refunds. In addition, as we have stated previously in this proceeding, our discretion is at its zenith when fashioning an appropriate remedy.<sup>27</sup> In our discretion, we are requiring settlements to be made in a reasonable time period once the calculations are completed and, accordingly, there is no need to require that interest be applied to the payments.

7. **Inclusion of Bandwidth Payments in Service Schedule MSS-3**

a. **November 2006 Order**

33. In the November 2006 Order, we accepted, as in compliance with Order Nos. 480 and 480-A, Entergy's proposal to include in Service Schedule MSS-3 the bandwidth remedy function. We stated that Service Schedule MSS-3 would now be used both for pricing energy exchanged among the Operating Companies and also to calculate and provide for any rough production cost equalization payments, if such payments are required.

b. **Request for Rehearing**

34. The Arkansas AG argues that the November 2006 Order allows the inclusion of bandwidth remedy provisions into Service Schedule MSS-3 even though the Commission did not identify any benefits that would result from permitting Entergy to do this. He explains that the November 2006 Order fails to properly consider and balance the relative adverse impacts on Arkansas ratepayers that would result from the inclusion of the bandwidth remedy provisions in Service Schedule MSS-3, versus the lack of harm to Entergy that would result from incorporating such provisions in a separate Service Schedule.

c. **Commission Determination**

35. We deny the request for rehearing. In the November 2006 Order, the Commission considered arguments concerning the possible impacts of including two separate

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<sup>26</sup> Opinion No. 480, 111 FERC ¶ 63,111 at P 145.

<sup>27</sup> Opinion No. 480-A, 113 FERC ¶ 61,282 at P 154.

functions into Service Schedule MSS-3, and directed Entergy to make transparent and separate in its billing the amounts applicable to each of the service schedule's functions. In addition, Opinion Nos. 480 and 480-A did not require the bandwidth remedy to be separated from Service Schedule MSS-3, and we will not require Entergy to do so here. In addition, Service Schedule MSS-3 is the most appropriate place in the Entergy's System Agreement to include bandwidth payments/receipts, given the nature of the costs that drive production cost disparities. Service Schedule MSS-3 has historically been used to allocate energy costs among the Operating Companies and, therefore, including bandwidth calculations in Service Schedule MSS-3 accurately reflects the nature of the costs driving the bandwidth payments.

**8. Inclusion of Interruptible Loads in Determining Bandwidth Payments**

**a. November 2006 Order**

36. In the November 2006 Order, we found that Entergy had complied with Opinion No. 480 by including interruptible loads in its calculation of total production costs in its compliance filing.<sup>28</sup>

**b. Request for Rehearing**

37. The Louisiana Commission argues that the Commission's inclusion of interruptible loads in the production cost calculation violates Opinion Nos. 468 and 468-A.<sup>29</sup> It states that in those two orders the Commission determined that the 12 coincident peak (CP) demand data used to allocate capacity costs among the Operating Companies should not include interruptible loads. The Louisiana Commission contends, however, that the November 2006 Order allows inclusion of interruptible loads in the 12 CP allocator used to allocate fixed capacity costs. It argues that the rationale the Commission used relied on a methodology proposed by Entergy in Exhibit ETR-26, despite the fact that parties agreed that the Commission's interruptible load ruling in Docket No. EL95-33-002, which was issued subsequent to the filing of ETR-26, would control the issue here.

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<sup>28</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 62.

<sup>29</sup> *Louisiana Public Service Comm'n v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004) (Opinion No. 468), *order on reh'g*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005) (Opinion No. 468-A). Those orders held that the System Agreement was to be modified to exclude interruptible load from the calculation of peak load responsibility under Service Schedule (MSS-1) (Reserve Equalization) and MSS-5 (Distribution of Revenue from Sales Made for the Joint Account of All Companies).

38. According to the Louisiana Commission, it is not reasoned decision-making to allow the Entergy Exhibit ETR-26 methodology (one it claims violates Commission orders) simply because Entergy Exhibit ETR-26 was developed and filed prior to their issuance. The Louisiana Commission maintains that Exhibit ETR-26 did not exclude interruptible loads because the Commission had not decided the issue, and the parties (Entergy, the Arkansas Commission and the Mississippi Commission) agreed that the Commission's interruptible load ruling would control the issue here.

