UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Louisiana Public Service Commission

v. Docket No. EL07-52-000

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

ORDER ON COMPLAINT

(Issued May 31, 2007)

1. On April 3, 2007, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint against Entergy Services, Inc. (Entergy)[1] and Entergy Corporation requesting that the Commission order Entergy to: (1) remove interruptible load from the 12 coincident peak (CP) load data used to allocate the Entergy Operating Companies' fixed production cost responsibilities; and (2) calculate the production costs for Vidalia, a hydroelectric plant in Louisiana, based on the average annual Service Schedule MSS-3 rate of all the Operating Companies rather than the average annual Service Schedule MSS-3 rate paid by Entergy Louisiana. Service Schedule MSS-3 is part of the Entergy System Agreement, which is a Commission rate schedule that allocates costs among the Operating Companies. For the reasons set forth below, we will deny the relief requested in the Complaint.

[1] The complaint also was filed against the Entergy Operating Companies (Operating Companies). The Operating Companies are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. and Entergy New Orleans, Inc.

I. Background

2. The Louisiana Commission regulates: (1) public utilities operating in Louisiana; (2) the retail rates and services of Entergy Louisiana; and (3) the Louisiana operations of Entergy Gulf States, Inc.[2]

3. Entergy Corporation is a public utility holding company headquartered in New Orleans, Louisiana. Its wholly-owned operating company subsidiaries are Entergy Louisiana, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc. It delivers electricity to approximately 2.6 million customers in portions of Texas, Arkansas, Louisiana and Mississippi.

4. Entergy is a subsidiary of Entergy Corporation that provides various accounting, computer, legal and other services to the subsidiaries of the Entergy system. It acts as an agent for Entergy Corporation and for the Operating Companies, which are parties with Entergy to the System Agreement, in matters related to the System Agreement before the Commission.

II. Complaint

5. The Louisiana Commission explains that, in June 2001, it filed a complaint under section 206 of the Federal Power Act (FPA)[3] in Docket No. EL01-88, alleging that the System Agreement's allocation of certain costs associated with the integrated operations of the Entergy system no longer operated to produce rough production cost equalization between the Entergy Operating Companies. The Louisiana Commission states that the Commission found that the rough production cost equalization had been interrupted on the Entergy system and that a bandwidth remedy of +/- 11 percent was appropriate to remedy the disparities.[4] The Louisiana Commission, among others, sought review of Opinion Nos. 480 and 480-A in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

6. On November 17, 2006, the Commission accepted, as modified, Entergy's April 10, 2006 filing in Docket No. EL01-88-006 to comply with Opinion Nos. 480 and

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[2] Entergy states that the Louisiana Commission regulates the retail rates and services of Entergy Louisiana other than those customers in the Fifteenth Ward of the City of New Orleans, which are subject to the regulatory authority of The Council of the City of New Orleans (New Orleans).

[3] 16 U.S.C. § 824e (2000).

[4] The Louisiana Commission cites *Louisiana Public Service Comm'n v. Entergy Services, Inc*., Opinion No. 480, 111 FERC ¶ 61,311, *aff'd*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *appeal docketed*, No. 05-1462 (D.C. Cir. 2005).

480-A (April Compliance Filing) and directed a further compliance filing.[5] The Louisiana Commission argues that the November 2006 Order failed to adopt proposed revisions to the April Compliance Filing to: (1) bring it into compliance with Opinion Nos. 468 and 468-A,[6] which, according to the Louisiana Commission, hold that demand-related costs should not be allocated to interruptible load in the System Agreement; and (2) reprice the Vidalia power purchase contract to conform to the language in Opinion Nos. 480 and 480-A.

7. The Louisiana Commission states that the April Compliance Filing utilized a 12 CP basis to allocate the system's demand-related capacity costs, but, contrary to Opinion Nos. 468 and 468-A, failed to include an adjustment to remove interruptible load from the system monthly coincident peaks.[7]

8. With respect to the Vidalia repricing adjustment, the Louisiana Commission maintains that the April Compliance Filing inappropriately uses the average annual Service Schedule MSS-3 rate paid by Entergy Louisiana rather than the average Service Schedule MSS-3 rate paid by all the Operating Companies.

