

163 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Louisiana Public Service Commission

Docket No. EL01-88-015

v.

Entergy Services, Inc.

OPINION NO. 561

ORDER ON INITIAL DECISION

(Issued May 17, 2018)

1. This case is before the Commission on exceptions to an Initial Decision¹ issued November 7, 2016, and involves a “bandwidth” calculation filing, covering a seven-month period in 2005, submitted by Entergy Services, Inc. (Entergy Services)² on behalf of the Entergy Operating Companies (Operating Companies)³ (collectively, Entergy).⁴

¹ *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 157 FERC ¶ 63,018 (2016) (Initial Decision).

² Entergy is a wholly-owned subsidiary of Entergy Corporation.

³ The five Operating Companies involved in this proceeding were, at the relevant times for filing pursuant to this bandwidth calculation filing: 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).

⁴ As explained below, Entergy bandwidth calculation filings are annual filings to achieve rough production cost equalization among the Operating Companies participating (*continued ...*)

Entergy's filing was made pursuant to a remand by the D.C. Circuit Court of Appeals and subsequent Commission order. On October 15, 2015, the Commission issued an order⁵ accepting and suspending Entergy's proposed rates and establishing hearing and settlement judge procedures. In this order, as discussed below, we affirm the Presiding Judge's findings in the Initial Decision, with additional discussion regarding one accounting issue.

I. Procedural Background

2. The Commission has held that the System Agreement required that production costs be "roughly equal" among those Operating Companies participating in the System Agreement.⁶ In Opinion Nos. 480 and 480-A, the Commission held that the Entergy System was no longer in rough production cost equalization and adopted a numerical bandwidth remedy. This bandwidth remedy achieves rough production cost equalization on the Entergy System among the Operating Companies participating in the System Agreement by not allowing any Operating Company to have production costs that are more than 11 percent above or below the Entergy System average production costs. Under the bandwidth remedy, each calendar year, the production costs of each Operating Company are calculated, with payments made by the low cost Operating Company(ies) to the high cost Operating Company(ies) such that, after reflecting the payments and receipts, no Operating Company would have production costs more than 11 percent above the Entergy System average or more than 11 percent below the Entergy System

in the Entergy System Agreement (System Agreement). The System Agreement terminated in 2016.

⁵ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 153 FERC ¶ 61,032 (2015) (Hearing Order), *reh'g denied*, 155 FERC ¶ 61,118 (2016), *aff'd*, *Ark. Pub. Serv. Comm'n v. FERC*, No. 16-1193 (D.C. Cir. Jan. 30, 2018).

⁶ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 136 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006) (November 2006 Compliance Order), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007) (April 2007 Compliance Order), *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) (Louisiana Remand), *order on remand*, 137 FERC ¶ 61,047 (2011) (2011 Order on Remand), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152 (2014) (2014 Order on Rehearing), *order denying reh'g*, 153 FERC ¶ 61,034 (2015) (2015 Order Denying Rehearing II), *remanded*, *La. Pub. Serv. Comm'n v. FERC*, 866 F.3d 426 (D.C. Cir. 2017) (affirming 2011 Order on Remand and 2014 Order on Rehearing).

average. The 11 percent figure was based on historical cost data, such that the bandwidth remedy would apply if the Entergy System exceeded historical cost disparities.⁷

3. In Opinion No. 480, issued June 1, 2005, the Commission found that the bandwidth remedy should apply prospectively starting in calendar year 2006, with the first payments, based on calendar year 2006 production costs, occurring in 2007. Entergy subsequently submitted a compliance filing containing its proposed bandwidth formula, as part of the System Agreement. The bandwidth formula was accepted by the Commission⁸ to be applied prospectively for production costs incurred during calendar year 2006 and all calendar years thereafter.

4. In its remand⁹ of Opinion Nos. 480 and 480-A, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the Commission had not provided a reasonable explanation for the Commission's decision to delay implementation of the bandwidth remedy until a full year of data had become available for the 2006 test year. The court held that the Commission's argument that use of the first calendar year of data was "the most appropriate and equitable way" to implement the bandwidth remedy was a conclusion rather than a reason, and that the Commission had failed to explain why it believed that the first calendar year was the most equitable time.¹⁰

5. In the subsequent 2011 Order on Remand, the Commission held that it would implement the bandwidth remedy on June 1, 2005, the date the Commission issued Opinion No. 480 determining that the rates were unjust and unreasonable. The Commission stated that allowing the bandwidth remedy to be implemented on June 1, 2005 is consistent with the court's direction that, absent a reasonable explanation for a delay to implement the bandwidth remedy, it would be arbitrary and capricious for the Commission to delay implementation of a just and reasonable rate.¹¹ The Commission

⁷ Opinion No. 480, 111 FERC ¶ 61,311 at P 144.

⁸ See November 2006 Compliance Order, 117 FERC ¶ 61,203; April 2007 Compliance Order, 119 FERC ¶ 61,095 (2006 Compliance Tariff).

⁹ Louisiana Remand, 522 F.3d 378.

¹⁰ *Id.* at 400.

¹¹ 2011 Order on Remand, 137 FERC ¶ 61,047 at P 34. The Commission denied a Louisiana Commission request for rehearing regarding these rulings in the 2014 Order on Rehearing. 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 33.

directed Entergy to submit a compliance filing calculating the bandwidth payments and receipts for the period June 1, 2005 through December 31, 2005 (2005 period).¹²

6. On February 28, 2014, the Commission issued an order¹³ rejecting a compliance filing submitted by Entergy on December 19, 2011 in response to the 2011 Order on Remand. The Commission rejected Entergy's use of six months of data as a basis for the calculation for the seven-month period at issue, rather than actual data for all seven months, and required Entergy to submit a subsequent compliance filing. The Commission stated that in Entergy's subsequent compliance filing, Entergy must perform bandwidth calculations for the 2005 period using monthly data wherever possible. The Commission stated that, for components of the bandwidth formula where month-to-month variations in costs are not meant to be captured, end-of-year amounts should be used.¹⁴ The Commission also stated that payments associated with the 2005 period must include interest.¹⁵

II. Entergy's Filing

7. On April 29, 2014, as amended on May 7, 2014 and May 23, 2014, Entergy submitted a compliance filing in response to the 2014 Order Rejecting Compliance Filing. The compliance filing calculated bandwidth payments and receipts for the 2005 period. As part of its compliance filing, as amended, Entergy filed a comprehensive recalculation report showing the payment/receipt amounts based on the 2005 monthly data. Entergy stated that the sources of the monthly data are the actual books and records of each Operating Company that existed at that time. Entergy contended that it used monthly data as the source for those variables not based on data as of December 31, 2005, e.g., rate base components use year-end balances. Entergy stated that with respect to the Demand Ratio and Entergy Ratio, Entergy applied a seven-month average balance. Entergy states that the resulting variations or disparities from the system average cost for each Operating Company are as follows. Variations below the system average are in parentheses.

¹² *Id.*

¹³ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,153 (2014) (2014 Order Rejecting Compliance Filing), *order denying reh'g*, 153 FERC ¶ 61,033 (2015) (2015 Order Denying Rehearing I).

¹⁴ *Id.* PP 26-27.

¹⁵ *Id.* P 30.

Operating Company	% Initial Disparity (Before Remedy)	% Final Disparity (After Remedy)
Entergy Arkansas	(23.37%)	(11.00)%
Entergy Gulf States Louisiana	13.92%	5.64%
Entergy Louisiana	(1.04)%	(1.04)%
Entergy Mississippi	10.56%	5.64 %
Entergy New Orleans	6.79%	5.64 %
Entergy Texas	13.54%	5.64 %

8. As shown above, Entergy Arkansas has an initial disparity in the Compliance Filing exceeding the plus or minus 11 percent from system average costs set forth in Opinion No. 480 and 480-A. The payments and receipts pursuant to Service Schedule MSS-3 section 30.11 are as follows:

Company	(Payment)/Receipt (\$ Millions)
Entergy Arkansas	(\$167.3)
Entergy Gulf States Louisiana	\$72.8
Entergy Louisiana	\$0.0
Entergy Mississippi	\$33.2
Entergy New Orleans	\$2.1
Entergy Texas	\$59.2

9. With regard to interest calculations, Entergy stated that it had computed interest on the payments and receipts based on the calculations included in its compliance filing. Entergy stated that interest was compounded quarterly from June 1, 2006 through May 14, 2014, the date upon which its current compliance filing payments will be made.

Company	(Payment)/Receipt (\$ Millions) (Interest Amounts)
Entergy Arkansas	(\$56.5)
Entergy Gulf States Louisiana	\$24.0
Entergy Louisiana	\$0.0
Entergy Mississippi	\$11.0
Entergy New Orleans	\$0.5
Entergy Texas	\$21.0

10. On October 15, 2015, the Commission issued an order stating that the compliance filing raises issues of material fact and setting the matter for hearing and settlement judge procedures.¹⁶ On December 4, 2015, the participants in the settlement proceedings recommended initiation of hearing procedures to be conducted with settlement procedures.

11. On July 11, 2016, the parties and Commission trial staff (Trial Staff) filed a Joint Statement of Contested Issues and Positions¹⁷ in accordance with the procedural schedule. The parties and Trial Staff identified thirteen issues to be decided in this case.¹⁸

12. On June 30, 2016, Entergy filed a motion for partial summary judgment in this proceeding.¹⁹ Entergy's motion asserted that the Commission had already ruled on the

¹⁶ Hearing Order, 153 FERC ¶ 61,032.

¹⁷ Entergy July 11, 2016 Joint Statement of Contested Issues and Positions at 1-45.

¹⁸ In order to maintain consistency with briefs and exhibits filed in this proceeding, the issues discussed herein (i.e., Issue Nos. 4, 6, 12, and 13) retain the original numbers that were designated in the Joint Statement of Contested Issues and Positions that were filed on July 11, 2016 in accordance with the procedural schedule.

¹⁹ Entergy June 30, 2016 Motion for Partial Summary Disposition at 1.

applicable tariff in this proceeding and that the bandwidth formula accepted in the Commission's prior orders governs the calculation of payments and receipts for the 2005 period. On July 28, 2016, the Presiding Judge issued a partial initial decision,²⁰ finding that the Compliance Tariff filed by Entergy on December 18, 2006 constitutes the bandwidth formula that should be used in this proceeding. The Presiding Judge also summarily disposed of certain other issues in this case pertaining to the application of the compliance tariff. On May 17, 2018 the Commission issued an order²¹ affirming the Partial Initial Decision.

III. Initial Decision

13. On November 7, 2016, the Presiding Judge issued the Initial Decision addressing those issues not already resolved in the Partial Initial Decision. Entergy, Trial Staff, and the Louisiana Public Service Commission (Louisiana Commission) filed briefs on exceptions. Entergy, Trial Staff, the Louisiana Commission, and the Arkansas Public Service Commission (Arkansas Commission) filed briefs opposing exceptions.

14. The Initial Decision covered various issues, including: (1) whether interest on payments related to the 2005 bandwidth test period should be accrued from June 1, 2005, the first day of the test period, or from June 1, 2006, the date that those payments should have been made; (2) whether Entergy Louisiana's Net Operating Loss Accumulated Deferred Income Tax (ADIT) is attributable to the Entergy Louisiana's 2001 "Vidalia tax deduction," and, if so, whether it is appropriate to exclude Entergy Louisiana's Net Operating Loss ADIT recorded in Account 190 caused by the Vidalia tax deduction from the 2005 bandwidth calculation; (3) whether Entergy Louisiana's accounting for the leased portion of the Waterford 3 Nuclear Plant sale/leaseback should be changed to be the same as the accounting for the owned portion of the plant; (4) whether the Operating Companies properly accounted for regulatory asset deferrals and amortizations identified in Exhibits S-28 through S-32; and (5) whether the deferrals and amortizations identified in Exhibits S-28 through S-32 should affect the amount of costs reflected in the bandwidth calculation.

15. In the Initial Decision, the Presiding Judge finds, inter alia, (1) that the appropriate start date for interest on bandwidth payments in this proceeding is June 1, 2006; (2) that a portion of Entergy Louisiana's Net Operating Loss ADIT must be excluded from the ADIT input variable of the bandwidth formula to the extent that the ADIT is properly attributable to the Vidalia tax deduction; (3) that Entergy Louisiana's accounting for the

²⁰ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 156 FERC ¶ 63,018 (2016) (Partial Initial Decision).

²¹ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 163 FERC ¶ 61,117 (2018).

leased portion of the Waterford 3 plant should be revised to reflect that it is a financing transaction; (4) that Entergy did not properly account for certain regulatory asset deferrals and amortizations identified in Exhibits S-28 through S-32; and (5) that Entergy will be required to determine the impact of accounting changes on the bandwidth calculation for the 2005 bandwidth period and make a compliance filing to change the result accordingly.

IV. Discussion

16. Having fully evaluated the Initial Decision, the parties' briefs, and the record before us, we affirm the Presiding Judge's findings. Specifically, we affirm the Presiding Judge's findings that the appropriate start date for interest is June 1, 2006. We also agree with the Presiding Judge's finding that a portion of Entergy Louisiana's Net Operating Loss ADIT is attributable to the Vidalia tax deduction. We affirm the Presiding Judge's related finding that it is appropriate to exclude from the 2005 bandwidth calculation Net Operating Loss ADIT recorded in Account 190 that is attributable to the Vidalia tax deduction. We agree with the Presiding Judge that Entergy did not properly account for certain regulatory asset deferrals. Although the Presiding Judge did not address whether corrections for the regulatory asset deferrals should be made for years subsequent to the 2005 bandwidth period, we find that making such corrections is necessary to ensure proper implementation of the filed rate.²² We also agree with the Presiding Judge that Entergy must determine the impact of accounting changes as discussed in this order and file a compliance filing.

17. Lastly, we note that no parties excepted to the Presiding Judge's ruling on whether Entergy Louisiana's accounting for the leased portion of the Waterford 3 plant should be changed to be the same as the accounting for the owned portion of the plant. Accordingly, we summarily affirm the Presiding Judge on this issue.

A. Issue Four: Start Date for Interest on Bandwidth Payments

1. Background

18. On February 28, 2014, the Commission issued two orders in this proceeding ordering interest on bandwidth payments for 2005 bandwidth period. In the 2014 Order on Rehearing, which addressed requests for rehearing of the 2011 Order on Remand, the Commission granted the Louisiana Commission's request that interest be required on the

²² The Presiding Judge noted that the omission from the Initial Decision of any argument raised by the participants in this proceeding does not mean it that it has not been considered. Rather, it indicates that issues not specifically discussed or addressed have been considered and are rejected. Initial Decision, 157 FERC ¶ 63,018 at P 28.

bandwidth payments in this proceeding.²³ The Commission required that interest be calculated on the payment/receipt amounts as of June 1, 2006.²⁴ In the 2014 Order Rejecting Compliance Filing, which rejected Entergy's initial compliance filing regarding bandwidth payments for the 2005 bandwidth period, the Commission, *inter alia*, agreed with the Louisiana Commission's argument that payments/receipts for the 2005 bandwidth period must include interest.²⁵

19. Entergy requested rehearing of the Commission's determination regarding interest in both orders, resulting in the issuance of two similar Commission orders²⁶ on October 15, 2015. In the 2015 Order Denying Rehearing I, the Commission rejected Entergy's request for rehearing of the 2014 Order Rejecting Compliance Filing, again affirming the Commission's prior determination regarding interest.²⁷ In the 2015 Order Denying Rehearing II, the Commission denied Entergy's request for rehearing of the 2014 Order on Rehearing, affirming the Commission's prior ruling that interest must be included on payment/receipts for the 2005 bandwidth period.²⁸

20. In the 2005 bandwidth calculation, Entergy computed interest as of the date of issuance of transfer payments and receipts among the Operating Companies, which is June 1, 2006.²⁹ The Louisiana Commission argued that the 2015 Orders Denying Rehearing indicated that the correct start date should be one year earlier, June 1, 2005, the date on which the 2005 bandwidth period begins.³⁰

²³ 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 42.