**c. Commission Determination**

39. In the Opinion No. 480 proceeding, the Commission directed Entergy to utilize the method in Exhibit ETR-26, which included interruptible load in the measurement of total production costs of each Operating Company for purposes of production cost comparisons. In the November 2006 Order, the Commission held that Entergy had complied with this directive to follow the Exhibit ETR-26 methodology regarding the interruptible load issue.<sup>30</sup> The Louisiana Commission does not argue that Entergy has failed to comply with this directive and, accordingly, we deny rehearing. We noted previously in the November 2006 Order<sup>31</sup> that customers may file section 206 complaints if they seek to make a change.<sup>32</sup>

**9. Allocation of Costs**

**a. November 2006 Order**

40. In its compliance filing, Entergy proposed to allocate net general and intangible plant and related depreciation and amortization expenses on labor ratios. Entergy stated that its proposal was an adjustment to the methodology reflected in Exhibits ETR-26 and ETR-28. In the November 2006 Order, the Commission denied Entergy's request to make adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28, stating that Entergy must comply with the requirements of Opinion Nos. 480 and 480-A. The Commission further stated that if Entergy wishes to make future changes to its methodology, it must make a section 205 filing with the Commission.

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<sup>30</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 62.

<sup>31</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 69.

<sup>32</sup> We note that on April 2, 2007, the Louisiana Commission filed a section 206 complaint in Docket No. EL07-52-000 on this interruptible load issue.

**b. Request for Rehearing**

41. The Arkansas Commission alleges that the Commission erred in rejecting Entergy's proposal to allocate certain costs on the basis of labor ratios rather than plant ratios. It contends that the Commission erred in rejecting Entergy's proposal to include payroll costs of certain Entergy service companies in the payroll costs of the Operating Companies when calculating labor ratios.

42. The Arkansas Commission states that the Commission, in rejecting Entergy's proposed modifications, stated only that Entergy must comply with Opinion Nos. 480 and 480-A. It claims that there has never been a serious dispute about whether general and intangible plant should be allocated on the basis of a labor ratio or a plant ratio. It argues that the Commission should decide whether or not to accept Entergy's proposals on labor ratios and payroll costs on the basis of cost allocation principles rather than on the basis of how an exhibit was prepared.

**c. Commission Determination**

43. We deny rehearing. In the November 2006 Order, we denied Entergy's request to make adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28, including allocating certain costs on the basis of labor ratios rather than plant ratios,<sup>33</sup> because its proposed adjustments were inconsistent with what was required to comply with Opinion Nos. 480 and 480-A. We stated further that Entergy could seek to make a change in the methodology at any time by making a section 205 filing with the Commission.<sup>34</sup>

**10. The Pricing of Vidalia Power**

**a. November 2006 Order**

44. In the November 2006 Order, the Commission accepted, as being in compliance with Opinion Nos. 480 and 480-A, Entergy's re-pricing of Vidalia energy based on the annual Service Schedule MSS-3 rate paid by ELL.

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<sup>33</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 69. *See, e.g., Delmarva Power & Light Co.*, 63 FERC ¶61,321 at 63,160 (1993) (the sole relevant issue in reviewing [a] compliance filing is whether it complies with the directions in the [order]”) (*Delmarva*); *accord, Sierra Pacific Power Co.*, 80 FERC ¶ 61,376 at 62,271 (1997) (The sole purpose of a compliance filing is to make the revisions directed by the Commission”).

<sup>34</sup> We note that on March 30, 2007, Entergy made a section 205 filing in Docket No. ER07-682-000 to allocate certain costs on the basis of labor ratios rather than plant ratios.

**b. Request for Rehearing**

45. The Louisiana Commission argues that if Vidalia is repriced, it should be repriced at the average MSS-3 rate, rather than the average MSS-3 rate *paid by ELL*. The Louisiana Commission contends that because ELL purchases disproportionately from the exchange at times when the price is low, Entergy's approach artificially lowers the hypothetical Vidalia cost in a manner not intended in the Commission's Orders. It contends that the adjustment produces a subnormal replacement cost, because ELL would purchase more energy from the exchange, at higher prices, if it did not have Vidalia

46. The Louisiana Commission argues that the Commission explicitly directed that Vidalia be repriced at the annual price of the MSS-3 exchange, not at a price solely reflecting ELL's purchases from the exchange. The Louisiana Commission argues that allowing use of the average annual MSS-3 rate paid by ELL is a departure from the Commission's prior orders and understates the cost of replacing Vidalia.<sup>35</sup>

**c. Commission Determination**

47. We deny the request for rehearing. In the November 2006 Order, we stated that we would accept, as being in compliance with Opinion Nos. 480 and 480-A, Entergy's re-pricing of the Vidalia energy based on the annual Service Schedule MSS-3 rate paid by ELL.<sup>36</sup> Contrary to the Louisiana Commission's argument that doing so would be a departure from our prior orders, in Opinion No. 480, the Commission stated that "[f]uture production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26, which accounts for Vidalia by re-pricing the energy at the annual [Service Schedule] MSS-3 rate."<sup>37</sup> As we stated in the November 2006 Order, Entergy's Exhibit ETR-26 includes the re-pricing of the Vidalia energy based on the annual Service Schedule MSS-3 rate *paid by ELL*.<sup>38</sup> Thus, the Louisiana Commission's

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<sup>35</sup> We note that on April 2, 2007, the Louisiana Commission filed a section 206 complaint in Docket No. EL07-52-000 alleging that Entergy's compliance filing in Docket No. EL01-88-004, and the Commission's acceptance of it, failed to adopt a pricing methodology to bring it in compliance with Opinion Nos. 480 and 480-A. (Specifically, that Entergy deviated from the "annual MSS-3 rate" and instead used the "average annual MSS-3 rate paid by ELL").