III. Notice of Filing and Responsive Pleadings

9. On April 3, 2007, the Commission issued a notice of the Louisiana Commission's filing with interventions and protests due on or before April 30, 2007. On April 19, 2007, Entergy filed a request for extension of the comment date. On April 24, 2007, the Commission issued a notice of extension of time, granting an extension for motions to intervene, comments or protests to and including May 3, 2007. The Arkansas Electric Cooperative Corporation, Arkansas Electric Energy Consumers, Inc., Arkansas Public Service Commission (Arkansas Commission), New Orleans, Louisiana Energy Users

[5] *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203 (2006) (November 2006 Order). On December 18, 2006, Entergy submitted another compliance filing and various parties, including the Louisiana Commission, requested rehearing of the November 2006 Order. On January 17, 2007, the Louisiana Commission also protested Entergy's December 18, 2006 compliance filing, stating that the Louisiana Commission "specifically reserves and raises on rehearing . . . all issues that it raised on rehearing and in its Petition For Review of FERC Opinion Nos. 480 and 480-A . . . [which is] properly before the Court of Appeals for decision." Protest On Behalf Of The Louisiana Public Service Commission, Docket No. EL01-88-006 (Jan. 17, 2007).

[6] *Louisiana Public Service Comm'n v. Entergy Corp., et al.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004), *reh'g denied*, *Louisiana Public Service Comm'n v. Entergy Corp., et al.*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005), *appeal docketed*, No. 05-1161 (2005).

[7] Complaint at 4.

Group, Mississippi Public Service Commission (Mississippi Commission) and Occidental Chemical Corporation filed timely motions to intervene. Entergy filed a timely answer.[8] The Arkansas Commission and the Mississippi Commission jointly filed a timely answer and motion to dismiss. New Orleans filed timely comments.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Removal of Interruptible Load From 12 CP Load Data

1. Complaint

11. The Louisiana Commission argues that Entergy's inclusion of interruptible load in the system monthly coincident peaks in the April Compliance Filing inappropriately conflicts with the Commission's holding in Opinion Nos. 468 and 468-A that interruptible load should be removed when calculating peak load responsibility ratios.[9]

12. The Louisiana Commission states that, in the November 2006 Order, the Commission permitted the inclusion of interruptible load in the 12 CP allocator used to allocate fixed capacity costs because Exhibit ETR-26 used such an approach. The Louisiana Commission argues, however, that Exhibit ETR-26 was developed and filed prior to the issuance of Opinion No. 468 and that it did not exclude interruptible load because the Commission had not yet decided the issue.[10]

13. The Louisiana Commission maintains that because: (1) Opinion Nos. 468 and 468-A were issued after the hearing in Docket No. EL01-88, which addressed, among other issues, the allocation of production costs among the Operating Companies in the System Agreement;[11] and (2) because certain parties agreed that the interruptible load

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[8] Entergy objects to the inclusion of Entergy Corporation as a party to the proceeding because, in Entergy's opinion, the parties should be limited to the Operating Companies, which are public utilities under the FPA and parties to the System Agreement, and their agent, Entergy. Entergy Answer at n.1.

[9] Complaint at 4.

[10] *Id.* at 5.

[11] *Id.* at 6. The hearing in Docket No. EL01-88 led to Opinion Nos. 480 and 480-A.

issue would be governed by Docket No. EL95-33 (which led to Opinion Nos. 468 and 468-A) and would control that issue in Docket No. EL01-88, the Commission should order Entergy to apply the principle regarding the allocation of fixed generation costs on the basis of load responsibility excluding interruptible load to the rough equalization formula.[12]