²⁴ *Id.*

²⁵ 2014 Order Rejecting Compliance Filing, 146 FERC ¶ 61,153 at P 30. The 2014 Order Rejecting Compliance Filing found that interest was required but did not specify a start date.

²⁶ 2015 Order Denying Rehearing I, 153 FERC ¶ 61,033 and 2015 Order Denying Rehearing II, 153 FERC ¶ 61,034 (jointly, 2015 Orders Denying Rehearing).

²⁷ 2015 Order Denying Rehearing I, 153 FERC ¶ 61,033 at PP 12-16.

²⁸ 2015 Order Denying Rehearing II, 153 FERC ¶ 61,034 at PP 13-17.

²⁹ Ex. ESI-2 at 6.

³⁰ Louisiana Commission Post-hrg. Br. at 1.

2. Initial Decision

21. The Presiding Judge found that interest for the 2005 bandwidth period should begin to accrue as of June 1, 2006. The Presiding Judge explained that there is no overall rule dictating when the interest clock of a remedy starts to run. The Presiding Judge explained that the June 1, 2006 date was established in the 2014 Order on Rehearing, in which the Commission found that:

In the instant case, due to the length of time that has passed, we find that it is appropriate to follow our general policy and require interest to be paid on the bandwidth remedy payments for the seven-month period in 2005 to ensure full compensation. As the court explained in *Anadarko Petroleum Corp. v. FERC*, “interest is simply a way of ensuring full compensation. This is why the delay between the time of the customers’ injury and the granting of relief is a reason for awarding interest, not denying it” This finding is also consistent with our more recent orders regarding the bandwidth remedy. Consistent with those orders, we will direct that interest be calculated on the payment/receipt amounts *from June 1, 2006* until the date of the Entergy Intra-System Bill that will reflect the bandwidth calculation amounts for the seven-month 2005 period.³¹

22. The Presiding Judge explained that the Commission “muddied the waters” with regard to the interest question in the 2015 Order Denying Rehearing II.³² In that order, the Commission found:

On March 31, 2014, Entergy Services, Inc., (Entergy) requested rehearing of the Commission’s ruling in a prior order that Entergy *must include interest, beginning June 1, 2006*, and the recalculated bandwidth payment and receipt amounts for the seven-month period from June 1, 2005 through December 31, 2005. ... *The request for rehearing is denied.*

Entergy also argues that the general policy considerations set forth in *Anadarko* in support of interest are inapplicable to bandwidth payments. However, the first policy consideration, just compensation, is fully applicable. In the circumstances of this case, the implementation date of the bandwidth remedy has been pushed back seven months to June 1, 2005, and full compensation requires interest *from that date* until the date of the

³¹ 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 42 (footnotes omitted) (emphasis added).

³² Initial Decision, 157 FERC ¶ 63,018 at P 36.

Intra-System bill that will reflect the bandwidth calculation amounts for calendar year 2006.³³

23. The Presiding Judge found that because the text of the Order Denying Rehearing II contains irreconcilable provisions, it is appropriate to ignore the language in the two 2015 orders denying rehearing and to rely instead on the 2014 Order on Rehearing's interest start date of June 1, 2006. The Presiding Judge also noted that there is no language in the Order Denying Rehearing II that overrides the motivations of the 2014 Order on Rehearing that the June 1, 2006 start date ensures "full compensation."³⁴

24. The Presiding Judge found that there is a practical problem with starting the interest clock on the first day of implementation of the bandwidth remedy. The Presiding Judge explained that the Compliance Tariff provides that bandwidth transfer payments and receipts are computed on the basis of "the preceding year's results."³⁵ The Presiding Judge explained that the amounts of the first set of transfer payments were unknowable until the applicable test period was completed. The Presiding Judge found that, accordingly, it would not be possible to establish as of the very first day of that period which Operating Companies would be making transfer payments, and which would be receiving payments, or even if payments were to be made at all.³⁶ The Presiding Judge found that the Commission "cannot have intended Entergy to embark on a mathematically impossible task."³⁷

3. Briefs on Exceptions

25. The Louisiana Commission argues that the correct start date for interest associated with the 2005 bandwidth period is June 1, 2005. The Louisiana Commission explains that in the 2011 Order on Remand, the Commission ordered the bandwidth remedy to be implemented on June 1, 2005, and further ordered Entergy to calculate bandwidth payments and receipts *for* the seven-month period of June 1, 2005 through

³³ 2015 Order Denying Rehearing II, 153 FERC ¶ 61,034 at PP 1, 13, 17 (emphasis added). The 2015 Order Denying Rehearing I contained identical language.

³⁴ Initial Decision, 157 FERC ¶ 63,018 at P 40.

³⁵ *Id.* P 41 (citing Arkansas Commission Post-hg. Brief at 4-5).

³⁶ *Id.*

³⁷ *Id.*

December 31, 2005.³⁸ The Louisiana Commission contends that the Commission found the System Agreement rates to be unduly discriminatory as of that date, and that it “would be arbitrary and capricious of the Commission to delay implementation of a just and reasonable rate.”³⁹ The Louisiana Commission argues that, consistent with established practice in the bandwidth proceedings, interest is due on delayed payments from the time the bandwidth rate is made effective. The Louisiana Commission contends that the payments are for the seven-month 2005 bandwidth period, and interest must be paid for the delay since that time to ensure adequate compensation for the undue discrimination. The Louisiana Commission argues that the Commission reiterated in numerous orders that the bandwidth payments and receipts were “for” the 2005 bandwidth period, with an effective date of June 1, 2005.⁴⁰ The Louisiana Commission argues that, accordingly, there can be no serious question that the rates at issue in this proceeding are effective on June 1, 2005, and that interest should flow from the same date that rates are effective.

26. The Louisiana Commission contends that this case is different from other bandwidth implementation proceedings in that the rates, as Entergy has filed them, are not based on a preceding year of data as required by Service Schedule MSS-3. The Louisiana Commission explains that in the other cases, the bandwidth calculation was based on data from the year preceding the effective date of the rates. The Louisiana Commission contends that, accordingly, unlike other bandwidth implementation years, the “test period” and the “rate effective period” are the same. The Louisiana Commission argues that because the rate-effective period occurred many years ago, there is no need to use a test year “proxy” to represent the rate-effective period.⁴¹

27. The Louisiana Commission contends that the interest start date should be based on the Commission’s most recent expressions of will, which would support a June 1, 2005 interest start date. The Louisiana Commission argues that although the 2014 Order on Rehearing establishes June 1, 2006 as the start date for interest, the 2015 Orders Denying

³⁸ *Id.* (citing 2011 Order on Remand, 137 FERC ¶ 61,047 at P 34) (emphasis added).

³⁹ Louisiana Commission Brief on Exceptions at 10 (citing 2011 Order on Remand, 137 FERC ¶ 61,047 at P 34).

⁴⁰ *Id.* at 19-20 (citing 2014 Order Rejecting Compliance Filing, 146 FERC ¶ 61,153 at PP 1, 27; 2015 Order Denying Rehearing I, 153 FERC ¶ 61,033 at P 12).

⁴¹ *Id.* at 22.

Rehearing required that interest commence June 1, 2005.⁴² The Louisiana Commission argues that the two orders should control the start date for interest, as they are the most recent and are consistent with the purpose of providing interest, i.e., ensuring just compensation. The Louisiana Commission also argues that the order setting this case for hearing is the latest, most applicable authority on interest, and it recognized that payments associated with the 2005 bandwidth period “*must* include interest.”⁴³ The Louisiana Commission argues that the Hearing Order also recognizes June 1, 2005 as the effective date for rates in this proceeding.⁴⁴ The Louisiana Commission notes that the Hearing Order cites to the 2014 Order Rejecting Compliance Filing, which states that “bandwidth payments associated with the [2005 bandwidth period] must also include interest.”⁴⁵ The Louisiana Commission further notes that the 2014 Order Rejecting Compliance Filing also confirms that the remedy in this proceeding is “for” the 2005 bandwidth period.⁴⁶ The Louisiana Commission explains that in response to Entergy’s request for rehearing of the 2014 Order Rejecting Compliance Filing, the Commission issued the Order Denying Rehearing I, which, according to the Louisiana Commission, specifies a June 1, 2005 start date for interest.⁴⁷ The Louisiana Commission argues that, accordingly, the Hearing Order emerges from a line of Commission orders that recognize the June 1, 2005 effective date.

28. The Louisiana Commission argues that the Initial Decision erred in ignoring the 2015 Orders Denying Rehearing due to “irreconcilable” language, i.e., denying rehearing of the order listing June 1, 2006 as the start date for interest, while, according to the Louisiana Commission, stating that the interest start date is June 1, 2005.⁴⁸ The

⁴² *Id.* (citing 2015 Order Denying Rehearing II, 153 FERC ¶ 61,034 at P 17; 2015 Order Denying Rehearing I, 153 FERC ¶ 61,033 at P 16).

⁴³ *Id.* at 24 (citing Hearing Order, 153 FERC ¶ 61,032 at P 6) (emphasis added).

⁴⁴ *Id.* (citing Hearing Order, 153 FERC ¶ 61,032 at P 22 n.30). The Hearing Order stated that June 1, 2005 is the effective date for the *rates* in this proceeding, but did not discuss the start date for interest.

⁴⁵ *Id.* (citing 2014 Order Rejecting Compliance Filing, 146 FERC ¶ 61,153 at P 30).

⁴⁶ *Id.* (citing 2014 Order Rejecting Compliance Filing, 146 FERC ¶ 61,153 at P 26).

⁴⁷ *Id.* at 25.

⁴⁸ *Id.* at 11.

Louisiana Commission asserts that the Commission is free to clarify its orders as long as it retains jurisdiction over the case. The Louisiana Commission argues that there is also an internal conflict in the 2014 Order on Rehearing. The Louisiana Commission explains that in that order, the Commission granted the Louisiana Commission's request for rehearing, which requested a June 1, 2005 start date for interest, but inconsistently stated that interest would start June 1, 2006. The Louisiana Commission adds that the Commission ruled that the bandwidth remedy would be "for" the 2005 bandwidth period.⁴⁹ The Louisiana Commission argues that the Initial Decision fails to explain how one "irreconcilable conflict" differs from the other.⁵⁰ The Louisiana Commission adds that because the 2014 Order Rejecting Compliance Filing did not explicitly repeat the June 1, 2006 interest start date contained in the 2014 Order on Rehearing, the Commission erred in referring to the June 1, 2006 interest start date on rehearing of that order in the 2015 Order Denying Rehearing I. The Louisiana Commission contends that the 2014 Order Rejecting Compliance Filing only agreed in general terms "that bandwidth payments associated with the seven-month period must include interest . . .
",⁵¹

29. The Louisiana Commission disputes the Initial Decision's finding that it would be mathematically impossible to calculate interest from June 1, 2005, because the amounts owed are not known until the remedy period is completed.⁵² The Louisiana Commission argues that the Presiding Judge mistakes calculating interest for the period June 1, 2005 forward with calculating interest on June 1, 2005. The Louisiana Commission adds that it is not necessary to know the amounts of the payments on June 1, 2005 to calculate interest beginning June 1, 2005. The Louisiana Commission argues that, instead, once the payments were known, refunds and interest on those refunds could be calculated. The Louisiana Commission argues that this could occur any time after Entergy's filing to determine the payments for the 2005 period.⁵³

30. The Louisiana Commission argues that both section 205(e)⁵⁴ and 206(b)⁵⁵ of the Federal Power Act (FPA) make clear that refunds are determined from the

⁴⁹ *Id.* (citing 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 42).

⁵⁰ *Id.*

⁵¹ *Id.* at 27 (citing 2014 Order Rejecting Compliance Filing, 146 FERC ¶ 61,153 at P 30).

⁵² *Id.* (citing Initial Decision, 157 FERC ¶ 63,018 at P 41).

⁵³ *Id.* at 45.

⁵⁴ 16 U.S.C. § 824d(e) (2012).

commencement of the remedy period, when the Commission determines the just and reasonable rates and provides for paying interest. The Louisiana Commission contends that the amounts are never known during the period being remedied, but they are known once the Commission determines the refunds for the rate-effective period. The Louisiana Commission argues that the Initial Decision would prevent the Commission from ever attaching interest for a refund period, because it assumes that interest has to be calculated during that period. The Louisiana Commission contends that when unjust and unreasonable costs in rates are refunded, the amounts owed are always calculated after the unjust and unreasonable rates were assessed.⁵⁶

31. The Louisiana Commission contends that a June 1, 2005 start date for interest is required by the Commission's regulations, which state that "[i]nterest shall be computed from the *date of collection* until the date refunds are made"⁵⁷ The Louisiana Commission argues that, in this case, the payments would have started on the date of the rates. The Louisiana Commission adds that, even if they were delayed a year, the "date of collection" in the regulation is not the date that bandwidth payments would have started, but instead should be the date that the overpayments were "collected" from ratepayers who were deprived of the use of their money from that date.⁵⁸

4. Briefs Opposing Exceptions

32. Entergy, the Arkansas Commission, and Trial Staff all argue that the correct start date for interest in this proceeding is June 1, 2006. Trial Staff contends that the 2014 Order on Rehearing unambiguously establishes a June 1, 2006 interest start date and is the controlling legal precedent, and that the Commission's subsequent orders support this finding. Trial Staff argues that the 2015 Orders Denying Rehearing support a June 1, 2006 interest effective date. Trial Staff explains that both of the 2015 Orders Denying Rehearing denied Entergy's request for rehearing of the issue of whether interest was due for the payments and receipts in the 2005 bandwidth period, but did not address a change in the interest effective date.⁵⁹

⁵⁵ 16 U.S.C. § 824e(b) (2012).

⁵⁶ Louisiana Commission Brief on Exceptions at 11.

⁵⁷ *Id.* at 41 (citing 18 C.F.R. § 35.19a (2017) (emphasis added)).

⁵⁸ *Id.* (citing *San Diego Gas & Elec. v. Sellers of Energy*, 105 FERC ¶ 61,066 (2003)).

⁵⁹ Trial Staff Brief Opposing Exceptions at 14.

