139 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Entergy Services, Inc. Docket No. ER07-956-002

OPINION NO. 505-A

ORDER GRANTING REHEARING IN PART, DENYING REHEARING IN PART AND GRANTING CLARIFICATION

(Issued May 7, 2012)

1. This case is before the Commission on rehearing to an opinion[1] issued on January 10, 2010, and involves rates filed by Entergy Services, Inc. (Entergy)[2] on behalf of five Entergy Operating Companies[3] pursuant to Service Schedule MSS-3 of the Entergy System Agreement (System Agreement), implementing for the first time the

[1] *Entergy Services, Inc*., Opinion No. 505, 130 FERC ¶ 61,023 (2010).

[2] Entergy is a wholly-owned subsidiary of Entergy Corporation that provides operating services to six operating companies (Operating Companies). Entergy Power Inc. (EPI) is a subsidiary of Entergy. System Energy Resources, Inc. (SERI) is another Entergy affiliate, which owns and operates the Grand Gulf nuclear facility. Entergy Corporation is a public utility holding company that provides electric service through the Operating Companies.

[3] The five Operating Companies involved in this proceeding are, at the relevant times for filing pursuant to the first bandwidth calculation: Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana LLC (Entergy Louisiana), Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy New Orleans). In 2007, Entergy Gulf States was split into Entergy Texas, Inc. and Entergy Gulf States Louisiana, LLC, which subsequently serve load in their respective states, but that reorganization is not relevant to this proceeding, which pertains to the 2006 bandwidth payment.

Commission's bandwidth remedy as provided for in Opinion Nos. 480 and 480-A.[4] On July 27, 2007, the Commission accepted these proposed rates for filing, suspended them for a nominal period, to become effective June 1, 2007, as requested, subject to refund, and ordered the proceeding to hearing and settlement judge procedures.[5] These procedures resulted in an initial decision,[6] which was affirmed in part and reversed in part in Opinion No. 505. In this order, as discussed below, we grant the request for rehearing regarding the adjustment for the unregulated 30 percent portion of the River Bend nuclear plant (River Bend 30), deny the other requests for rehearing, and grant certain requests for clarification.

I. Background

2. In Opinion No. 505, the Commission affirmed the Presiding Judge's findings that (1) Entergy did not act imprudently in declining to purchase Independence Steam Electric Station (ISES) 2 capacity; (2) the bandwidth formula in Service Schedule MSS-3 is the lawful rate; (3) tax refunds associated with Net Operating Loss carry-backs are properly recorded in Account 143; (4) Entergy properly excluded certain Accumulated Deferred Income Taxes (ADIT) from the bandwidth calculation; and (5) Entergy presented an appropriate method for correcting an error that resulted in excluding certain costs associated with an unregulated portion of the River Bend nuclear facility twice in the bandwidth calculation (River Bend 30). However, the Commission reversed the Presiding Judge's rulings that (1) Entergy Arkansas should be allowed to allocate a portion of its bandwidth payment to Union Electric Company (Union Electric); (2) Entergy erroneously calculated its nuclear depreciation and decommissioning expenses; (3) Entergy properly accounted for interim storm damage cost recovery; (4) Entergy properly accounted for the annual amortization expense of the Spindletop Regulatory Asset; and (5) Entergy properly used the FERC Form 1 as the source of data to calculate the Energy Ratio.

3. Entergy, the Louisiana Public Service Commission (Louisiana Commission) and Union Electric request rehearing of Opinion No. 505. The Louisiana Commission

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[4] *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *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*, *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011).

[5] *Entergy Services, Inc.*, 120 FERC ¶ 61,094 (2007) (Hearing Order).