14. Highlighting statements from briefs that Entergy, the Arkansas Commission and the Mississippi Commission filed in Docket No. EL01-88, the Louisiana Commission claims that these entities agreed that the treatment of interruptible load in Docket No. EL01-88 should be conformed to the treatment ultimately determined in Docket No. EL95-33.[13] Also, the Louisiana Commission argues that although nuclear-related fixed production costs (which are approximately 56 percent of fixed production costs) ordinarily would not be allocated to interruptible load, they are allocated to interruptible load in the rough equalization formula because the "energy allocation" required by Opinion No. 480 includes interruptible energy. The Louisiana Commission contends that only 44 percent of the system's fixed production costs are allocated on a 12 CP load responsibility basis and these remaining costs should be allocated on a peak responsibility basis that excludes interruptible load.[14]

2. Entergy's Answer

15. Entergy disagrees with the Louisiana Commission's contention that Opinion Nos. 468 and 468-A are controlling in the instant case because, in Entergy's opinion, a ruling that interruptible load should be excluded from Service Schedule MSS-1 does not mean it should be excluded from Service Schedule MSS-3. Entergy argues that Opinion Nos. 468 and 468-A did not require the exclusion of interruptible load from all System Agreement service schedule calculations. Rather, they only required such exclusion for purposes of calculating reserve equalization payments under Service Schedule MSS-1, which allocates generation reserve capacity costs among the Operating Companies. Entergy contends that, in contrast, the fixed costs allocated under the Service Schedule MSS-3 bandwidth formula include actual costs that are incurred "regardless of whether that load was interruptible or not," and hence exclusion of interruptible load is not required.[15]

16. Entergy maintains that because interruptible load has been excluded for purposes of generation capacity reserve equalization payments (*i.e.*, Service Schedule MSS-1) does

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[12] *Id.* at 8.

[13] *Id.* at 6-7.

[14] *Id*. at 8.

[15] Entergy Answer at 16.

not mean that the Operating Companies do not incur any production costs to serve interruptible load. Entergy states that the 12 CP allocator is used in allocating Average Fixed Production Costs under Service Schedule MSS-3 Section 30.13. Arguing that the Louisiana Commission offers no reason why interruptible load should be excluded where the situation does not involve only reserve capacity, Entergy points out that these fixed costs include not only reserve capacity but, more importantly, all of the fixed costs associated with all the coal-fired base load capacity on the system.

17. Further, Entergy states that Opinion Nos. 480 and 480-A required Entergy to make a compliance filing using the methodology in Exhibit ETR-26, which did not exclude interruptible load for purposes of comparing total production costs (as opposed to how interruptible load is handled in calculating cost responsibility under Service Schedule MSS-1).[16]

3. Arkansas Commission and Mississippi Commission's Answer and New Orleans' Comments

18. The Arkansas Commission and Mississippi Commission maintain that Opinion Nos. 468 and 468-A held that interruptible load should be excluded from Service Schedule MSS-1 and Service Schedule MSS-5 calculations, but that interruptible load should continue to be included in Service Schedule MSS-2 and Service Schedule MSS-6 calculations. The Arkansas Commission and Mississippi Commission argue that the Louisiana Commission fails to acknowledge that the Commission treated different costs differently in Opinion Nos. 468 and 468-A. The Arkansas Commission and Mississippi Commission conclude that the Complaint should be dismissed because the Louisiana Commission failed to meet its burden to show that interruptible load should be excluded from the allocation of all fixed costs for purposes of the bandwidth remedy. New Orleans states that the Louisiana Commission made the same arguments and offered the same evidence in Docket No. EL01-88-004 and that the Commission already approved the tariff provisions at issue as just and reasonable in the November 2006 Order.[17]

4. Commission Determination

19. Section 206 of the FPA, 16 U.S.C. § 824e (2000), provides that whenever the Commission finds, either on its own motion or on complaint, that any existing rates, charges or classifications of a public utility are unjust, unreasonable, unduly discriminatory or preferential, it shall determine the just and reasonable rates, charges or classifications and establish the same by order. Section 206(b), 16 U.S.C. § 824e(b) (2000), states that in any proceeding under this section, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust,

[16] *Id.*

[17] New Orleans Comments at 2.

unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant." Accordingly, the Louisiana Commission bears the burden to: (1) establish that Service Schedule MSS-3 as currently filed with the Commission is unjust and unreasonable with regard to the inclusion of interruptible load in the system monthly coincident peaks to allocate capacity costs; and (2) if that showing is made, show that its proposed amendments to Service Schedule MSS-3 are just and reasonable.