33. Trial Staff argues that because the 2014 Order on Rehearing is the only Commission order that directly addresses the interest effective date, and rehearing of that order was denied, the establishment of a June 1, 2006 interest start date must stand. Trial Staff disagrees with the Louisiana Commission's assertion that a sentence in the 2015 Orders Denying Rehearing referring to June 1, 2005 requires a change in the start date. Trial Staff contends that the sentence appears in a paragraph responding to a claim in Entergy's request for rehearing whether policy considerations regarding the application of interest apply to this proceeding. Trial Staff argues that given the context, it is clear that the Commission was addressing policy about whether interest should apply, not the date from which interest should be calculated.⁶⁰

34. Entergy explains that the remedy effective date is not the same as the effective date for payments and interest. Entergy contends that the Louisiana Commission blurs the rate effective date and the interest start date by arguing that, because bandwidth payments are "for" the 2005 bandwidth period, interest must be paid beginning June 1, 2005. Entergy explains that the Commission has previously explained the distinction between the effective date of the bandwidth remedy and the date on which payments should be made. Entergy contends that in Opinion No. 480, the Commission originally held that the bandwidth remedy would be "effective for calendar year 2006."⁶¹ Entergy explains that in its subsequent compliance filing in that proceeding, Entergy proposed a rate schedule that utilized calendar year 2006 production cost data to calculate payments beginning June 1, 2007. Entergy explains that the Commission rejected the Louisiana Commission's arguments that a June 1, 2007 payment date was inconsistent with the Commission's prior ruling that the bandwidth remedy be effective for calendar year 2006, thereby drawing a clear distinction between the effective date of the remedy and the effective date of the annual bandwidth payments.⁶²

35. The Arkansas Commission adds that interest should be determined on bandwidth payments per the bandwidth formula in Service Schedule MSS-3. The Arkansas Commission asserts that the tariff language provides that payments start on June 1, 2006 following the 2005 bandwidth period, and failure to follow that mandate would violate the as-filed bandwidth formula.⁶³ The Arkansas Commission disagrees with the Louisiana Commission's argument that interest is required as of June 1, 2005 to address

⁶⁰ *Id.* at 16.

⁶¹ Entergy Brief Opposing Exceptions at 8 (citing Opinion No. 480, 111 FERC ¶ 63,111 at P 145).

⁶² *Id.* (citing Opinion No. 480-A, 113 FERC ¶ 61,282 at P 47).

⁶³ Arkansas Brief Opposing Exceptions at 4.

alleged unjust and unreasonable “cost disparities” among the Operating Companies existing on that date. The Arkansas Commission argues that the Commission requires interest payments to provide the time value of payments received by the Operating Companies starting June 1, 2006, not on alleged overpayments beginning June 1, 2005. The Arkansas Commission explains that there can be no such overpayments since the bandwidth payments for 2005 would not commence until June 1, 2006.⁶⁴

36. Entergy and the Arkansas Commission argue that the Presiding Judge correctly determined that the Commission did not intend for Entergy to undertake a mathematically impossible task. Entergy agrees with the Presiding Judge that the amounts of the transfer payments “were unknowable until the applicable test period was completed.”⁶⁵ Entergy explains that, therefore, it would be impossible to establish as of the very first day of the test period which Operating Company would be making or receiving payments.⁶⁶ The Arkansas Commission contends that the Louisiana Commission’s exception misses the point that even if it were mathematically possible to determine payments beginning June 1, 2005, the bandwidth remedy is prospective in nature, and applying the formula retroactively to June 1, 2005 would violate the filed rate.⁶⁷

37. Trial Staff, Entergy, and the Arkansas Commission also disagree with the Louisiana Commission’s assertion that a June 1, 2006 start date for interest is inconsistent with the Commission’s regulations. Trial Staff disputes the Louisiana Commission’s contention that 18 C.F.R. 35.19a, *Refund requirements under suspension orders*, is controlling and requires interest to be paid from the date customers initially began paying overcharges. Trial Staff explains that this date does not apply because the Commission has stated repeatedly that the bandwidth remedy does not involve refunds.⁶⁸ Entergy and the Arkansas Commission add that even if the interest regulation were applicable here, the Initial Decision correctly recognized that the date of collection is the date on which bandwidth payments would have started, which is June 1, 2006.⁶⁹ Trial Staff argues that

⁶⁴ *Id.* at 5.

⁶⁵ Entergy Brief Opposing Exceptions at 15 (citing Initial Decision at P 41).

⁶⁶ *Id.*

⁶⁷ Arkansas Commission Brief Opposing Exceptions at 13.

⁶⁸ Trial Staff Brief Opposing Exceptions at 31 (citing, e.g., Opinion No. 480, 111 FERC ¶ 61,311 at P 145).

⁶⁹ Entergy Brief Opposing Exceptions at 14; Arkansas Commission Brief on Exceptions at 12.

the Louisiana Commission incorrectly argues that the FPA requires interest to be paid on unjustified rates or charges. Trial Staff contends that the Louisiana Commission cites a permissive passage despite claiming a mandatory rule. Trial Staff explains that the cited material notes that the Commission “may by further order require . . . refund, with interest . . . such increased rates or changes as by its discretion shall be found not justified.”⁷⁰

38. The Arkansas Commission adds that, contrary to the assertion made by the Louisiana Commission, the most recent relevant order supports a June 1, 2006 interest start date. The Arkansas Commission explains that the Commission’s order on rehearing and clarification issued September 22, 2016, in Docket No. ER10-1350-005, concludes that the interest effective date is June 1, 2006.⁷¹ The Arkansas Commission explains that, in that order (regarding bandwidth payments for calendar year 2009), interest is necessary on bandwidth payments given the delay since the June 1, 2010 effective date of such payments, “in order to ensure full compensation.”⁷² The Arkansas Commission further explains that, in support of its determination, the Commission stated that “[t]his determination is also consistent with numerous recent orders regarding interest and the bandwidth calculation,”⁷³ with a citation to a paragraph in the 2014 Order on Rehearing that requires interest in this proceeding to be calculated from June 1, 2006. The Arkansas Commission argues that because the Louisiana Commission believes that the interest start date should be determined by the Commission’s most recent expression of will, the Commission’s September 22, 2016 order in Docket No. ER10-1350-005 should control the interest start date in this proceeding.

⁷⁰ Trial Staff Brief Opposing Exceptions at 33 (citing 16 U.S.C. § 824d(e) (emphasis added)).

⁷¹ Arkansas Commission Brief Opposing Exceptions at 10 (citing *Entergy Servs., Inc.*, 156 FERC ¶ 61,196, at P 151 (2016)).

⁷² *Id.*

⁷³ *Id.* (citing 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 42).

5. Commission Determination

39. We affirm the Presiding Judge's ruling that interest on bandwidth payments in this proceeding should accrue from June 1, 2006. To the extent that any language in any prior order is ambiguous, we clarify that June 1, 2006 is the correct date.

40. In the April 2007 Compliance Order, the Commission, in part, addressed the issue of interest to be applied to bandwidth payments and receipts.⁷⁴ In that order, the Commission denied a Louisiana Commission request for rehearing and reaffirmed that interest was not required on bandwidth payments.⁷⁵ Subsequently, after the D.C. Circuit remanded to the Commission the matter of determining the effective date of the bandwidth remedy, and after the Commission issued its 2011 Order on Remand establishing a June 1, 2005 effective date for the bandwidth remedy,⁷⁶ the Commission determined in the 2014 Order on Rehearing that interest would be required on bandwidth payments in this proceeding.⁷⁷ The Commission determined that "due to the length of time that has passed . . . it is appropriate to follow our general policy and require interest to be paid on the bandwidth payments for the seven-month period in 2005 to ensure full compensation."⁷⁸ The Commission unambiguously ordered that "interest be calculated on the payment/receipt amounts from June 1, 2006 until the date of the Entergy Intra-System Bill that will reflect the bandwidth recalculation amounts for the seven-month period."⁷⁹ No party sought rehearing of the Commission's ruling on the effective date for interest. June 1, 2006 is therefore the correct date from which to calculate interest.

41. The Louisiana Commission argues incorrectly that the Commission changed the start date to June 1, 2005 when the Commission denied Entergy's request for rehearing on the question of whether, not when, to apply interest in the 2015 Orders Denying Rehearing. The Louisiana Commission's argument relies on a single sentence in the nearly identical 2015 orders. However, the purpose of those orders was not to change the effective date for interest. Rather, the 2015 Orders Denying Rehearing only address the question of whether interest should apply, not the date from which interest should apply.

⁷⁴ April 2007 Compliance Order, 119 FERC ¶ 61,095 at PP 30-32.

⁷⁵ *Id.* P 32.

⁷⁶ 2011 Order on Remand, 137 FERC ¶ 61,047 at P 34.

⁷⁷ 2014 Order on Rehearing, 146 FERC ¶ 61,152 at PP 41-42.

⁷⁸ *Id.* P 42.

⁷⁹ *Id.* (emphasis added).

Each of the relevant paragraphs in the 2015 Orders Denying Rehearing describe Entergy's request for rehearing and confirm that the scope of the order is limited to whether interest should apply. The 2015 Orders Denying Rehearing do not meaningfully delve into the interest effective date specified in the 2014 Order on Rehearing. Accordingly, we reject the argument that the Commission expressly intended in those orders to reset that date to June 1, 2005.⁸⁰

42. Moreover, the Commission made clear in the 2015 Orders Denying Rehearing that its decision to require interest for the 2005 bandwidth calculation was "consistent with numerous recent orders regarding interest and the bandwidth formula,"⁸¹ which required that interest be effective June 1 of the year following the test period subject to the annual bandwidth calculation (i.e., when annual bandwidth payments and receipts occur).⁸² For example, in the first and second bandwidth calculation filings, in Docket Nos. ER07-956 and ER08-1056, respectively, interest was required from the payment date, i.e., June 1 of the year following the test period.⁸³ The 2014 Order on Rehearing, the 2014 Order Rejecting Compliance Filing, and the 2015 Orders Denying Rehearing all cite to the relevant orders in these two dockets, noting that the interest ruling for the instant proceeding is "consistent with [these] more recent orders." Furthermore, testimony provided at hearing by Entergy witness Hunt indicated that all of the bandwidth calculations for which interest is required would include interest from this date, not including the test period.⁸⁴ Accordingly, we find that this approach, as specified in the

⁸⁰ Trial Staff Brief Opposing Exceptions at 14.

⁸¹ 2015 Order Denying Rehearing I, 153 FERC ¶ 61,033 at P 12 n.19; 2015 Order Denying Rehearing II, 153 FERC ¶ 61,034 at P 13 n.25).

⁸² *See, e.g., April 2007 Compliance Order*, 119 FERC ¶ 61,095 at PP 24-25 (noting that the 2007 bandwidth calculation was based on a 2006 test year with payments to begin in June 2007); *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105, at P 3 (2012) (noting that "Entergy is required, by June 1 of each year, to make a compliance filing implementing the bandwidth formula using the prior year's production costs.").

⁸³ *Entergy Servs., Inc.*, 139 FERC ¶ 61,104, at P 13 (2012) (requiring Entergy to calculate interest from June 1, 2007 for the 2006 bandwidth calculation); *Entergy Servs., Inc.*, 142 FERC ¶ 61,011, at P 21 (requiring Entergy to calculate interest from June 1, 2008 for the 2007 bandwidth calculation). *See also Entergy Arkansas, Inc.*, 148 FERC ¶ 61,088, at PP 13-14 (2014) (ordering Entergy to file a new compliance filing "based on the 2006 and 2007 calendar year data, with interest, from June 1, 2007 or June 1, 2008, as appropriate.").

⁸⁴ Tr. 275:17-22; Tr. 285:5-22.

Commission's orders and relied upon for the June 1, 2006 interest requirement in this proceeding, should be followed here rather than the Louisiana Commission's proposal to apply interest from the remedy effective date.

43. Given that our recent orders concerning interest and the bandwidth formula require that interest be effective June 1 of the year following the test year, we reject the Louisiana Commission's argument that the 2014 Order on Rehearing is internally inconsistent in establishing an interest start date of June 1, 2006 while also stating that interest is "for" the seven-month 2005 bandwidth period.⁸⁵ As noted above, the remedy is prospective, based on the annual production cost data, with rough production cost equalization payments to begin the following year. Accordingly, payments beginning the following year are the Commission's established remedy *for* the prior year, or in this case, the seven-month 2005 bandwidth period. The Commission's use of the word "for" is simply referring to the payments which are the remedy *for* the 2005 bandwidth period. It does not imply that interest should be granted "for" the 2005 bandwidth period as the Louisiana Commission suggests. To the contrary, the Commission used nearly identical language in requiring interest to be paid in Docket Nos. ER07-956 and ER08-1056, which led to interest being calculated from June 1 of the year following the test year. Specifically, in Docket No. ER07-956, the Commission required Entergy to calculate interest on the payment/receipt amounts from June 1, 2007 until the Intra-System Bill that will reflect the bandwidth calculation amounts *for calendar year 2006*.⁸⁶ The calculation was based upon calendar year 2006 production cost data, while interest accumulated from June 1, 2007, the date payments were to begin. Nearly identical language was used by the Commission in Docket No. ER08-1056 in requiring interest to be calculated from June 1, 2008 for the 2007 test period.⁸⁷ Importantly, the 2014 Order on Rehearing noted that the June 1, 2006 effective date was consistent with the above cited orders in Docket Nos. ER07-956 and ER08-1056. Accordingly, the statement in the 2014 Order on Rehearing that interest is required on the bandwidth payments for the previous year cannot reasonably be read to imply an interest effective date other than June 1 of the following year, i.e., 2006.

44. We also reject the Louisiana Commission's argument that the Hearing Order supports its contention that June 1, 2005 is the appropriate start date for interest. The Louisiana Commission's primary argument is that the Hearing Order cites the 2014 Order Rejecting Compliance, which in turn broadly states that interest is required, and states that the remedy is "for" the 2005 bandwidth period. However, as discussed above, use of

⁸⁵ Louisiana Commission Brief Opposing Exceptions at 32.

⁸⁶ *Entergy Servs., Inc.*, 139 FERC ¶ 61,104 at P 13.

⁸⁷ *Entergy Servs., Inc.*, 142 FERC ¶ 61,152 at P 42 n.60.

the word “for” simply refers to bandwidth payments being made a remedy “for” a relevant period, and prior cases using similar language confirm this interpretation. The Louisiana Commission adds that the 2015 Order Denying Rehearing I denied rehearing of the 2014 Order Rejecting Compliance Filing, which indicates that the Hearing Order “emerges from a line of Commission orders that ... recognize June 1, 2005 as the start date for interest.”⁸⁸ However, as discussed above, the 2015 Orders Denying Rehearing substantively discuss whether interest should apply, not the interest start date, and deny rehearing of the 2014 Order on Rehearing. The Hearing Order is otherwise bereft of any indication that the Commission intended a June 1, 2005 start date for interest.

45. Further, we agree with the Presiding Judge that it would be mathematically impossible to begin the interest clock on June 1, 2005. As explained above, the bandwidth calculation uses a historical test period, and the payments and receipts calculated based on that test period occur beginning June 1 of the year following the test period. In this case, the test period ends December 31, 2005. As noted by the Presiding Judge, the amounts of the transfer payments “were unknowable until the applicable test period was completed.”⁸⁹ Accordingly, the Presiding Judge was correct to find that it would thus be impossible “to establish as of the very first day of that period which Entergy Operating Companies would be making payments, which would be receiving payments, or even if payments were to be made at all.”⁹⁰ Therefore, it would also be mathematically impossible to calculate interest starting June 1, 2005.

46. Despite the Presiding Judge’s clear reasoning, the Louisiana Commission contends that the Presiding Judge was under the impression that it was necessary to know the amounts of payments on June 1, 2005 to calculate interest as of that date. However, we find that this is not a reasonable interpretation of the Initial Decision. The Presiding Judge stated that it would be impossible “to compute interest on these payments” with interest starting June 1, 2005 because the amounts of the payments that would have been due are unknowable “until the applicable test period was completed.”⁹¹ It is only after the test year is completed that it becomes clear which Operating Companies would be making or receiving bandwidth payments. Further, contrary to the Louisiana Commission’s argument that the Commission can simply backdate interest to June 1, 2005 once the amounts are known, the Commission provides interest to compensate for the time value of money, based on when a person would otherwise have had use of the

⁸⁸ Louisiana Commission Brief Opposing Exceptions at 25.

⁸⁹ Initial Decision, 157 FERC ¶ 63,018 at P 41.