<sup>36</sup> November 2006 Order, 117 FERC ¶ 61,203 at P 59.

<sup>37</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 33.

<sup>38</sup> *See, e.g.*, Testimony of Bruce Louiselle (Exhibit ETR-23) at pp. 41-42 ("The second [analysis] re-prices the Vidalia purchases to what they would have been had the price been equal to the average cost per kWh incurred by ELI incident to its "purchases" under the MSS-3.")

arguments were properly addressed in Opinion Nos. 480 and 480-A, and are beyond the scope of this proceeding as they are irrelevant to whether Entergy properly implemented the Commission's directives.

## **B. Compliance Filing**

### **1. Background**

48. On December 18, 2006, Entergy submitted its compliance filing as required by the November 2006 Order, revising MSS-3 section 30.12, Actual Production Costs, MSS-3 section 30.13, Average Production Cost, and MSS-3 section 30.14, Billing Procedure for section 30.09(d). Entergy revised section 30.12 to reflect the methodology in Exhibit ETR-26 and ETR-28. These several changes include: (1) using plant ratios rather than labor ratios to calculate net General and Intangible Plant expenses, (2) removing the payroll costs of EOI and ESI from labor ratio calculations, (3) clarifying that the State Income Tax rate for EGS is the rate for Louisiana, and (4) amending the expense allocation in Account 923 (Outside Services) to be based on plant ratios instead of labor ratios.

49. Entergy also submitted revised language to a footnote in section 30.12 to specify that an adjustment to the determination of Actual Production Cost would include the repricing of energy associated with the Vidalia purchase power contract for ELL "based on the average annual Service Schedule MSS-3 rate paid by ELL" as stipulated in the November 2006 Order. Entergy revised section 30.14 to specify that the billing parameters for bandwidth payments would be in effect from June 1 until December 31 of each year and that payments would be made on a monthly basis based on dividing the amount payable by seven. Entergy also submitted minor typographical corrections to sections 30.12 and 30.13. Entergy states that these corrections were needed to properly reflect the Exhibit ETR-26 methodology.

### **2. Discussion**

50. Upon review of the filing, we find that Entergy has modified its System Agreement so that it is now in accordance with the November 2006 Order. We accept Entergy's filing as being in compliance with the November 2006 Order and deny the Louisiana Commission's protest.

51. The only protest of Entergy's compliance filing comes in the form of a one-paragraph protest by the Louisiana Commission that seeks to reserve and raise on rehearing all issues that the Louisiana Commission raised in its challenges to Opinion Nos. 480 and 480-A. The Louisiana Commission provides no supporting information and does not even list which issues it is attempting to reserve and raise. Indeed, it has made no effort to demonstrate how Entergy's filing may not be in compliance with the

Commission's November 2006 Order. A party making a protest in a Commission proceeding has an obligation to make its case before the Commission with reasonably articulated arguments to which the Commission can respond. But when a party advances a wholly undeveloped claim – as here – the Commission has little occasion to present a reasoned response.<sup>39</sup> As the D.C. Circuit has held, when petitioners or appellants present no arguments to substantiate a claim of error, we normally decline to entertain the issue.<sup>40</sup> Simply put, it is not the court's duty to identify, articulate, and substantiate a claim for the petitioner.<sup>41</sup> Or, to express the matter in a different way, “the Commission cannot be asked to make silk purse responses to sow's ear arguments.”<sup>42</sup> In addition, nothing in our regulations or precedent provides for parties “reserving” issues that may or may not return to the Commission in a later proceeding as the Louisiana Commission requests. Accordingly, the Louisiana Commission's protest is denied.

The Commission orders:

(A) The requests for rehearing with one exception are hereby denied, as discussed in the body of this order.

(B) Action with respect to the issue of refunds among the Operating Companies is hereby deferred, as discussed in the body of this order.

(C) Entergy's December 18, 2006 compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>39</sup> *Pub. Serv. Electric and Gas Co. v FERC*, 2007 U.S. App. LEXIS 8468 (D.C. Cir. 2007).

<sup>40</sup> *Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983).

<sup>41</sup> *National Exchange Carrier Ass'n v. FCC*, 253 F.3d 1, 4 (D.C. Cir. 2001).

<sup>42</sup> *City of Vernon v. FERC*, 845 F.2d 1042, 1047 (D.C. Cir. 1988.)