20. We will deny the relief requested in the Complaint, as discussed further below. Service Schedule MSS-3 is a Commission-approved rate schedule. Moreover, the Commission held a hearing in Docket No. EL01-88 with respect to the use of Exhibit ETR-26, which includes interruptible load in the system monthly coincident peaks in allocating capacity costs. The Louisiana Commission has not met its burden under FPA section 206 to establish that the current provisions of Service Schedule MSS-3 regarding the inclusion of interruptible load in the system monthly coincident peaks to allocate capacity costs are unjust and unreasonable, nor that the Louisiana Commission's proposed alternative (to exclude interruptible load) is just and reasonable.

21. In the instant proceeding, the Louisiana Commission repeats its argument that the November 2006 Order contradicts Opinion Nos. 468 and 468-A.[18] Acknowledging that the November 2006 Order permitted the inclusion of interruptible load to allocate fixed capacity costs, the Louisiana Commission states that this was so because Exhibit ETR-26 used such an approach. The Louisiana Commission maintains that Exhibit ETR-26 was developed and filed prior to the issuance of Opinion No. 468 and that it did not exclude interruptible load because the Commission had not yet decided the issue.

22. The Louisiana Commission ignores the fact that the Commission, in the Opinion No. 480 proceeding, 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 complied with the directive to follow the Exhibit ETR-26 methodology regarding the interruptible load issue.[19] Moreover, in the April 2007 Order,[20] the Commission denied the Louisiana Commission's request for rehearing to exclude interruptible load, noting that the Louisiana Commission did not argue that Entergy failed to comply with the Commission's directive.[21] Additionally, the Louisiana Commission failed to seek rehearing of the Opinion No. 480's conclusion that

[18] Complaint at 4.

[19] November 2006 Order, 117 FERC ¶ 61,203 at P 62.

[20] *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 119 FERC ¶ 61,095 (2007) (April 2007 Order).

[21] April 2007 Order, 119 FERC ¶ 61,095 at P 39.

"[f]uture production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26."[22]

23. The Louisiana Commission also argues that certain parties agreed that the interruptible load issue would be governed by Docket No. EL95-33 (which led to Opinion Nos. 468 and 468-A) and would control that issue in Docket No. EL01-88. Entergy, however, states that "[r]egarding the Interruptible Load Issue, Entergy does not agree that Opinion Nos. 468 and 468-A require the exclusion of interruptible load for purposes of the MSS-3 bandwidth formula."[23] The April 2007 Order denied rehearing of the Louisiana Commission's claims regarding the treatment of interruptible load. It appears that the Louisiana Commission did not adequately preserve whatever agreement may have existed among the parties and its ability to enforce the agreement it claims exists is uncertain.[24] Further, the Commission has not ruled that Opinion Nos. 468 and 468-A apply to the measurement of total production costs of each Operating Company for purposes of production cost comparisons in Service Schedule MSS-3.

24. Under Service Schedule MSS-3, *total* production costs of each Operating Company are being calculated. The allocator used in these calculations includes interruptible load, which is appropriate. By contrast, Opinion Nos. 468 and 468-A held that the System Agreement was to be modified to exclude interruptible load from the calculation of *peak* load responsibility under MSS-1, Reserve Equalization, and Service Schedule MSS-5, Distribution of Revenue from Sales Made for the Joint Account of All

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[22] Opinion No. 480, 111 FERC ¶ 61,311 at P 33.

[23] Entergy Answer at 2.