⁹⁰ *Id.*

⁹¹ *Id.*

funds.⁹² Those Operating Companies would not have use of any funds until after the 2005 bandwidth period. Accordingly, we find that the Presiding Judge was correct in ruling that the calculation of interest from June 1, 2005 is not mathematically possible and not what the Commission intended.

47. We also disagree with the Louisiana Commission's argument that a June 1, 2006 interest effective date is inconsistent with the Commission's regulations. Specifically, 18 C.F.R. § 35.19a, *Refund requirements under suspension orders*, does not apply because the bandwidth remedy does not involve refunds. The Commission has stated repeatedly since the inception of the bandwidth remedy that the remedy is to apply prospectively, and does not involve refunds. In Opinion No. 480, the Commission explicitly held that refunds would not be allowed, citing section 206(c) of the FPA.⁹³ The issue was reconsidered in the 2011 Order on Remand, and the Commission opted to "apply here our usual practice in such cases, invoking our equitable discretion not to order refunds, notwithstanding our authority to do so."⁹⁴ The issue was laid to rest in the 2014 Order on Rehearing, which denied a Louisiana Commission request for rehearing.⁹⁵ Accordingly, as applied prospectively and explicitly not involving refunds, the bandwidth remedy does not implicate the Commission's regulations regarding suspension orders.

48. Finally, the Louisiana Commission incorrectly argues that section 206 of the FPA requires interest to be paid on unjustified rates or charges. However, we agree with Trial Staff that the Louisiana Commission is citing a permissive passage despite claiming that it is a mandatory rule.⁹⁶ The cited material notes that the Commission "*may* by further order require ... refund, with interest ... such increased rates or charges as by its decision shall be found not justified."⁹⁷ As often noted in bandwidth proceedings, the Commission's "discretion is at its zenith in determining an appropriate remedy."⁹⁸

⁹² See, e.g., *H.Q. Energy Servs., Inc.*, 113 FERC ¶ 61,184, at P 40 (2005). See also *PPL Wallingford Energy, LLC*, 116 FERC ¶ 61,078, at P 31 & n.38 (2006) ("[T]he purpose of ordering interest is to make the recipient whole for the time value of money it would otherwise have received.").

⁹³ Opinion No. 480, 111 FERC ¶ 61,311 at P 145 (citing U.S.C. § 824e(c) (2000)).

⁹⁴ 2011 Order on Remand, 137 FERC ¶ 61,047 at PP 31-32.

⁹⁵ 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 59.

⁹⁶ Trial Staff Brief Opposing Exceptions at 33.

⁹⁷ 16 U.S.C. § 824d(e) (emphasis added).

⁹⁸ April 2007 Compliance Order, 119 FERC ¶ 61,095 at P 32.

Accordingly, this statutory provision does not compel any particular result and therefore does not controvert the correct application of a June 1, 2006 effective date.

B. Issue Six: Net Operating Loss ADIT and the Vidalia Tax Deduction

1. Background

a. ADIT and the Bandwidth Formula

49. As a general matter, under federal and certain state income tax regulations for the period at issue in this case, a Net Operating Loss is created when deductions taken on a corporate tax return exceed taxable income for a given year. In that situation, the company may apply the Net Operating Loss against net taxable income for that year, and if any Net Operating Loss remains the company may use it to offset taxable income in other years and thereby reduce its tax expense for those years. The offset may be applied to the company's net taxable income the previous two years in the case of federal income tax and the previous three years in the case of Louisiana state income tax (a "carryback"), and may also be applied in the following 20 tax years for federal tax and the following 15 years for Louisiana tax (a "carryforward"). The tax benefit of the Net Operating Loss carryforward is recognized as a deferred tax asset recorded in Uniform System of Accounts (USofA) Account 190, *Accumulated deferred income taxes* (ADIT).

50. ADIT on the Operating Companies' books as of December 31, 2005 is a factor with regard to production costs as calculated in the bandwidth formula. The ADIT input variable is derived from USofA Accounts 190, 281, and 282, with certain adjustments.⁹⁹ Entergy excludes several ADIT items of each Operating Company from the bandwidth formula's ADIT variable. Entergy Louisiana's excluded-ADIT items for the 2005 bandwidth period include ADIT for the year ended December 31, 2005 resulting from a Net Operating Loss carryforward for Louisiana state income tax, in the amount of \$97 million.¹⁰⁰

51. In the first bandwidth calculation proceeding, for calendar year 2006, in Opinion No. 505,¹⁰¹ Opinion No. 505-A,¹⁰² and a subsequent clarifying order,¹⁰³ the Commission

⁹⁹ Ex. ESI-3 at 6.

¹⁰⁰ Ex. ESI-2 at 185-186.

¹⁰¹ Opinion No. 505, 130 FERC ¶ 61,023 (2010).

¹⁰² Opinion No. 505-A, 139 FERC ¶ 61,103.

¹⁰³ Opinion No. 505 Clarifying Order, 145 FERC ¶ 61,045.

held that Entergy must include certain Net Operating Loss carryforwards in the bandwidth calculation according to a ratio of certain tax-deductible utility expenses derived from each Operating Company's FERC Form 1.¹⁰⁴ In 2013, Entergy made a compliance filing to calculate the Net Operating Loss carryforward amount to include in the bandwidth calculation for calendar year 2006 in accordance with the ratio created by the Commission in the three orders. In this proceeding, Entergy seeks to exclude from the 2005 bandwidth period ADIT associated with the Louisiana state income tax Net Operating Loss carryforward that results from the Vidalia tax deduction, as discussed below.

b. The Vidalia Tax Deduction

52. In 1985, Louisiana Power & Light Company, the predecessor of Entergy Louisiana, entered into an agreement to purchase up to 94 percent of the output from the Vidalia Hydroelectric Power plant (Vidalia).¹⁰⁵ In that year, the Louisiana Commission approved a phased-in rate schedule for the costs of the plant by means of a long-term contract (the Vidalia Contract). The Vidalia Contract sets forth specific rates to be paid by Entergy Louisiana, which escalate during the contract term (ending in 2031) to a peak of 20.5 cents per kWh. These rates are, and are expected to remain, significantly above market value.¹⁰⁶ In 2002, in recognition of this above-market cost, Entergy Louisiana came up with a tax strategy to reduce the cost of this contract to customers. This strategy resulted in a \$1.8 billion deduction that translated into a tax savings for Entergy Louisiana of approximately \$680 million.

53. As explained by the Presiding Judge, Entergy Louisiana took the Vidalia tax deduction in 2001, resulting in a Net Operating Loss for that year that Entergy Louisiana carried forward to succeeding years.¹⁰⁷ In tax year 2001, the Vidalia tax deduction amounted to \$2.3 billion in 2001.¹⁰⁸ Together with Entergy Louisiana's other taxable income and deductions, the Vidalia tax deduction generated an initial Net Operating Loss

¹⁰⁴ Opinion No. 505, 130 FERC ¶ 61,023 at P 234; Opinion No. 505-A, 139 FERC ¶ 61,103 at PP 59-60; Opinion No. 505 Clarifying Order, 145 FERC ¶ 61,045 at PP 18-19.

¹⁰⁵ Ex. ESI-4 Revised at 33:6-9 (Louiselle Answering Test.). *See also* Opinion No. 480, 111 FERC ¶ 61,311 at n.14.

¹⁰⁶ Initial Decision, 157 FERC ¶ 63,018 at P 50.

¹⁰⁷ *Id.* P 53.

¹⁰⁸ *Id.* P 54.

in tax year 2001 that was attributable to Louisiana state tax in the amount of \$2.014 billion.¹⁰⁹ The Net Operating Loss for 2001 was carried forward on Entergy Louisiana's books to offset taxable income in future years or until it expired.¹¹⁰ After 2001, Entergy Louisiana generated Net Operating Losses in tax years 2003 and 2005, whereas it had taxable income in tax years 2002 and 2004.¹¹¹ As a consequence, the Louisiana state Net Operating Loss of \$2.014 billion, being the earliest Net Operating Loss available, reduced Entergy Louisiana's taxable income by \$61 million in 2002 and \$156 million of its taxable income in 2004. At the end of tax year 2004, \$1.797 billion of the 2001 Net Operating Loss was left for use, if needed, in tax year 2005 and subsequent tax years.

54. The tax effect of the Net Operating Loss ADIT generated by the Vidalia tax deduction was used in part to reduce electric rates for Entergy Louisiana's customers. In 2002, the Louisiana Commission entered a settlement with Entergy Louisiana whereby Entergy Louisiana's customers were provided a guaranteed share of the tax benefits of the transaction.¹¹² Through 2015, Entergy Louisiana's customers have been credited with \$199.1 million, and they are projected to be credited with a total of \$419.1 million through 2026.¹¹³ Thus, the settlement reduces rates for Louisiana-jurisdictional customers of Entergy Louisiana, while at the same time it grants Entergy Louisiana the right to retain Vidalia's accelerated tax deductions for the remaining life of the contract.

¹⁰⁹ *Id.*

¹¹⁰ Trial Staff Post-hg. Brief at 9.

¹¹¹ Entergy Post-hg. Brief at 17.

¹¹² *Id.* at 10.

¹¹³ *Id.*

c. Vidalia Tax Deduction and the Bandwidth Formula

55. Because the tax benefits from the Vidalia tax deduction were retained by Entergy Louisiana and flowed, in part, directly to its Louisiana retail ratepayers, the Commission concluded in Opinion No. 480 that Vidalia was an Entergy Louisiana-only resource, not a system-wide production cost that should be equalized among all the Operating Companies.¹¹⁴

56. The Commission directed that the bandwidth formula exclude the capital and tax-related effects of the Vidalia tax deduction in order to avoid shifting its tax burdens and benefits to other Operating Companies. To ensure that costs associated with the Vidalia tax deduction stay in Louisiana, the Commission approved the inclusion of footnote 1 to the bandwidth formula which specifies, inter alia, that:

All Rate Base, Revenue and Expense items shall be based on the actual amounts of the Company's books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company; and shall include certain regulatory adjustments ... including, but not limited to: ...
 (3) *repricing of energy associated with the Vidalia purchase power contract for [Entergy Louisiana] based on the average annual Service Schedule MSS-3 rate paid by [Entergy Louisiana], including the exclusion of the income tax savings of the Vidalia purchase power contract from ADIT and reflecting the reversal of the Vidalia capital transaction*¹¹⁵

2. Initial Decision

57. The Presiding Judge began his examination of the Net Operating Loss ADIT and the Vidalia transaction by noting that the focus of this issue, footnote 1 of the bandwidth formula, strives to fulfill the Commission's longstanding aim concerning the Vidalia tax transaction that "what happens in Louisiana stays in Louisiana."¹¹⁶ The Presiding Judge found that the following highlighted words of footnote 1 provide the operative language: "All Rate Base, Revenue and Expense items ... shall include certain regulatory adjustments ... *including the exclusion of the income tax savings of the Vidalia purchase*

¹¹⁴ Opinion No. 480, 111 FERC ¶ 61,311 at PP 183-184.

¹¹⁵ See Ex. ESI-3 at 5 (citing Compliance Tariff at § 30.12, n.1).

¹¹⁶ Initial Decision, 157 FERC ¶ 63,018 at P 73 (citing *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029, at P 78 (2011) ("...[C]osts associated with Vidalia must stay in Louisiana.")).

*power contract from ADIT*¹¹⁷ The Presiding Judge noted that no party suggested that footnote 1 should be ignored.

58. The Presiding Judge rejected arguments by the Louisiana Commission that Entergy Louisiana's 2005 Net Operating Loss ADIT is a deferred tax accounting item that has not yet produced a "tax savings," and therefore cannot fall within the meaning of the Vidalia exclusion required by footnote 1. The Presiding Judge found that, contrary to the Louisiana Commission's argument, the plain meaning of footnote 1 is to remove a certain "savings" amount from a deferred tax that is found in an ADIT account, not a savings amount from a current tax that comprises an item of expense.¹¹⁸ The Presiding Judge found that because Net Operating Loss ADIT in Account 190 is plainly a savings of deferred tax, all or part of it can be excluded from the ADIT input variable of the bandwidth formula to the extent that it is properly attributable to the Vidalia tax deduction.

59. The Presiding Judge disagreed with the Louisiana Commission's argument that Opinion No. 505 and the Opinion No. 505 Clarifying Order show how Net Operating Loss ADIT should be allocated and included in the ADIT input variable in the bandwidth formula. The Presiding Judge found that the Commission orders in the Opinion No. 505 proceeding provide only a general rule for including Net Operating Loss ADIT for every Operating Company in the bandwidth formula. The Presiding Judge explained that the Opinion No. 505 orders do not discuss the Vidalia tax deduction. The Presiding Judge further explained that the general rule of those orders is an outcome of protracted litigation and is not part of the bandwidth formula itself. The Presiding Judge found that, by contrast, "the issue at hand concerns a *specific* rule for *excluding* only the Vidalia portion of [Entergy Louisiana's] Net Operating Loss ADIT, which is stated explicitly in the formula at footnote 1."¹¹⁹ The Presiding Judge found that the specific instruction trumps the general rule.

60. The Presiding Judge rejected the Louisiana Commission's method, first offered in its post-hearing reply brief, as an un rebutted, "late-inning" approach.¹²⁰ The Presiding Judge explained that the Louisiana Commission proposed reducing Entergy Louisiana's Net Operating Loss ADIT by the excess cost of Vidalia's electricity production. The

¹¹⁷ *Id.* (citing Ex. ESI-3 at 5 n.1).

¹¹⁸ Initial Decision, 157 FERC ¶ 63,018 at P 75.

¹¹⁹ *Id.* P 78 (emphasis in original).

¹²⁰ *Id.* P 80.

Presiding Judge found this approach, even if helpful, was offered too late in the proceeding to afford the other parties an adequate opportunity to litigate it.

61. The Presiding Judge rejected Entergy's approach for excluding the Vidalia portion of Entergy Louisiana's Net Operating Loss ADIT, which consists of allocating Entergy Louisiana's 2001-vintage Net Operating Loss ADIT by the ratio that the 2001 Vidalia tax deduction bears to the total "other deductions" category in Entergy Louisiana's 2001 tax return, of which the Vidalia tax deduction is a part, yielding an exclusion of 97 percent of the 2001-vintage Net Operating Loss. The Presiding Judge noted that the total amount of the exclusion, in actual tax terms, comes to \$93.2 million.¹²¹ The Presiding Judge found that Entergy offered no rational basis for calculating its percentage this way. The Presiding Judge contended that Entergy's method is nothing more than a proportion that the Vidalia tax deduction bears to the particular line item on Entergy Louisiana's tax return in which it happens to be recorded. The Presiding Judge found that Entergy's approach is "no more just and reasonable than the way Entergy has (wrongly) treated Entergy Louisiana's state Net Operating Loss ADIT in every bandwidth filing up to now, which is to exclude it in its entirety."¹²²

62. The Presiding Judge noted that Trial Staff favored an allocation of Entergy Louisiana's 2001-vintage Net Operating Loss ADIT according to the ratio that the 2001 Vidalia tax deduction bears to all deductions on Entergy Louisiana's 2001 tax return. The Presiding Judge explained that Trial Staff concluded that on this basis 56.8 percent of the 2001-vintage Net Operating Loss ADIT is attributable to the Vidalia tax deduction and, after removing the same proportion of that vintage that was consumed by positive taxable incomes in 2002 and 2004, is to be excluded from 2005 ADIT. The Presiding Judge further explained that the amount of Trial Staff's exclusion, in actual terms, comes to approximately \$56 million.¹²³ The Presiding Judge noted that Trial Staff claimed that its approach was consistent with the approach taken by the Commission for including Net Operating Loss ADIT in Opinion No. 505-A and the Opinion No. 505-A Clarifying Order.¹²⁴

63. The Presiding Judge found that Trial Staff's approach achieved the correct result. The Presiding Judge explained that Trial Staff's ratio excludes from the bandwidth

¹²¹ *Id.* P 81.