[6] *Entergy Services, Inc.*, 124 FERC ¶ 63,026 (2008) (Initial Decision).

argues, among other things, that the Commission erred in its determination regarding the proper methodology for calculating the Energy Ratio, the Commission erred in reversing the Presiding Judge on the depreciation issue, the Commission erred in its approval of an adjustment to the Entergy Gulf States labor ratio for River Bend 30 and incorrectly approved a double removal of Administrative and General (A&G) expenses for River Bend 30 and the Commission should clarify the proper accounting of costs associated with the Spindletop Regulatory Asset. Entergy argues, among other things, that the Commission erred in reversing the Presiding Judge's ruling that Entergy Arkansas should be allowed to allocate a portion of its bandwidth payment to Union Electric. Union Electric requests clarification with regard to refunds concerning the issue of bandwidth payments it made to Entergy Arkansas. Both Entergy and the Louisiana Commission request clarification of the functionalization of ADIT related to Net Operating Loss carry-forwards. As discussed below, we grant the request for rehearing as it pertains to the adjustment for A&G for River Bend 30, deny the other requests for rehearing, and grant certain requests for clarification.

II. Discussion

A. Procedural Matters

4. Entergy filed an answer to the Louisiana Commission's request for rehearing. The Louisiana Commission and Union Electric filed answers to Entergy's request for rehearing. Rule 713(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers to a request for rehearing. Therefore, we reject the answers.

5. The Louisiana Commission filed a motion requesting that the Commission take administrative notice of Entergy's Opinion No. 505 compliance filing when considering whether to grant rehearing in this proceeding. Entergy filed an answer to the Louisiana Commission's motion, stating that it does not object to the Commission taking administrative notice of Entergy's compliance filing. Concerns about Entergy's compliance filing are more appropriately raised in the compliance proceeding in Docket No. EL07-956-003; we see no reason to address compliance issues here. Accordingly, the request for administrative notice is denied.

B. Requests for Rehearing

1. Methodology and Energy Ratio

a. Opinion No. 505

6. In Opinion No. 505, the Commission affirmed the Presiding Judge's ruling that the bandwidth formula in Service Schedule MSS-3 is the lawful rate, and takes precedence in

any conflict with the methodology found in Exhibit Nos. ETR-26 and ETR-28.[7] The Commission held that the bandwidth formula was filed by Entergy in compliance with Opinion No. 480 to implement the methodology in Exhibit Nos. ETR-26 and ETR-28. The Commission agreed with the Presiding Judge that in instances where there are details omitted from the accepted Service Schedule MSS-3 bandwidth formula (such as a particular source of data to use to calculate bandwidth formula inputs), the underlying details included in the methodology used in Exhibit Nos. ETR-26 and ETR-28 control.[8] However, the Commission disagreed with the Presiding Judge that Entergy used the correct source of data in determining the Energy Ratio.[9] But the Commission found that, because Entergy's bandwidth formula provides for certain adjustments to the data when calculating the Energy Ratio, Entergy appropriately performed such adjustments in order to be in compliance with the Commission-accepted bandwidth formula in Entergy's System Agreement.[10]

7. The Commission found that the Louisiana Commission's argument that bandwidth formula changes related to the calculation of the Energy Ratio were somehow "slipped" without sufficient notice into Entergy's April 2006 filing to comply with Opinion No. 480 (April 2006 Compliance Filing) was unavailing. It found that the bandwidth formula was filed by Entergy to comply with Opinion No. 480, was properly noticed, and interested entities, including the Louisiana Commission, intervened and filed protests

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[7] Opinion No. 505, 130 FERC ¶ 61,023 at P 133. In Opinion No. 480, the Commission held that "[f]uture production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26." Opinion No. 480, 111 FERC ¶ 61,311 at P 33. Exhibit ETR-26 compares historical production costs of the Operating Companies for years 1983-2001 and for the 12 months ending August 31, 2002. Exhibit ETR-28 is a production cost analysis for the Operating Companies for the 12 months ending August 31, 2002 and details the numbers supporting the 2002 data in Exhibit ETR-26.

[8] Opinion No. 505, 130 FERC ¶ 61,023 at P 134.