[24] Although the administrative law judge's initial decision in Docket No. EL01-88 mentioned an agreement between the parties with respect to having the interruptible load issue governed by Opinion Nos. 468 and 468-A, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, 106 FERC ¶ 63,012 at P 45 and n.15 (2004), the judge made no findings that would suggest that he agreed or disagreed with this outcome. The Louisiana Commission did not seek clarification as to the "agreement" issue in its rehearing of Opinion No. 480. Application For Rehearing On Behalf Of The Louisiana Public Service Commission, Docket No. EL01-88-000 (July 1, 2005). Moreover, on May 31, 2006, the Louisiana Commission's protest to the April Compliance Filing raised the exclusion of interruptible load, but failed to note the "agreement" issue. Protest On Behalf Of The Louisiana Public Service Commission To Compliance Filing Of Entergy Services, Inc., Docket No. EL01-88-004 (May 31, 2006). On December 18, 2006, the Louisiana Commission reintroduced the "agreement" issue in its rehearing of the November 2006 Order. Application For Rehearing On Behalf Of The Louisiana Public Service Commission, Docket No. EL01-88-004 at 11 and 13 (Dec. 18, 2006) (Louisiana Rehearing).

Companies.[25] Opinion Nos. 468 and 468-A simply do not relate to Service Schedule MSS-3 and the related determination of bandwidth payments. Contrary to the Louisiana Commission's allegation that the Commission's interruptible load ruling should control the issue with respect to Service Schedule MSS-3, nothing in Opinion Nos. 468 and 468-A ties the exclusion of interruptible load from Service Schedule MSS-1 and Service Schedule MSS-5 calculations to the exclusion of interruptible load from total production costs calculated for bandwidth payments under Service Schedule MSS-3.

25. Furthermore, the Louisiana Commission failed to meet its burden under FPA section 206 to show that Service Schedule MSS-3 results in unjust and unreasonable rates. Service Schedule MSS-3 is used to compare each Operating Company's actual fixed production costs to determine the deviation from the system average. As Entergy points out in its answer, these fixed costs include not only reserve capacity but *all* of the fixed costs associated with all the coal-fired base load capacity on the system.[26] The Louisiana Commission's arguments do not persuade us that the result of Opinion Nos. 480 and 480-A should change.

C. Calculation of the Production Costs for Vidalia

1. Complaint

26. The Louisiana Commission states that the April Compliance Filing inappropriately amended Service Schedule MSS-3 to reprice the cost of electricity from the Vidalia hydroelectric project at the average price paid by Entergy Louisiana for purchases from the exchange, rather than the average Service Schedule MSS-3 rate for all of the Operating Companies. The Louisiana Commission states that Service Schedule MSS-3 prescribes the pricing of energy economically dispatched by Entergy as between the Operating Companies.[27]

27. The Louisiana Commission also argues that because Entergy Louisiana 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 by the Commission. The Louisiana Commission states that the price Entergy Louisiana paid reflects Entergy Louisiana's exchange energy purchases made while it also was taking

[25] Opinion No. 468, 106 FERC ¶ 61,228 at P 63 (2004); Opinion No. 468-A, 111 FERC ¶ 61,080 at P 15-17 (2005).

[26] Entergy Answer at 18.

[27] Complaint at 9. The Louisiana Commission explains that Service Schedule MSS-3 prices the excess generation of the "long" companies during the hour to the "short" companies, based on the average energy cost (plus O&M and SO2 replacement cost adders) of the selling companies (long) for the excess generation.

energy from Vidalia and, to replace Vidalia energy, Entergy Louisiana would have to make substantially more purchases from the exchange that would involve different and generally higher prices than the prices paid for energy taken while Entergy Louisiana also was purchasing from Vidalia.[28]

28. The Louisiana Commission contends that even though Exhibit ETR-26 may have used Entergy Louisiana's Service Schedule MSS-3 price as the basis to reprice Vidalia energy, that treatment apparently was not part of the Commission's understanding of Exhibit ETR-26 at the time Opinion No. 480-A was issued.[29] Detailing statements regarding Vidalia pricing from the initial decision in Docket No. EL01-88, the briefs on exceptions and Opinion Nos. 480 and 480-A, the Louisiana Commission concludes that "[n]ot once in the descriptions by the parties or the Commission, was it stated that Vidalia would be repriced using only a portion of purchases – these made by ELL – from the MSS-3 exchange."[30]

29. The Louisiana Commission argues that the Commission held in Opinion No. 480-A that the "annual MSS-3 rate" paid by all the Operating Companies, not a price solely reflecting Entergy Louisiana's purchases from the exchange, should be used to reprice the cost of electricity from the Vidalia project.[31] Thus, the Louisiana Commission requests that the Commission order Entergy to calculate Entergy Louisiana's Vidalia production costs based on the average Service Schedule MSS-3 rate of all the Operating Companies.