¹²² *Id.* P 82.

¹²³ *Id.* P 83 (citing Staff Post-hg. Br. at 15).

¹²⁴ Opinion No. 505, 130 FERC ¶ 61,023; Opinion No. 505-A, 139 FERC ¶ 61,103 at P 60; Opinion No. 505 Clarifying Order, 145 FERC ¶ 61,045 at PP 18-19.

calculation a portion of Entergy Louisiana's 2001-vintage Net Operating Loss, i.e., the ratio that the Vidalia tax deduction bears to all of Entergy Louisiana's tax deductions (including the Vidalia tax deduction), that is in proportion with the tax-deductible expenditures that form the source of Entergy Louisiana's 2001-vintage Net Operating Loss. The Presiding Judge explained that because the Vidalia tax deduction itself does not appear in Entergy Louisiana's 2001 FERC Form 1, it is justifiable to use Entergy Louisiana's tax return instead, thereby satisfying the requirement in footnote 1 of the bandwidth formula to use data "as reported in FERC Form 1 or such other supporting data as may be appropriate."

64. The Presiding Judge added that it would be unjust and unreasonable to leave the Vidalia Net Operating Loss ADIT in the bandwidth calculation without any adjustment as required by footnote 1. The Presiding Judge explained that doing so would render the language of footnote 1 a nullity. The Presiding Judge further explained, that leaving it in also distorts the bandwidth remedy's objective of rough production cost equalization because it distorts Entergy Louisiana's production economics.¹²⁵

65. Lastly, the Presiding Judge directed Entergy to make a compliance filing wherein Entergy Louisiana's 2001-vintage Net Operating Loss ADIT is to be allocated according to Trial Staff's ratio that the 2001 Vidalia tax deduction bears to all tax-deductible expenses on Entergy Louisiana's return. The Presiding Judge ruled that the result is to be excluded from the ADIT input variable of the bandwidth formula for the 2005 test period with *pro rata* adjustments for Net Operating Loss ADIT that is consumed in intervening years.¹²⁶

3. Briefs on Exceptions

66. The Louisiana Commission contends that in each previous bandwidth proceeding, Entergy has included virtually all of Entergy Louisiana's state Net Operating Loss ADIT in the bandwidth calculation. The Louisiana Commission contends that, nevertheless, in this case Entergy excluded the state Net Operating Loss ADIT, arguing that much of it is a tax savings caused by a deduction for the Vidalia tax deduction. The Louisiana Commission explains that Entergy relied on footnote 1 of the bandwidth formula, which permits excluding "the income tax savings of the Vidalia purchase power contract from ADIT . . ."¹²⁷ The Louisiana Commission argues that the Initial Decision ordered an exclusion different from Entergy's based on a Trial Staff calculation that was presented

¹²⁵ Initial Decision, 157 FERC ¶ 63,018 at P 88.

¹²⁶ *Id.* P 89.

¹²⁷ Louisiana Commission Brief on Exceptions at 12.

in Trial Staff's briefs. The Louisiana Commission argues that the exclusion is erroneous because Net Operating Loss ADIT is only a potential tax savings that might be relied on in the future related to unutilized tax deductions.

67. The Louisiana Commission argues that Entergy Louisiana's Net Operating Loss ADIT is not a tax savings and thus is not excludable under footnote 1 of the bandwidth formula. The Louisiana Commission argues that Net Operating Loss carried forward from prior years has not been utilized against revenues to produce a reduction in payable income taxes. The Louisiana Commission contends that, instead, Net Operating Loss carried forward from prior years constitutes deductions that may be used to produce tax savings in the future. The Louisiana Commission explains that the Initial Decision finds that Net Operating Loss ADIT represents a "savings" amount from a deferred tax" that is found in an ADIT account that must be excluded under footnote 1, not an actual realized tax savings.¹²⁸ The Louisiana Commission argues that all the Vidalia ADIT, including the Vidalia tax deduction savings, is excluded from the bandwidth calculation because it is booked into Account 283, which is not a bandwidth account. The Louisiana Commission argues that Net Operating Loss ADIT represents tax losses produced by all taxable revenues and expenses of the company that could not be utilized to produce tax savings.¹²⁹

68. The Louisiana Commission argues that the Initial Decision arbitrarily fails to apply the Commission formula for determining the Net Operating Loss ADIT that is includable in the bandwidth calculation, versus non-includable Net Operating Loss ADIT. The Louisiana Commission explains that in the Opinion No. 505 proceeding (the first annual bandwidth proceeding) which addressed calendar year 2006, the Commission provided explicit instructions regarding how Entergy should determine Net Operating Loss ADIT.¹³⁰ The Louisiana Commission contends that the Commission-approved formula requires a comparison of incurred tax-deductible expenses includable in FERC cost of service versus incurred tax-deductible expenses that are not includable.¹³¹ The Louisiana Commission explains that the Presiding Judge dismisses these instructions as only a general rule, whereas the Presiding Judge asserts that footnote 1 is more specific.¹³² The Louisiana Commission argues that this ruling is illogical because the

¹²⁸ *Id.* at 12 (citing Initial Decision, 157 FERC ¶ 63,018 at P 75).

¹²⁹ *Id.* at 13.

¹³⁰ *Id.* at 50 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 234).

¹³¹ *Id.* (Opinion No. 505 Clarifying Order, 145 FERC ¶ 61,045 at P 14).

¹³² *Id.* at 13 (citing Initial Decision, 157 FERC ¶ 63,018 at P 78).

general rule is specifically designed to determine the amount of Net Operating Loss ADIT that is includable for Commission cost-of-service purposes. The Louisiana Commission contends that footnote 1 simply directs the Vidalia tax deduction savings that are not includable and does not perform the function of the Commission's formula. The Louisiana Commission argues that the Commission's orders require a focus on incurred expenses in the year the Net Operating Loss was created, but the Initial Decision shifts the focus to tax deductions.¹³³

69. The Louisiana Commission argues that the state Net Operating Loss ADIT at issue existed in 2006 and was the subject of the Commission's orders in the Opinion No. 505 proceeding. The Louisiana Commission contends that, following the Commission's instructions, Entergy included about 97 percent of the state Net Operating Loss ADIT in the bandwidth calculation.¹³⁴ The Louisiana Commission contends that, in the Opinion No. 505 proceeding, Entergy argued that state Net Operating Loss ADIT was produced by storm costs so it did not attribute any of the 2001 Net Operating Loss ADIT to the Vidalia tax deduction.¹³⁵ The Louisiana Commission contends that the compliance filing in that case and the Commission's orders were made part of the record and were examined at the hearing through cross and redirect examination. The Louisiana Commission contends that the Presiding Judge rejected the Louisiana Commission's explanation of how the formula would apply to exclude any effect of the Vidalia tax deduction as a "late inning" approach, but accepted a conflicting Trial Staff calculation that was presented entirely on brief and was never the subject of Trial Staff testimony.¹³⁶

70. The Louisiana Commission argues that the Commission's orders in the Opinion No. 505 proceeding require that Entergy determine includable Net Operating Loss ADIT by comparing incurred expenses includable for Commission cost-of-service purposes in the year the Net Operating Loss was created to all incurred expenses in that year.¹³⁷ The Louisiana Commission contends that the calculation necessarily required the examination of FERC Form 1s from prior years, which were not in the record in that proceeding. The Louisiana Commission argues that, nevertheless, the Commission required Entergy to

¹³³ *Id.*

¹³⁴ *Id.* (citing Ex. LC-90).

¹³⁵ *Id.* at 50 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 234).

¹³⁶ *Id.* at 14 (citing Initial Decision, 157 FERC ¶ 63,018 at PP 80, 83).

¹³⁷ *Id.* at 50 (citing Opinion No. 505 Clarifying Order, 145 FERC ¶ 61,045 at P 14).

comply, using the appropriate data. The Louisiana Commission argues that the Presiding Judge should have directed compliance with the controlling precedent.¹³⁸

71. The Louisiana Commission argues that the Initial Decision erred in focusing only on deductions in 2001. The Louisiana Commission argues that the test period used to set the rates in this case occurred in 2005. The Louisiana Commission further explains that the 2001 Net Operating Loss ADIT existed in 2005 only because the deductions in 2002-2005 prevented using most of the carryforward against taxable revenue. The Louisiana Commission contends that all the deductions in 2002-2005 contributed to either creating Net Operating Loss ADIT or preserving the 2001 Net Operating Loss ADIT.¹³⁹ The Louisiana Commission argues that the Commission's rulings make clear that Net Operating Loss ADIT results from all revenues and deductions, and a carry-forward from 2001 to 2005 necessarily results from deductions in subsequent years. The Louisiana Commission argues that the Presiding Judge's focus on only one year is irrational.¹⁴⁰

4. Briefs Opposing Exceptions

72. Entergy disagrees with the Louisiana Commission's arguments that Entergy Louisiana's 2005 Net Operating Loss ADIT does not qualify for exclusion from the bandwidth formula because it is a deferred tax accounting item that has not yet produced a tax savings and that it was not caused by the Vidalia tax deduction. Entergy disputes the Louisiana Commission's contention that the state Net Operating Loss ADIT is an income tax effect that has not been realized because Entergy has not yet been able to use the Net Operating Loss carryforwards against taxable income.

73. Entergy argues that the Vidalia-related language in footnote 1 does not limit exclusion of income tax savings based on whether or not the savings have "yet to be realized." Entergy explains that, by definition, if there are tax savings in ADIT, they are tax savings that have not yet been utilized. Entergy further explains that, once the tax savings are utilized, they are no longer included in ADIT, and are accordingly no longer recorded in Account 190. Entergy contends that, therefore, it is logical to conclude that when the Commission adopted the phrase "the exclusion of the income tax savings of the Vidalia purchase power contract from ADIT" in footnote 1, it intended to refer to tax

¹³⁸ *Id.*

¹³⁹ *Id.* at 59.

¹⁴⁰ *Id.*

savings recorded on the books of Entergy Louisiana as ADIT that would be utilized in the future.¹⁴¹

74. Entergy argues that the Initial Decision correctly determined that the plain meaning of footnote 1 is to remove a certain “savings” amount from a deferred tax that is found in an ADIT account. Entergy contends that, accordingly, the “only way to exclude any “tax savings” from the Vidalia transaction in compliance with footnote 1 is to remove all or some portion of Entergy Louisiana’s 2001-vintage Net Operating Loss ADIT . . . because that is the only effect of the 2001 Vidalia tax deduction that shows up in the annual bandwidth calculation for 2005 and beyond.”¹⁴²

75. Entergy and Trial Staff reject the Louisiana Commission’s argument that Entergy Louisiana’s 2005 Net Operating Loss ADIT balance is almost entirely attributable to storm losses and has already been addressed by the Commission in the Opinion No. 505 proceeding.¹⁴³ Entergy explains that the Louisiana Commission’s argument should be rejected because it erroneously conflates the subject of the Net Operating Loss in the Opinion No. 505 proceeding with the subject of the Net Operating Loss in this proceeding. Entergy explains that in the Opinion No. 505 proceeding, Entergy was not addressing the 2001 Net Operating Loss, the Vidalia tax deduction, or the Vidalia-related language in footnote 1. Entergy explains that, rather, the Net Operating Loss carryforwards at issue were related to storm losses from Hurricanes Katrina and Rita that occurred in 2005. Entergy contends that the finding in that proceeding, that storm damage costs “are properly recorded in Account 182.3” and “should be included in the bandwidth calculation,” has no bearing on the balance of the Net Operating Loss carryforward from 2001 which is at issue in this proceeding.¹⁴⁴ Entergy and Trial Staff argue that the 2001 Net Operating Loss was caused by a different factor, specifically the Vidalia tax deduction.

76. Trial Staff argues that the facts evinced at hearing in the instant proceeding demonstrate that state Net Operating Loss ADIT related to the Vidalia tax deduction remained in Entergy Louisiana’s Account 190 balance as of December 31, 2005. Trial Staff contends that Entergy Louisiana’s federal tax deductions for 2001 (including the

¹⁴¹ Entergy Brief Opposing Exceptions at 19.

¹⁴² *Id.* at 20 (citing Initial Decision, 157 FERC ¶ 63,018 at P 79).

¹⁴³ Trial Staff Brief Opposing Exceptions at 35; Entergy Brief Opposing Exceptions at 21.

¹⁴⁴ Entergy Brief Opposing Exceptions at 22 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 324).

Vidalia Contract mark-to-market deduction and all other deductions) were moderately adjusted to determine state tax deductions for the 2001 tax year.¹⁴⁵ Trial Staff argues that the tax effect of Entergy Louisiana's state tax deduction associated with the 2001 Vidalia Contract mark-to-market deduction was recorded in Account 283 as an ADIT liability representing the temporary tax savings of that deduction, to be reversed over the remaining life of the Vidalia Contract. Trial Staff contends that because Entergy Louisiana's total 2001 tax deductions exceeded its 2001 state taxable revenue by approximately \$2 billion, Entergy Louisiana recognized a state Net Operating Loss of that amount for the 2001 tax year.¹⁴⁶ Trial Staff explains that this 2001 state Net Operating Loss amount was carried forward to offset state taxable income generated in subsequent years, thus creating a Net Operating Loss carryforward. Trial Staff contends that as of December 31, 2015, the Account 190 state Net Operating Loss carryforward ADIT balance for the 2001 Net Operating Loss was \$97 million.¹⁴⁷

77. Entergy explains that the "general rule" articulated in Opinion No. 505-A and the 505-A Clarifying Order is the basis for the Louisiana Commission's argument that the Commission should adopt a calculation based on incurred expenses. Entergy adds that, however, the Initial Decision was correct in finding that the general rule was the outcome of protracted litigation and is not part of the bandwidth formula itself.¹⁴⁸ Entergy explains that the Initial Decision was correct to find that "the issue at hand concerns a *specific* rule for *excluding* only the Vidalia portion of Entergy Louisiana's Net Operating Loss ADIT, which is stated *explicitly* in the Formula at footnote 1."¹⁴⁹ Entergy argues that it is therefore necessary to give effect to and harmonize the specific requirement with the orders in the Opinion No. 505 proceeding pertaining to Net Operating Loss ADIT generally. Entergy explains that do to that, it is first necessary to determine the amount of Net Operating Loss ADIT that is attributable to the Vidalia tax deduction savings, exclude that amount (as instructed by footnote 1), and then apply the formula as expressed in Opinion No. 505-A and the Opinion No. 505-A Clarifying Order to any remaining Net Operating Loss ADIT.

¹⁴⁵ Trial Staff Brief Opposing Exceptions at 38 (citing Ex. ESI-42 at 3:6-12).

¹⁴⁶ *Id.* at 39.

¹⁴⁷ *Id.* at 40 (citing Ex. ESI-28 at 11:6-9). This is the amount being contested in this proceeding which Entergy has excluded from the 2005 bandwidth calculation.

¹⁴⁸ Entergy Brief Opposing Exceptions at 23 (citing Initial Decision, 157 FERC ¶ 63,018 at P 78).

¹⁴⁹ *Id.* at 24 (citing Initial Decision, 157 FERC ¶ 63,018 at P 78 (emphasis in original)).