[9] The Energy Ratio used in the bandwidth formula in Service Schedule MSS-3 is each Operating Company's annual energy usage as a percentage of the total system's annual energy usage. Each Operating Company's annual energy usage is referred to as its "net area load." Net area load is the basis on which the Entergy System's variable production costs are allocated to each of the Entergy Operating Companies. For example, if the system's total net area load is 100 MWh, and one of the Operating Company's net area load is 20 MWh, for purposes of calculating the bandwidth payments and receipts, the Operating Company would be allocated a 20 percent share of the system's variable production costs.

[10] Opinion No. 505, 130 FERC ¶ 61,023 at P 137.

to various aspects of the filing.[11] The bandwidth formula was further revised in a December 18, 2006 filing to comply with the November 2006 Compliance Order (December 2006 Compliance Filing)[12] and the Louisiana Commission had another opportunity to comment on that filing.[13] The Commission noted that the Louisiana Commission protested a number of issues with respect to the bandwidth formula in Service Schedule MSS-3 in the proceedings concerning the April 2006 Compliance Filing and the December 2006 Compliance Filing, and found that there is no evidence that the Louisiana Commission could not have raised its concerns regarding the Energy Ratio at the time the compliance filings were made.[14]

8. The methodology issue arose in the context of determining which of two data sources for calculating the Energy Ratio is appropriate, either: (1) the Intra-System Bill; or (2) the FERC Form 1. The differences in the two data sources involve the treatment of non-requirement sales.[15] Calculating the net area load as reported by the Intra-System Bill includes non-requirement sales by individual Operating Companies. Calculating the net area load as reported by the FERC Form 1 excludes the non-requirement sales by individual Operating Companies. The Louisiana Commission argued that Entergy must follow the methodology found in Exhibit Nos. ETR-26 and ETR-28, which used the Intra-System Bill as the source of net area load used to calculate the Energy Ratio, without adjustment to such data to exclude non-requirement sales by individual Operating Companies. In Opinion No. 505, the Commission found that although Entergy provided the formula to be used in determining the Energy Ratio in the December 2006 Compliance Filing, it did not specify the source of data to be used in determining the Energy Ratio.[16] Further, because Exhibit Nos. ETR-26 and ETR-28 sourced the data from the Intra-System Bill, and Entergy did not seek to make a change from that in a section 205 filing, the Commission found that the bandwidth formula must source the data from the Intra-System Bill. However, the Commission found that because the bandwidth formula provides that non-requirement sales will be removed from the net area load used to calculate the Energy Ratio, Entergy must adjust the net area load sourced

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[11] *See* November 2006 Compliance Order, 117 FERC ¶ 61,203.

[12] The definition of the Energy Ratio proposed in the April 2006 Compliance Filing was revised in the December 2006 Compliance Filing to remove energy losses from the numerator.

[13] *See* April 2007 Compliance Order, 119 FERC ¶ 61,095.

[14] Opinion No. 505, 130 FERC ¶ 61,023 at P 136.

[15] The non-requirements sales include the individual Operating Company off-system opportunity sales.

[16] System Agreement at section 30.13.

from the Intra-System Bill to remove the non-requirement sales in any event when it calculates the Energy Ratio, in order to be in compliance with the Commission-accepted formula in Entergy's System Agreement.[17]

b. Request for Rehearing

9. The Louisiana Commission argues that Entergy unlawfully modified the bandwidth formula without providing proper notice. The Louisiana Commission argues that changes to the methodology for determining Energy Ratios were buried on page 481 of a revised System Agreement included with Entergy's April 2006 compliance filing, and that Entergy failed to indicate that the changes affected the methodology underlying the bandwidth formula. The Louisiana Commission contends that in Opinion No. 505, the Commission failed to explain how Entergy's filing letters could constitute notice.[18] The Louisiana Commission contends that Opinion No. 505 conflicts with the Commission's directive that any change to the methodology in Exhibit Nos. ETR-26 and ETR-28 must be made through a separate section 205 or section 206 filing.[19] The Louisiana Commission argues that Opinion No. 505 determines that Entergy could and did make a change to the methodology for calculating net area requirements, but contains no explanation of "how a utility's violation of the Commission's instruction can supplant the Commission-approved methodology."[20] The Louisiana Commission argues that the Commission's determination cannot be squared with Entergy's representations that no changes had been made to the approved methodology.