2. Entergy's Answer

30. In its answer, Entergy explains that the April 2007 Order makes clear that the Vidalia issue raised by the Louisiana Commission in the instant Complaint was properly addressed in Opinion Nos. 480 and 480-A. Entergy states that the Louisiana Commission appealed to the D.C. Circuit the issue of whether the output from Vidalia should be repriced for purposes of determining the production cost disparities among the Operating Companies. It adds that the Louisiana Commission did not raise the directly related issue of how the Vidalia energy should be repriced in the event that the court upholds the Commission's decision to reprice Vidalia. Thus, Entergy contends that the Louisiana

[28] *Id.* at 12.

[29] *Id.* at 9-10.

[30] *Id.* at 11.

[31] *Id.* at 10-12.

Commission is precluded from filing a complaint regarding an issue "inhering in the controversy" that is pending on appeal before the D.C. Circuit.[32]

31. Entergy also argues that the Louisiana Commission is barred under FPA section 313[33] from relitigating the issue of whether the repricing should be based on the annual Service Schedule MSS-3 rate paid by Entergy Louisiana as opposed to the annual Service Schedule MSS-3 price paid by all of the Operating Companies because the Vidalia repricing issue was litigated at the hearing in Docket No. EL01-88-000 and decided in Opinion Nos. 480 and 480-A. Entergy points to the Commission's citation to the testimony of Entergy's witness Mr. Louiselle in the November 2006 Order and the April 2007 Order as well as the holding that Vidalia repricing is to be based on the annual Service Schedule MSS-3 rate "paid by ELL" in the April 2007 Order.[34] Highlighting testimony in the Docket No. EL01-88 proceeding, Entergy concludes that the Louisiana Commission knew over four years ago that the proposal to reprice the Vidalia energy was a proposal to use "the average annual MSS-3 rate paid by ELI multiplied by the volumes of the ELI Vidalia purchases."[35]

32. Entergy also argues that even if the Louisiana Commission were permitted to relitigate the Vidalia issue, the Louisiana Commission has not met its FPA section 206 burden of proof to show that the current Vidalia repricing issue is unjust and unreasonable and that its alternative is just and reasonable.

3. Arkansas Commission and Mississippi Commission's Answer and New Orleans' Comments

33. Like Entergy, the Arkansas Commission and Mississippi Commission argue that the Complaint should be dismissed because the Louisiana Commission is precluded from relitigating what was intended by Opinion No. 480 and the Louisiana Commission failed to show that the methodology for repricing Vidalia is not just and reasonable. The Arkansas Commission and Mississippi Commission request that the Commission summarily dismiss the Complaint because the doctrines of *res judicata* and issue preclusion bar the Louisiana Commission from relitigating the Vidalia pricing issue.

34. The Arkansas Commission and Mississippi Commission also argue that the Louisiana Commission should not be permitted to shift the Vidalia costs to ratepayers of the other Operating Companies.

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[32] Entergy Answer at 5-6.

[33] 16 U.S.C. § 825*l* (2000).

[34] Entergy Answer at 7.

[35] *Id.* at 10.

35. Noting that the Louisiana Commission already made the same argument when Entergy initially proposed the Vidalia tariff adjustment, New Orleans also argues that the Complaint is a collateral attack on the November 2006 Order because the Commission approved the current Vidalia pricing structure as just and reasonable and the Louisiana Commission failed to meet its burden of proof under section 206 of the FPA.