78. Trial Staff also argues that the Initial Decision properly applied the Commission's formula to determine the amount of Entergy Louisiana's 2005 Account 190 state Net Operating Loss ADIT balance that is attributable to the Vidalia tax deduction. Trial Staff explains that the Initial Decision takes the ratio of the Vidalia tax deduction to Entergy Louisiana's total deductible expenses in 2001, and then multiplies Entergy Louisiana's Account 190 state Net Operating Loss carryforward ADIT balance attributable to the 2001 state Net Operating Loss by this ratio. Trial Staff argues that this results in the portion of Entergy Louisiana's Account 190 state Net Operating Loss balance, as of December 31, 2005, that stems from the Vidalia tax deduction.¹⁵⁰ Trial Staff contends that this calculation results in approximately \$56.8 million of Entergy Louisiana's Account 190 Net Operating Loss ADIT, as of December 31, 2005, being attributable to the Vidalia tax deduction.¹⁵¹

79. Trial Staff adds that the \$56.8 million is properly excluded from the 2005 bandwidth calculation. Trial Staff contends that in Opinion No. 480, the Commission found that the Vidalia Contract was not entered into for the benefit of the Entergy System, and therefore should not be spread throughout Entergy's System.¹⁵² Trial Staff argues that if the portion of Entergy Louisiana's state Net Operating Loss carryforward ADIT attributable to the Vidalia tax deduction was included in the bandwidth formula, it would increase Entergy Louisiana's production costs, thus spreading costs associated with the Vidalia Contract to other Operating Companies by way of the 2005 bandwidth calculation.

80. Entergy adds that although it previously held the position that Entergy Louisiana's state Net Operating Loss ADIT should be included in the bandwidth formula, Entergy does not oppose the Initial Decision's adoption of Trial Staff's recommended proposal.¹⁵³ Entergy contends that Trial Staff's recommended proposal is acceptable because it is consistent with the Commission's directives in the Opinion No. 505 proceeding.

81. Entergy contends that the Louisiana Commission's argument that the Initial Decision incorrectly limited its tax analysis to a single year, instead of tax deductions that occurred over the 2001 to 2005 period, should be rejected. Entergy explains that the Commission's test for determining what portion of the Account 190 Net Operating Loss

¹⁵⁰ *Id.* at 44.

¹⁵¹ *Id.*

¹⁵² *Id.* at 53 (citing Opinion No. 480, 111 FERC ¶ 61,311 at PP 173-74; Opinion No. 514, 137 FERC ¶ 61,207 at P 78).

¹⁵³ Entergy Brief Opposing Exceptions at 23.

carryforward ADIT balance should be included in the bandwidth calculation compares deductions at issue in the relevant year, (i.e., 2001) to total deductions which make up the Net Operating Loss for that year, and not total deductions taken in the years the Net Operating Loss persisted. Entergy further explains that the Internal Revenue Code and the Louisiana tax code require that the Net Operating Loss for a given year be tracked separately from other years and that the Net Operating Losses from different years be consumed in the order which they were established. Entergy explains that, accordingly, Entergy Louisiana is required to separately account for how much of the Net Operating Loss generated in 2001 exists at year-end in 2002, 2003, 2005, and 2005.¹⁵⁴

5. Commission Determination

82. We affirm the Presiding Judge's determinations regarding Net Operating Loss ADIT and the Vidalia tax deduction. Specifically, we find (1) that the bandwidth formula requires the exclusion of capital and tax related effects of the Vidalia tax deduction in order to avoid shifting tax burdens and benefits to other Operating Companies, and (2) that a portion of Entergy Louisiana's 2005 state Net Operating Loss carryforward ADIT balance recorded in Account 190 as of December 31, 2005 is attributable to the Vidalia tax deduction and is properly excluded from the 2005 bandwidth calculation.

83. As an initial matter, we agree with Entergy and Trial Staff that a portion of the Louisiana state Net Operating Loss ADIT stems from the Vidalia tax deduction. In 2002, Entergy Louisiana's predecessor, Entergy Louisiana, Inc. (ELI) utilized the mark-to-market provisions of the Internal Revenue Code to accelerate the recognition, for tax purposes, of losses associated with the above-market pricing of a long-term purchased power contract that ELI had entered into with Catalyst Old River Hydroelectric Limited Partnership, i.e., the Vidalia Contract. By doing so, ELI was able to claim a federal tax deduction of \$2.3 billion in the 2001 tax year.¹⁵⁵

84. The tax effect of ELI's state tax deduction associated with the Vidalia contract mark-to-market deduction was recorded in Account 283 as an ADIT liability representing temporary tax savings of that deduction, to be reversed over the remaining life of the Vidalia contract.¹⁵⁶ Because ELI's total state tax deductions exceeded its 2001 state taxable income, ELI recognized a state Net Operating Loss of approximately \$2 billion. Several witnesses testified that this state Net Operating Loss was carried forward to offset state taxable income generated in subsequent years, thus creating a Net Operating Loss

¹⁵⁴ *Id.* at 26.

¹⁵⁵ Ex. ESI-13 at 2.

¹⁵⁶ Tr. 237:2-8.

carryforward.¹⁵⁷ The tax effect of the resulting state Net Operating Loss carryforward was recorded as an ADIT asset in Account 190. Between 2002 and 2005, Entergy Louisiana experienced two years of positive state taxable income, and, accordingly the 2001 state Net Operating Loss carryforward served to offset that state taxable income for those years, and was, itself, reduced by certain amounts for those two years.¹⁵⁸ As pertinent to the 2005 bandwidth period, as of December 31, 2005, the 2001 state Net Operating Loss carryforward consisted of approximately \$1.8 billion.¹⁵⁹ Accordingly, it is readily apparent that the 2001 state Net Operating Loss persisted through December 31, 2005 and that a portion of that Net Operating Loss was created by the Vidalia tax deduction.

85. Having determined that a portion of the Louisiana state Net Operating Loss ADIT is attributable to the Vidalia tax deduction, we further find that that portion must be excluded from the 2005 bandwidth calculation. As the Presiding Judge explained, the pertinent provision of the bandwidth formula is footnote 1, which strives to fulfill the Commission's "long-stated aim" concerning the Vidalia tax transaction that costs associated with Vidalia must stay in Louisiana.¹⁶⁰ The following language from footnote 1 is pertinent: "[a]ll Rate Base, Revenue and Expense items . . . shall include certain retail regulatory adjustments . . . including the exclusion of the income tax savings of the Vidalia purchase power contract from ADIT and reflecting the reversal of the Vidalia capital transaction"¹⁶¹ The Account 190 state Net Operating Loss carryforward ADIT attributable to the Vidalia tax deduction falls within this provision because it acts as a necessary offset to the tax savings recorded Account 283, which is excluded from the bandwidth calculation.¹⁶²

86. Additionally, we find that this exclusion is necessary due to the Commission's determination in Opinion No. 480 that "the costs [of the Vidalia Contract] should not . . .

¹⁵⁷ Ex. ESI-42 at 3:21-4:1; Ex ESI-44 at line 10; Ex. ESI-46 at 1:1F.

¹⁵⁸ Trial Staff Brief Opposing Exceptions at 39.

¹⁵⁹ Trial Staff Initial Brief at 11 (citing Ex. ESI-44).

¹⁶⁰ Initial Decision, 157 FERC ¶ 63,018 at P 73 (citing Opinion No. 514, 137 FERC ¶ 61,029 at P 78 (" . . . [C]osts associated with Vidalia must stay in Louisiana.")).

¹⁶¹ Ex. ESI-3 at 4 n.1 (emphasis added).

¹⁶² Trial Staff Initial Brief at 13.

be spread throughout Entergy's system."¹⁶³ In Opinion No. 480, the Commission found that the Vidalia Contract was not entered into for the benefit of the Entergy system, and therefore found that the associated costs and benefits should remain in Louisiana.¹⁶⁴ These associated costs and benefits include Entergy Louisiana's Account 190 Net Operating Loss carryforward ADIT associated with the Vidalia tax deduction in the 2005 bandwidth calculation, which, if included in the bandwidth calculation, would increase Entergy Louisiana's production costs and therefore increase bandwidth payments for other Operating Companies. We find that inclusion of the Vidalia deferred tax asset would directly contradict the Commission's directive in Opinion No. 480. Moreover, pursuant to the definition of ADIT in the bandwidth formula, Account 190 should be "reduced by amounts not generally and properly includable for FERC cost of service purposes." We have determined that the costs of the Vidalia tax deduction are not properly includable in the bandwidth calculation, and the bandwidth formula's definition of ADIT similarly supports the exclusion of related Account 190 Net Operating Loss carryforward ADIT amounts.

87. Having determined that it is appropriate to exclude Net Operating Loss ADIT recorded in Account 190 caused by the Vidalia tax deduction from the 2005 bandwidth calculation, we next must determine the appropriate amount of Account 190 ADIT to exclude. Trial Staff favors an allocation of Entergy Louisiana's 2001-vintage Net Operating Loss ADIT according to the ratio that the 2001 Vidalia deduction bears to all deductions on Entergy Louisiana's 2001 tax return.¹⁶⁵ Trial Staff explains that on this basis, 58.6 percent of the 2001-vintage Net Operating Loss ADIT is attributable to the Vidalia tax deduction and, after removing the same proportion of 2001 ADIT that was consumed by positive taxable incomes in 2002 and 2004, is to be excluded from 2005 ADIT.¹⁶⁶ The amount of Trial Staff's exclusion, in actual tax terms, comes to approximately \$56 million.

88. We agree with the Presiding Judge that Trial Staff's proposed allocation is just and reasonable. Because sufficient details regarding the Vidalia tax deduction do not appear on Entergy Louisiana's 2001 FERC Form 1, it is accordingly justifiable to use Entergy Louisiana's 2001 tax return instead, thereby satisfying footnote 1's requirement to use

¹⁶³ Opinion No. 480, 111 FERC ¶ 61,311 at P 174.

¹⁶⁴ *Id.* P 173.

¹⁶⁵ In 2001, the sum of Entergy Louisiana's total federal deductible expenses was approximately \$4 billion and the Vidalia Contract tax deduction was approximately \$2.3 billion. Trial Staff Initial Brief at 12.

¹⁶⁶ Initial Decision, 157 FERC ¶ 63,018 at P 83.

data “as reported in FERC Form 1 or such other supporting data as may be appropriate.” As the Presiding Judge explained, in the absence of more guidance from the bandwidth formula itself, “it is rational enough to underlie a just and reasonable implementation of the Vidalia exclusion that is required by footnote 1 of the [b]andwidth [f]ormula.”¹⁶⁷

89. Further, we are not persuaded by the Louisiana Commission’s objections to the Presiding Judge’s determinations. For example, the Louisiana Commission notes that footnote 1 refers to “the exclusion of the income *tax savings* of the Vidalia purchase power contract from ADIT,”¹⁶⁸ and argues that Entergy Louisiana’s 2005 Net Operating Loss ADIT does not qualify for exclusion from the bandwidth formula because it is a deferred tax accounting item that has not yet produced a *tax savings*. However, the Vidalia-related language in footnote 1 does not limit the exclusion of income tax savings based on whether or not the savings have yet to be realized. As explained by Entergy, by definition, “if there are tax savings in ADIT, they are tax savings that have not yet been utilized. Once the tax savings are utilized they are no longer included in ADIT, and they are no longer recorded in Account 190.”¹⁶⁹ Therefore, it is logical to conclude that the reference to tax savings in footnote 1 refers to tax savings recorded on the books of Entergy Louisiana as ADIT to be utilized in the future.

90. We also disagree with the Louisiana Commission’s argument that ADIT related to the Vidalia tax deduction is already recorded in Account 283, which is an account excluded from the bandwidth formula. This argument mischaracterizes the function of these ADIT balances. At the time that Entergy Louisiana took the Vidalia tax deduction, it recorded the tax effect, i.e., the amount of taxes that would be saved by applying the entire deduction, in Account 283 as ADIT. This amount therefore represented the amount of the tax savings that Entergy Louisiana would realize from the Vidalia tax deduction had it been used to offset taxable income. However, because Entergy Louisiana’s tax deductions exceeded its taxable revenues in 2001, it was unable to use all of its deductions in 2001 to offset taxable income. Accordingly, the 2001 state Net Operating Loss was established, the tax effect of which was recorded in Account 190 as a Net Operating Loss ADIT.¹⁷⁰

¹⁶⁷ *Id.* P 87.

¹⁶⁸ Louisiana Commission Brief on Exceptions at 46 (citing Ex. ESI-3 at 4 n.1 (emphasis added)).

¹⁶⁹ Entergy Brief Opposing Exceptions at 19.

¹⁷⁰ Trial Staff Brief Opposing Exceptions at 55.

91. We also disagree with the Louisiana Commission's contention that the Presiding Judge erred in adopting a Net Operating Loss calculation based on tax deductions instead of incurred expenses. In its exceptions, the Louisiana Commission argues that Net Operating Loss ADIT should be allocated per the Commission's directives in Opinion No. 505-A and the Opinion No. 505-A Clarifying Order.¹⁷¹ However, we find that footnote 1 of the bandwidth formula must be complied with prior to the application of the general ADIT provision discussed in Opinion No. 505-A and the Opinion No. 505-A Clarifying Order. We note that, in Opinion No. 505-A, the Commission directed that:

Entergy must multiply its Net Operating Loss carryforward balance by the ratio of incurred expenses includable for Commission cost-of-service purposes to total expenses incurred during the period the Net Operating Loss was recognized. ADIT related to the calculated Net Operating Loss carryforward balance to be included in the bandwidth calculations must then be allocated to the production function in the bandwidth formula using the plant ratios as prescribed in Service Schedule MSS-3.¹⁷²

92. The Commission further clarified its directive in its subsequent Opinion No. 505-A Clarifying Order, stating:

Entergy must multiply its net operating loss carryforward balance by the ratio of incurred tax deductible utility expenses includable for Commission cost-of-service purposes to total tax deductible expenses incurred during the period the net operating loss was recognized. This net operating loss ADIT ratio results in a pro rata allocation of net operating loss ADIT amounts to the bandwidth formula. In accordance with the provisions of the bandwidth formula, Entergy must apply the resulting ADIT amounts to plant ratios to determine the amount of the ADIT to include in bandwidth calculations.¹⁷³

93. This formula, referred to by the Presiding Judge as the "general rule," is the basis for the Louisiana Commission's argument that the Commission should adopt a calculation based on incurred expenses. However, as the Presiding Judge correctly pointed out, "[n]either Opinion No. 505, Opinion No. 505-A, nor the [Opinion No.] 505-A Clarifying Order mentions the Vidalia transaction."¹⁷⁴ Accordingly, it is necessary to

¹⁷¹ Louisiana Commission Brief on Exceptions at 50.

¹⁷² Opinion No. 505-A, 139 FERC ¶ 61,103 at P 60.

¹⁷³ Opinion No. 505-A Clarifying Order, 145 FERC ¶ 61,045 at P 14.

¹⁷⁴ Initial Decision, 157 FERC ¶ 63,018 at P 78.

determine a means for excluding only the Vidalia portion of Entergy Louisiana's Net Operating Loss ADIT; such exclusion is explicitly provided for in the bandwidth formula at footnote 1. We agree with the Presiding Judge that, in order to harmonize the orders in the Opinion No. 505 proceeding with footnote 1, the "specific instruction trumps the general rule." This is appropriate because, given that footnote 1 exists and states a specific requirement pertaining to the Vidalia tax deduction, it is necessary for the Commission to give effect to and harmonize that specific requirement with the Docket No. ER07-956 orders pertaining to the Net Operating Loss issue generally. We find that, to do that, it is first necessary to determine the amount of Net Operating Loss ADIT that is attributable to the Vidalia tax savings, exclude that amount, and then apply the Docket No. ER07-956 formula to any remaining Net Operating Loss ADIT. This should have the effect of harmonizing the Commission's precedent in Opinion No. 505-A and the Opinion No. 505-A Clarifying Order with the Commission's explicit instructions in footnote 1.