10. The Louisiana Commission argues that Entergy does not have the power under the Federal Power Act (FPA) to change its approved rate without proper notification to the Commission. The Louisiana Commission adds that the Commission asserts that the April 2006 and December 2006 Compliance Filings provided proper notice of the change in methodology, even though Entergy assured the Commission that it did not depart from the approved methodology. The Louisiana Commission argues that the Commission fails to explain how Entergy's notice met the statutory standard, and fails to explain how the notice was provided.

11. The Louisiana Commission argues that if the filing letter states there are no changes, a contradictory tariff definition cannot provide the statutory notice of a tariff change. In support of its position, it explains that cases such as *City of Cleveland* stand

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[17] Opinion No. 505, 130 FERC ¶ 61,023 at P 137.

[18] Louisiana Commission Request for Rehearing at 25.

[19] *Id*. at 24 (citing November 2006 Compliance Order, 117 FERC ¶ 61,203 at P 69).

[20] *Id*. at 5.

for the proposition that a tariff filed in contravention of legal authority does not become an inviolate "filed rate."[21] Additionally, it contends that in *East Tennessee.*,[22] the D.C. Circuit rejected arguments made by gas sellers who argued that clauses in their filed rates effectively approved a deviation from the requirement of the regulations, finding that "if the Commission had intended a departure from [its] policy so dramatic as the petitioner's restrictive interpretation … it would have accompanied its decision with a thorough explanation, an explanation absent here."[23]

c. Commission Determination

12. We deny the Louisiana Commission's request for rehearing. As the Commission stated in Opinion No. 505, the Commission accepted Entergy's proposed definition of the Energy Ratio variable in two prior compliance filings.[24] That definition is now the filed lawful rate and takes precedence in any conflict with the methodology found in Exhibit Nos. ETR-26 and ETR-28.

13. The Louisiana Commission repeats its argument made in its brief on exceptions that Entergy failed to provide proper notice of its change to the methodology in Exhibit Nos. ETR-26 and ETR-28, contending that the definition of the Energy Ratio is buried in the System Agreement and that it contains terms that are undefined. However, the Louisiana Commission has provided no new arguments that would convince us to reconsider our prior determination. The Energy Ratio variable is defined in the bandwidth formula in Service Schedule MSS-3 and was originally filed by Entergy in its April 2006 Compliance Filing to comply with the directives of Opinion Nos. 480 and 480-A. The sections relating to the bandwidth formula in Service Schedule MSS-3 were completely new to the tariff. Interested parties, including the Louisiana Commission, intervened and filed protests to various aspects of the filing. In its April 2006 Compliance Filing, Entergy proposed certain adjustments to the methodology reflected in Exhibit Nos. ETR-26 and ETR-28.[25] The Commission denied Entergy's request to make

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[21] *Id*. at 26 (citing *City of Cleveland, Ohio v. FPC.*, 525 F.2d 845 (D.C. Cir. 1976) (*City of Cleveland*).

[22] *East Tennessee Natural Gas Co. v. FERC,* 631 F.2d 794 (D.C. Cir. 1980) (*East Tennessee*).

[23] *Id*. at 799.

[24] The two prior compliance filings were the April and December 2006 Compliance Filings. *See* Opinion No. 505, 130 FERC ¶ 61,023 at P 135.