4. Commission Determination

36. As set forth above, FPA section 206(b) requires that "the burden of proof to show that any rate . . . is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant."[36] Accordingly, the Louisiana Commission bears the burden to: (1) establish that Service Schedule MSS-3 as currently filed with the Commission is unjust and unreasonable with regard to the repricing of the cost of energy from Vidalia at the annual Service Schedule MSS-3 rate paid by Entergy Louisiana; and (2) if that showing is made, show that its proposed amendment to Service Schedule MSS-3 (to reprice Vidalia at the "annual MSS-3 rate" paid by all the Operating Companies) is just and reasonable.

37. The Commission denies the relief requested in the Complaint, as discussed further below. The Louisiana Commission has not met its burden under FPA section 206 to establish that the current provisions of Service Schedule MSS-3 regarding the pricing of Vidalia energy based on the Service Schedule MSS-3 rate paid by Entergy Louisiana are unjust and unreasonable, nor that the Louisiana Commission's proposed alternative (to reprice Vidalia energy at the average Service Schedule MSS-3 rate of all the Operating Companies) is just and reasonable.

38. In its request for rehearing of the November 2006 Order, the Louisiana Commission raised the very same Vidalia repricing issue that the Louisiana Commission raises in the Complaint. Shortly after the filing of the Complaint, the Commission issued the April 2007 Order. In the April 2007 Order, the Commission addressed the Louisiana Commission's identical Vidalia repricing argument made in the rehearing of the November 2006 Order.

39. Entergy argues that the Louisiana Commission is barred from relitigating the issue of whether the repricing of Vidalia energy should be based on the annual Service Schedule MSS-3 rate paid by Entergy Louisiana as opposed to the annual Service Schedule MSS-3 price paid by all of the Operating Companies because the same issue was litigated at the hearing in Docket No. EL01-88-000 and decided in Opinion Nos. 480 and 480-A. The Arkansas Commission and Mississippi Commission and New Orleans agree that the Louisiana Commission is precluded from arguing the Vidalia repricing issue.

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[36] 16 U.S.C. § 824e(b) (2000).

40. The November 2006 Order stated that the Commission would accept, in compliance with Opinion Nos. 480 and 480-A, Entergy's repricing of the Vidalia energy based on the annual Service Schedule MSS-3 rate paid by Entergy Louisiana.[37] 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."[38] Further, the April 2007 Order reiterated the Commission's statement in the November 2006 Order that Entergy's Exhibit ETR-26 includes the repricing of the Vidalia energy based on the annual Service Schedule MSS-3 rate paid by Entergy Louisiana.[39] The April 2007 Order also determined that the Louisiana Commission's arguments were properly addressed in Opinion Nos. 480 and 480-A and clarified that the November 2006 Order held that Vidalia would be repriced based on the annual Service Schedule MSS-3 rate paid by Entergy Louisiana.[40] As the November 2006 Order and the April 2007 Order dispose of the substantive arguments raised in the instant proceeding with respect to the Vidalia repricing issue, we find those orders to be controlling. Therefore, in accordance with our determinations in the November 2006 Order[41] and the April 27 Order,[42] we will deny the relief requested in the Complaint with respect to the calculation of production costs for Vidalia.

41. The Louisiana Commission has not provided any new substantive evidence that would alter the Commission's prior conclusions regarding the Vidalia repricing issue. In fact, the Louisiana Commission provided similar legal and factual information in the Docket No. EL01-88-000 proceeding (more specifically, in Docket No. EL01-88-004) and does not present any new information in the instant proceeding. Ultimately, the Commission has already determined that Exhibit ETR-26 includes the pricing of Vidalia energy at the annual Service Schedule MSS-3 rate paid by Entergy Louisiana and the Louisiana Commission has not established why such pricing should be changed.

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[37] November 2006 Order, 117 FERC ¶ 61,203 at P 59.

[38] Opinion No. 480, 111 FERC ¶ 61,311 at P 33.

[39] April 2007 Order, 119 FERC ¶ 61,950 at P 47 (citing the 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.")).

[40] April 2007 Order, 119 FERC ¶ 61,095 at P 47.

[41] November 2006 Order, 117 FERC ¶ 61,203 at P 59.

[42] April 2007 Order, 119 FERC ¶ 61,095 at P 47.

The Commission orders:

The relief requested in the Complaint is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.