94. Finally, we find that the Presiding Judge was correct to focus only on 2001, the year in which the relevant state Net Operating Loss was recognized. The Louisiana Commission argues that "the ALJ erred in limiting the analysis to a single year" because "all deductions in the years 2002-2005 either contributed to creating Net Operating Loss ADIT or preserving the 2001 [Net Operating Loss] ADIT."¹⁷⁵ The Louisiana Commission therefore attempts to calculate a ratio of the Vidalia tax deduction to total deductible expenses, using all tax deductions taken between 2001 and 2005 rather than just those taken in 2001. However, Opinion No. 505-A specifically requires the expenses at issue to be compared to "total expenses incurred during the period the [Net Operating Loss] was recognized." The Vidalia tax deduction was recognized in 2001, not 2001 through 2005, and therefore the total deductible expenses in this calculation are limited to that year.

95. While the Louisiana Commission is correct that had other deductions not been taken in 2002 through 2005, Entergy Louisiana's 2001 state Net Operating Loss could have been further consumed by additional taxable income in those years, and the resulting balance as of December 31, 2005 would have been lower. However, neither the absence of additional future revenue nor the amounts of future deductions are a factor in the Commission's formula for determining what portion of Account 190 Net Operating Loss carryforward ADIT is includable in the bandwidth formula. The established record in this proceeding shows that a portion of Entergy Louisiana's 2001 state Net Operating Loss, and the associated Account 190 state Net Operating Loss carryforward ADIT, continued to exist on December 31, 2005. The Commission's formula for determining what portion of the Account 190 Net Operating Loss carryforward ADIT balance is to be

¹⁷⁵ Louisiana Commission Brief on Exceptions at 56, 59.

included in the bandwidth calculation compares deductions at issue to total deductions which make up the relevant Net Operating Loss, not total deductions taken in the years the Net Operating Loss persisted.¹⁷⁶ Thus, the Initial Decision correctly limited its analysis to a single year, the period that the Net Operating Loss was recognized, and on that basis the Louisiana Commission's argument is rejected.

96. Accordingly, we affirm the Presiding Judge's directive to Entergy to make a compliance filing wherein Entergy Louisiana's 2001-vintage Net Operating Loss is to be allocated according to Trial Staff's ratio that the 2001 Vidalia tax deduction bears to all tax-deductible expenses on Entergy Louisiana's tax return.¹⁷⁷ The result is then to be excluded from the ADIT input variable of the bandwidth formula in the 2005 test period (with pro rata adjustments for Net Operating Loss ADIT that is consumed in intervening test years).¹⁷⁸

C. Issue Twelve: Proper Accounting for Regulatory Assets Identified in Exhibits S-28 through S-32

1. Background

97. At hearing, Trial Staff conducted discovery into the accounting source of certain regulatory assets in Accounts 407.3 (Regulatory debits) and 407.4 (Regulatory credits) during calendar year 2005.¹⁷⁹ Trial Staff found that the Operating Companies incorrectly used Accounts 407.3 and 407.4 during calendar year 2005 to record the establishment and/or amortization expense of certain regulatory assets where the source of the regulatory asset is specifically identifiable.¹⁸⁰ Although these two accounts do not factor into the bandwidth calculation, Trial Staff, as discussed further below, identified three regulatory assets which are currently accounted for in Accounts 407.3 or 407.4 that should be charged to Account 555 (Purchased Power), which is a bandwidth-eligible account.

98. Trial Staff explained that the reason these accounting entries are incorrect stems from the Commission's decision regarding a regulatory asset known as "Spindletop" held

¹⁷⁶ Trial Staff Brief Opposing Exceptions at 51.

¹⁷⁷ See Initial Decision, 157 FERC ¶ 63,018 at P 89.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* P 98.

¹⁸⁰ *Id.*

by Entergy Gulf States. Trial Staff explained that, in Opinion No. 505, the Commission determined that Spindletop must have originated in Account 501 (Fuel) and therefore its amortization should have been credited and charged to that account.¹⁸¹ Trial Staff further explained that the Commission held in Opinion No. 505 that, where the source of the regulatory asset is identifiable, the USofA requires that the entries establishing and amortizing a regulatory asset must be credited and charged, respectively, to the same account that would have been charged if the item had been included in income when incurred.¹⁸²

99. Trial Staff, viewing the decision in Opinion No. 505 to be a generally applicable rule, requested information from Entergy about the sources of certain regulatory assets of the Operating Companies and the reasons Entergy used Account 407.3 or Account 407.4 to defer or amortize those regulatory assets. In its response to Trial Staff's discovery requests, Entergy identified the original USofA account number for some of the expenses, and for others Entergy indicated that multiple accounts served as sources but did not identify them.¹⁸³

100. Trial Staff selected three such regulatory assets as examples of Entergy's errors: (1) Entergy Arkansas' 2005 recording of a debit of \$15.9 million in Account 407303, (2) Entergy Gulf States' 2005 recording of a credit of \$8.4 million in Account 407404, labeled "Regulatory Credits – Capacity," and (3) Entergy Louisiana's recording of a credit of \$56.3 million in Account 407404, labeled "Regulatory Credits – Capacity."¹⁸⁴ Trial Staff contended that each instance constitutes an Operating Company recording of either a debit or credit in subaccounts of Accounts 407.3 or 407.4 that responds to an identifiable source account, i.e., Account 555, that factors into the bandwidth formula.¹⁸⁵

101. Accordingly, Trial Staff recommended that (1) the Operating Companies' 2005 accounting should be corrected where the source of the corresponding regulatory asset is identifiable, (2) the correct amount should be charged or credited to the appropriate expense account; (3) a summary with the supporting details of all accounting corrections should be submitted as part of a compliance filing; (4) corresponding corrections should

¹⁸¹ *Id.* at P 99 (citing Opinion No. 505, 130 FERC ¶ 61,023 at PP 261-263).

¹⁸² *Id.*

¹⁸³ *Id.* P 100 (citing Ex. S-8 at 34:18-36:11).

¹⁸⁴ *Id.* P 101 (citing Revised Ex. S-8 at 33:6-12).

¹⁸⁵ *Id.*

be made to the Operating Companies' FERC Form 1s; and (5) corrected 2005 FERC Form 1s should be submitted to the Commission.¹⁸⁶

102. The bandwidth formula requires regulatory asset amortizations and deferrals of the type that includes the foregoing three items to be excluded from the bandwidth formula. The provision was added to the formula by amendment to the "PURP"¹⁸⁷ input variable definition as a result of a partial settlement in the second bandwidth calculation proceeding, in Docket No. ER08-1056-002, for calendar year 2007. This provision, if applicable here, would eliminate the effect of the three accounting items on the bandwidth formula. At hearing, Trial Staff took the position that because this amendment took effect after the 2005 bandwidth period, it does not apply to the bandwidth calculation for this proceeding.¹⁸⁸

2. Initial Decision

103. The Presiding Judge found that the three regulatory assets sourced from Account 555 that Trial Staff had specifically identified should be entered into the PURP input variable of the bandwidth formula for the 2005 bandwidth calculation. The Presiding Judge adds that the amendment to the PURP input variable that eliminates this requirement took effect after the 2005 bandwidth period. The Presiding Judge found that because the amendment was a definitional change to the bandwidth formula, not merely a change to an input, applying the amendment to this proceeding would constitute inappropriate retroactive ratemaking.¹⁸⁹

104. The Presiding Judge also found that accounts that do not provide inputs to the bandwidth formula should not be open in this proceeding to "fishing expeditions" by the Commission or any other party.¹⁹⁰ The Presiding Judge found that subjecting Entergy's accounting systems to annual searches for errors in non-bandwidth accounts would be

¹⁸⁶ *Id.* P 102. (citing Trial Staff Post-hg. Brief at 24).

¹⁸⁷ The PURP input variable is defined as Purchased Power Expense recorded in FERC Account 555, but excluding payments made pursuant to Section 30.09(d) of this Service Schedule and excluding the effects, debits and credits, resulting from a regulatory decision that causes the deferral of the recovery of current year costs or the amortization of previously deferred costs. *See* Service Schedule MSS-3, Section 30.12.

¹⁸⁸ *Id.* P 106.

¹⁸⁹ *Id.* P 112.

¹⁹⁰ *Id.* P 110.

unduly burdensome. The Presiding Judge noted that in Opinion No. 545, which addressed calendar year 2009, Entergy Louisiana was required to reform its depreciation rates for the Waterford 3 sale/leaseback portion and to re-file its FERC Form 1s for 2005 through 2009.¹⁹¹ The Presiding Judge noted that, however, this was done because the change had an impact on the bandwidth payments and receipts for those years.

105. Accordingly, the Presiding Judge found that other Entergy accounts that Trial Staff learned of in discovery may not be challenged in this proceeding unless Trial Staff can show how a particular accounting change would alter a bandwidth-eligible account. The Presiding Judge found that “it is not the purpose of these bandwidth proceedings to make Entergy’s books perfect.”¹⁹² The Presiding Judge found that, rather, the objective is only to achieve rough production cost equalization, given Entergy’s books as they now stand and as recorded in Entergy’s FERC Form 1s.

106. The Presiding Judge concluded that Trial Staff’s accounting remedy should be implemented for the three calendar year 2005 Operating Company regulatory asset accounting entries in Accounts 407.3 and 407.4 that were sourced from Account 555. The Presiding Judge found that Entergy is required to make a compliance filing in accordance with that remedy.

3. Briefs on Exceptions

107. Trial Staff argues that the Presiding Judge erred by limiting accounting corrections for regulatory asset deferrals to those that have been shown in the record in this proceeding to have an effect on the 2005 bandwidth calculation. Trial Staff contends that the Presiding Judge correctly adopted Trial Staff’s recommendation for the three specified examples of calendar year 2005 entries in Accounts 407.3 and 407.4 that were sourced from Account 555. However, Trial Staff adds that the Presiding Judge improperly rejected Trial Staff’s recommended changes for the remainder of the regulatory asset amounts identified in Exhibits S-28 through S-32 that may not have been linked to bandwidth-eligible source accounts. Trial Staff contends that the Presiding Judge erred in referring to examination of these accounts as a “fishing expedition.”¹⁹³

108. Trial Staff contends that in Opinion No. 505, regarding the first bandwidth calculation, the Commission found that Entergy Gulf States had incorrectly recorded

¹⁹¹ Opinion No. 545, 153 FERC ¶ 61,303 at PP 142, 150.

¹⁹² Initial Decision, 157 FERC ¶ 63,018 at P 112.

¹⁹³ Trial Staff Brief on Exceptions (citing Initial Decision, 157 FERC ¶ 63,018 at P 113).

expenses regarding Spindletop in Accounts 407.3 and 407.4. Trial Staff notes that the Commission directed Entergy Gulf States to correct its accounting in the FERC Form 1 by recording the expenses in Account 501 (Fuel).¹⁹⁴ Trial Staff explains that the Commission was clear in Opinion No. 505 that the change to Account 501 was for accounting purposes only and was not dispositive of whether the amounts of the regulatory asset amortized to expense were production costs properly included in the bandwidth calculation.¹⁹⁵ Trial Staff explains that, therefore, the Commission has clearly not limited its rulings on accounting adjustments to those that had a bandwidth implication.

109. Entergy contends that one of the three specific accounting errors identified by Trial Staff pertains to Entergy Arkansas' Grand Gulf purchased energy regulatory asset. Entergy argues that, as discussed further below in Entergy's exception to Issue Thirteen, this asset must be excluded from the bandwidth calculation per the terms of the bandwidth formula. Entergy argues that because this asset must be omitted from the bandwidth formula, it would be unreasonable to revise the accounting for that regulatory asset for the same reasons the Presiding Judge rejected Trial Staff's recommendation on various other regulatory assets.¹⁹⁶

110. The Louisiana Commission contends that consistent with accounting precedent, the Presiding Judge required that Entergy's deferral of costs booked to Account 555 be deferred from the correct source account – Account 555 – rather than Account 407.4. The Louisiana Commission contends that this ruling has the effect of removing \$56.3 million from the production costs of Entergy Louisiana and \$8.4 million from the production costs of Entergy Gulf States for 2005. The Louisiana Commission contends that while the Initial Decision corrects the accounting for 2005, it fails to address the incorrect accounting for the amortization of the same costs in years subsequent to 2005. The Louisiana Commission argues that the accounting in subsequent years was erroneous and should be corrected.¹⁹⁷

111. The Louisiana Commission argues that requiring accounting corrections for all applicable years is consistent with Opinion No. 545, which required accounting corrections for multiple years related to the Waterford 3 sale/leaseback. The Louisiana Commission contends that inconsistent treatment injures Entergy's Louisiana companies

¹⁹⁴ *Id.* (citing Opinion No. 505, 130 FERC ¶ 61,023 at PP 261-263).

¹⁹⁵ *Id.*

¹⁹⁶ Entergy Brief on Exceptions at 5.

¹⁹⁷ Louisiana Commission Brief on Exceptions at 15.

and is arbitrary. The Louisiana Commission argues that, moreover, because this is a remand proceeding to correct a legal error in delaying the bandwidth remedy, the correction is required for all years. The Louisiana Commission contends that if the 2005 case had been decided first, consistent with the Initial Decision, the correct accounting for the 2005 deferrals would have been used for all subsequent years.¹⁹⁸

4. Briefs Opposing Exceptions

112. Trial Staff disputes Entergy's contention that accounting corrections should be limited to those that have an effect on the 2005 bandwidth calculation, specifically with regard to the Grand Gulf purchased energy regulatory asset. Trial Staff reiterated its argument made on exceptions that, in Opinion No. 505, the Commission determined that Entergy Gulf States must make certain changes to its FERC Form 1 for accounting purposes only and that this ruling was not dispositive of whether the related expenses were production costs that must be included in the bandwidth calculation. Trial Staff argues that, accordingly, the Commission has clearly not limited its rulings on accounting adjustments to those that had a bandwidth implication.¹⁹⁹

113. Entergy responds to Trial Staff's contention that, in Opinion No. 505, the Commission made accounting determinations for accounting purposes only. Entergy explains that, in Opinion No. 505, the Commission recognized that there was a possibility that the regulatory asset could be included in the bandwidth calculation. Entergy contends that, for that reason, the Commission addressed the amortization of the asset. Entergy explains that, ultimately, the Commission found that Spindletop costs are production costs that are properly included in the bandwidth calculation.²⁰⁰ Entergy adds that in this proceeding, no party presented any evidence that the remaining regulatory assets referenced by Trial Staff in Exhibits S-28 through S-32 are related to any specific bandwidth-eligible accounts. Entergy adds that, unlike in Opinion No. 505, there is not an open question as to whether the remaining regulatory assets are linked to bandwidth-eligible accounts. Entergy explains that, therefore, the Presiding Judge correctly rejected Trial Staff's recommendation to expand accounting corrections for regulatory asset deferrals beyond those that have been shown in the record in this proceeding to have an effect on the 2005 bandwidth calculation.

114. Trial Staff contends that requiring accounting corrections for subsequent years is outside the scope of this proceeding. Trial Staff says that it agrees with the principle that

¹⁹⁸ *Id.*

¹⁹⁹ Trial Staff Brief Opposing Exceptions at 60.

²⁰⁰ *Id.*

if an accounting error is found, the Operating Companies should be required to correct their FERC Form 1 reports. Trial Staff adds that, however, if the Louisiana Commission's proposal were adopted, a process would need to be established to obtain and analyze the relevant data. Trial Staff contends that until such time as any corrections subsequent to the 2005 bandwidth period that is at issue in this proceeding are fully identified, it is premature to order Entergy to make any needed corresponding corrections in subsequent years.²⁰¹

115. Entergy agrees with the Louisiana Commission that a change in accounting for cost deferrals that extends to years beyond 2005 will have the effect of trapping costs in the bandwidth calculation because the deferrals would not be recognized in subsequent bandwidth test years.²⁰² However, Entergy adds that if the Commission re-opens this case, logically it would have to re-open all of the issues in this proceeding that may have a bearing on proceedings previously conducted for bandwidth test years after 2005, such as the proposed adjustment for the 2001 Louisiana state Net Operating Loss ADIT. Entergy adds that, nevertheless, it does not support re-opening prior proceedings to make an adjustment to Entergy Louisiana's Net Operating Loss ADIT or attempting to capture a cumulative, multi-period adjustment in this single bandwidth proceeding.²⁰³

116. The Louisiana Commission argues that Trial Staff's and Entergy's exceptions would not achieve fully correct accounting and ratemaking for regulatory asset deferrals. The Louisiana Commission argues that correcting the deferrals in 2005 without correcting the amortizations in later years traps costs outside the bandwidth calculation, even though they are prudent and legitimate production costs. The Louisiana Commission contends that the Initial Decision's incomplete correction of Entergy's deferral accounting has the effect of harming Louisiana's consumers by trapping up to \$65 million in deferred costs that are legitimate Entergy Louisiana and Entergy Gulf States Louisiana production costs outside the bandwidth calculation.²⁰⁴

117. The Louisiana Commission explains that if the accounting is corrected as ordered by the Initial Decision, all or part of these costs will be removed from Account 555, a bandwidth account, for the calendar year 2005 bandwidth calculation. The Louisiana Commission contends that if correct accounting were used for subsequent years, the costs would be amortized back to Account 555 as they were collected in retail rates and thus

²⁰¹ *Id.* at 62.

²⁰² Entergy Brief Opposing Exceptions at 35.

²⁰³ *Id.* at 35.

²⁰⁴ Louisiana Commission Brief Opposing Exceptions at 5.

would be properly reflected in production costs in later years. The Louisiana Commission adds that Trial Staff witness Sammon testified that FERC Form 1s should be revised and the bandwidth calculations restated for subsequent years to ensure that rates are just and reasonable.²⁰⁵

118. The Louisiana Commission argues that Entergy is inconsistent in seeking accurate treatment of Entergy Arkansas' production costs while ignoring the unfair Entergy Louisiana and Entergy Gulf States Louisiana production costs. The Louisiana Commission contends that the adjustment to remove the Grand Gulf purchased energy regulatory asset from the bandwidth calculation would benefit Entergy Arkansas because it results in higher Entergy Arkansas production costs for the bandwidth calculation and thus lowers Entergy Arkansas' bandwidth payments. The Louisiana Commission contends that, on the other hand, Entergy proposes no adjustment to obtain fair treatment to the Louisiana Operating Companies by correcting unfair accounting that would trap legitimate production costs outside the bandwidth.²⁰⁶

5. Commission Determination

119. We affirm the Presiding Judge's decision to adopt Trial Staff's recommendation to change the accounting for three regulatory asset deferrals from Account 407.3 (Regulatory Debits) and 407.4 (Regulatory Credits), which are not bandwidth-eligible accounts, to Account 555 (Purchased Power), which is a bandwidth-eligible account. The Presiding Judge's finding was based on the Commission's holding in Opinion No. 505, which found that when the source of a regulatory asset is identifiable, the USofA requires the entries establishing and amortizing a regulatory asset to be credited and charged to the same account that would have been charged if the item had been included in income when incurred.²⁰⁷ We note that no party disagreed with Trial Staff's proposed accounting with regard to corrections that would impact the 2005 bandwidth calculation.²⁰⁸

120. We also affirm the Presiding Judge's determination that accounting corrections should be limited to accounting adjustments that have been shown to have a bandwidth implication. We note that Trial Staff argues that the Commission previously has not limited its rulings on accounting adjustments to those with bandwidth implications, and that the Commission should not make such a limitation here. Trial Staff's argument

²⁰⁵ *Id.* at 8 (citing Ex. LC-55 at 3.).

²⁰⁶ *Id.* at 11.

²⁰⁷ Opinion No. 505, 130 FERC ¶ 61,023 at PP 262-263.

²⁰⁸ *See* Initial Decision, 157 FERC ¶ 63,018 at PP 107-108.

relies on Opinion No. 505, in which the Commission clarified that its directive that Entergy Gulf States must record the amortization expense of the Spindletop Regulatory Asset in Account 501 was *for accounting purposes only*, and not dispositive of whether the amounts of the regulatory asset amortized to expense were production expenses properly included in the 2007 bandwidth calculation.²⁰⁹ However, Opinion No. 505 is distinguishable from Trial Staff's argument. In Opinion No. 505, there was an open question as to whether the investment in the Spindletop regulatory asset should be included in the 2007 bandwidth calculation. Although the Commission found that the asset should have been amortized to Account 501, the Commission decided the amortization issue only, and it did not address the merits of whether the asset should be included in the bandwidth calculation "*in that order.*"²¹⁰ However, the Commission recognized that there was a possibility that the regulatory asset could be included in the bandwidth calculation. For that reason, the Commission addressed the amortization of the asset. Ultimately, the Commission found that the Spindletop regulatory asset costs are production costs that are properly reflected in the bandwidth calculation.²¹¹ In this proceeding, in contrast, no party presented any evidence that the remainder of the regulatory asset accounts referenced by Trial Staff in Exhibits S-28 through S-32 are related to any specific bandwidth-eligible accounts. Unlike in Opinion No. 505, therefore, there is not an open question as to whether the remaining regulatory assets are linked to bandwidth-eligible accounts. Accordingly, the Presiding Judge correctly rejected Trial Staff's recommendation to expand accounting corrections for regulatory asset deferrals beyond those that have been shown in the record in this proceeding to have an effect on the 2005 bandwidth calculation.

121. However, we agree with the Louisiana Commission that once accounting errors are shown to be relevant to the 2005 bandwidth calculation, the Operating Companies should be required to correct their FERC Form 1 reports for the three regulatory assets at issue for subsequent bandwidth test years, and make corresponding corrections to the bandwidth payments and receipts for those test years, to ensure that legitimate production costs are properly accounted for on the FERC Form 1 reports and reflected in rates under

²⁰⁹ Trial Staff Brief on Exceptions at 9 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 261) (emphasis added).

²¹⁰ Entergy Brief Opposing Exceptions at 32 (italics in original).

²¹¹ *La. Pub. Serv. Comm'n v. Entergy Services, Inc.*, Opinion No. 509, 132 FERC ¶ 61,253 at P 41 (2010) ("In light of our finding in Opinion No. 505 with respect to the appropriate accounting of the [Spindletop] Regulatory Asset costs and our discussion above, we conclude that Spindletop Regulatory Asset costs should be reflected in the bandwidth formula.").

the filed formula.²¹² Trial Staff concedes that it agrees with the principle that if an accounting error is found, the Operating Companies should be required to correct their FERC Form 1 reports.²¹³ Although the Presiding Judge did not explicitly rule on the issue of making corrections for subsequent years, we find that providing for this correction is consistent with the Commission's determination in Opinion No. 545, in which the Commission required Entergy Louisiana to revise and refile its FERC Form 1s for 2005 through 2009 and make corresponding corrections to the bandwidth payments and receipts for those years to correct an accounting error.²¹⁴ Consistent with that case, (1) the Operating Companies must revise and refile their FERC Form 1s for any subsequent years in accordance with the findings here; (2) Entergy must revise and refile its bandwidth filing in accordance with the refiled test year FERC Form 1s and the findings here; and (3) Entergy must calculate the revised transfer payments and receipts among the Operating Companies for the test years affected.

122. Trial Staff contends that the data for any accounting corrections beyond the 2005 bandwidth period is not in the record in this case, and that requiring corrections for subsequent years would be premature. Trial Staff adds that the Commission would have to establish a process to analyze the relevant data. We disagree with Trial Staff's contentions. First, correcting FERC Form 1s for the three identified regulatory assets should be a straightforward process for any affected Operating Companies. Once the FERC Form 1s are revised with corrected data, Entergy should be able to calculate the revised payments in its compliance filing. Also, Entergy's compliance filing will be subject to Commission review, providing sufficient process. However, we disagree with Entergy's contention that our findings here require us to open subsequent bandwidth test years to make adjustments for other issues that may have an impact on subsequent years, such as the 2001 Louisiana state Net Operating Loss ADIT. Entergy did not raise the possibility of opening subsequent test years to make adjustments for Net Operating Loss ADIT at the hearing, and other parties have been afforded no opportunity to consider this issue. Accordingly, we decline to consider that issue here.

123. Lastly, we note that Entergy contends that one of the three specific accounting errors identified by Trial Staff pertains to Entergy Arkansas' Grand Gulf purchased power energy regulatory asset. Entergy argues that, because this asset must be excluded from the bandwidth calculation per the terms of the bandwidth formula, it would be

²¹² The Louisiana Commission states that the deferred costs at issue "were amortized in 2006 and 2007, and perhaps 2008." Louisiana Commission Brief on Exceptions at 66.

²¹³ Trial Staff Brief Opposing Exceptions at 61.

²¹⁴ Opinion No. 545, 153 FERC ¶ 61,303 at P 150.

unreasonable to require that accounting for the Grand Gulf purchased energy regulatory asset be changed. We disagree. Trial Staff has demonstrated that the Grand Gulf purchased energy regulatory asset was incorrectly accounted for in Accounts 407.3 and 407.4, which are not bandwidth eligible accounts, and should be changed to Account 555, which is a bandwidth-eligible account. Although this accounting change will not change the results of the bandwidth calculation, because Account 555 is a bandwidth-eligible account, Entergy must nevertheless correct its accounting to help ensure that the bandwidth calculation will be populated with the correct inputs.

D. Issue Thirteen: Whether the Deferrals and Amortizations Identified in Exhibits S-28 through S-32 Should Affect the Amount of Costs Reflected in the Bandwidth Calculation

1. Initial Decision

124. The Presiding Judge ruled that the findings regarding Issue Twelve are dispositive of Issue Thirteen. The Presiding Judge found that, accordingly, Entergy is required to make a compliance filing to determine the impact of the accounting changes on the bandwidth calculation for calendar year 2005 and change the result accordingly.²¹⁵

2. Briefs on Exceptions

125. Entergy argues that the Presiding Judge erroneously held that his determination on Issue Twelve was dispositive of Issue Thirteen and did not address Issue Thirteen on the merits. Entergy contends that, specifically, the Presiding Judge failed to address Entergy's argument that the bandwidth formula expressly dictates the exclusion of the

²¹⁵ Initial Decision, 157 FERC ¶ 63,018 at P 114.

effects of the Grand Gulf purchased energy regulatory asset.²¹⁶ Entergy explains that footnote 1 of the bandwidth formula requires “(4) exclusion of the [Entergy Arkansas] and [Entergy Mississippi] retail approved Grand Gulf Accelerated Recovery Tariff effects on purchased power on [Entergy Arkansas’s] and [Entergy Mississippi’s] production cost.”²¹⁷ Entergy contends that unrebutted Trial Staff testimony conceded that footnote 1 requires exclusion of the Grand Gulf purchased energy regulatory asset from the bandwidth calculation.²¹⁸

126. Entergy asserts that the Presiding Judge correctly found in Issue Six that it would be unjust and unreasonable and render footnote 1 a nullity to leave the Vidalia-related Net Operating Loss ADIT in the bandwidth calculation without the adjustment required by footnote 1.²¹⁹ Entergy argues that the same result would occur if the accounting for the Grand Gulf purchased energy regulatory asset were charged to Account 555 and no adjustment were made to remove those costs from the bandwidth calculation.

3. Briefs Opposing Exceptions

127. Trial Staff contends that there was no need for the Initial Decision to address the merits of Issue Thirteen, given that no party disputed the applicability of the language in footnote 1 to the Grand Gulf purchased energy regulatory asset. Trial Staff states that it agrees that footnote 1 requires adjustments to exclude the effects of the retail-approved Grand Gulf Accelerated Recovery Tariff from the calendar year 2005 bandwidth calculation.²²⁰ However, Trial Staff adds that this does not mean that other regulatory cost deferrals may be excluded from this bandwidth calculation. Trial Staff contends that, unless the bandwidth formula has explicit terms requiring an adjustment, the actual entry on an Operating Company’s FERC Form 1 must be used for a bandwidth formula account input.

²¹⁶ Entergy Brief on Exceptions at 6 (citing Entergy Post-hg. Brief at 23 (“Note 1 in the Bandwidth Tariff expressly requires exclusion of the effects of the Grand Gulf Accelerated Recovery Tariff for both [Entergy Arkansas] and [Entergy Mississippi.]”).

²¹⁷ *Id.* (citing Ex. ESI-4 at 17.).

²¹⁸ *Id.* (citing Ex. S-56 at 21).

²¹⁹ *Id.* (citing Initial Decision, 157 FERC ¶ 63,018 at P 79).

²²⁰ Trial Staff Brief Opposing Exceptions at 62.

128. Trial Staff adds that Entergy ignores the overarching concern related to an Operating Company's incorrect use of Accounts 407.4 and 407.3 for establishing or amortizing regulatory assets. Trial Staff argues that the bandwidth formula explicitly requires Entergy to use the actual amounts recorded in an Operating Company's FERC Form 1, unless the bandwidth formula provides otherwise. Trial Staff argues that the accounting and FERC Form 1 reporting applicable to the deferrals identified in Exhibits S-28 through S-32 should be corrected and, to the extent that these corrections result in changes to the bandwidth accounts, the corrected inputs should affect the amount of costs reflected in the bandwidth calculation, unless the bandwidth formula requires otherwise.²²¹

4. Commission Determination

129. We affirm the Presiding Judge's determination that Issue Twelve is dispositive of Issue Thirteen. Entergy contends that the Presiding Judge erred by not addressing Issue Thirteen on the merits. Entergy argues that one of the accounting deferrals identified by Trial Staff pertain to the Grand Gulf purchased energy regulatory asset, which Entergy argues is expressly omitted from the bandwidth calculation by the terms of the bandwidth formula. However, we find that there was no need for the Presiding Judge to address the merits of Issue Thirteen, given that no party disputed the applicability of the language of footnote 1 of the bandwidth formula to the Grand Gulf purchased energy regulatory asset.²²² Accordingly, we affirm the Presiding Judge.

The Commission orders:

(A) The Initial Decision is hereby affirmed, as discussed in the body of this order.

²²¹ *Id.* at 63.

²²² Specifically, footnote 1 in section 30.12 of the System Agreement requires adjustments to exclude the effects of the retail-approved Grand Gulf Accelerated Recovery Tariff (for both Entergy Arkansas and Entergy Mississippi) from the 2005 bandwidth calculation. *See* Ex. ESI-3 at 5 (citing Compliance Tariff at § 30.12, n.1).

Docket No. EL01-88-015

- 56 -

(B) Entergy is hereby directed to file a compliance filing with 60 days of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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