[25] In its transmittal letter to the April 2006 Compliance Filing, Entergy proposed several adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28. These adjustments included changing how certain costs were allocated from a plant ratio

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adjustments to the methodology reflected in Exhibit Nos. ETR-26 and ETR-28, which formed the basis for the bandwidth formula.[26] Although Entergy did not specifically mention the change in methodology to the Energy Ratio variable in its transmittal letter to the April 2006 Compliance Filing, a tariff change not fully described in the transmittal letter does not void a change to the tariff. We note that Entergy specifically set forth the formula in section 30.13 of Service Schedule MSS-3 in the April 2006 Compliance Filing. The bandwidth formula was further revised in the December 2006 Compliance Filing. The Louisiana Commission protested both of these compliance filings on other issues, but did not raise any concerns with respect to the Energy Ratio at the time the compliance filings were made. Admittedly, the proper venue for Entergy to make the change to the Energy Ratio variable should have been through a separate section 205 filing,[27] and this was not done prior to the April and December 2006 Compliance Filings. Although the Commission did not specifically address the change to the Energy Ratio variable to exclude non-requirements sales, this change was accepted through the November 2006 and April 2007 Compliance Orders and it is now the filed lawful rate.

14. The Louisiana Commission relies on several cases to support its argument that the revisions to Service Schedule MSS-3 were made in a filing where the transmittal letter did not specify this particular change and therefore a contradictory tariff definition cannot provide the statutory notice of a change. It argues that, accordingly, a tariff filed in contravention of legal authority does not become an inviolate "filed rate."[28] However, the cases cited by the Louisiana Commission are not dispositive of our holding here. *City of Cleveland* involved a contract dispute between a municipality and its wholesale supplier in which the city claimed that the utility had filed a rate with the Commission that did not comport with their agreement. The Commission found that there was no

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method to a labor ratio method and also a change to the state income tax rate to use for Entergy Gulf States.

[26] November 2006 Compliance Order, 117 FERC ¶ 61,203 at P 69.

[27] After the two compliance filings were accepted, Entergy filed a section 205 proceeding in Docket No. ER08-774-000 on April 1, 2008 to change the source of the data to be included in the Energy Ratio variable. The effective date for the change to the bandwidth formula as a result of this filing was June 1, 2008 and affected the calculations for the 2007 calendar year data. It did not affect the calculations in the instant bandwidth proceeding which involves 2006 calendar year data.

[28] Louisiana Commission's Brief on Exceptions at 26.

contract and that the issue regarding alleged violation of the ordinance was "a local matter between the City and its officials."[29]

15. On review, the court remanded the case to the Commission because the court found that the Commission erred in accepting a rate that was contrary to both the parties' agreement and the ordinance that authorized the City to enter into the agreement. However, the *City of Cleveland* case is inapplicable to this proceeding because it involved unique circumstances that are not present here. The dispute in *City of Cleveland* involved a utility's filing that contained rate provisions that were alleged to be contrary to the parties' agreement and contrary to an ordinance that authorized the City to enter into the contract. There is no such claim in this proceeding that Service Schedule MSS-3 and the bandwidth formula contained therein is contrary to any contract or agreement among the parties, nor is there any issue here concerning the authority of any party to enter into the System Agreement. Thus, the Louisiana Commission's reliance on *City of Cleveland* for its statement that "the filed rate doctrine does not insulate rates from review when they are filed in contravention of authority or contract"[30] is misplaced; the authority and contract issues in *City of Cleveland* bear no relation to the Service Schedule MSS-3 filed rate in this proceeding.

16. Further, in *City of Cleveland* the court held that the considerations underlying the filed rate doctrine are "preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant."[31] However, in the instant case the Commission was made aware of the changes in the April 2006 and December 2006 Compliance Filings by Entergy's explanation, through a numerical and a written description of the bandwidth formula and that formula included the definition of the Energy Ratio variable. All parts of the bandwidth formula in Service Schedule MSS-3 were marked in redline because this was the first time the bandwidth formula had been incorporated into Entergy's tariff. Moreover, as noted above, interested parties, including the Louisiana Commission intervened and filed protests to various aspects of the filing. Therefore, contrary to the Louisiana Commission's arguments, this case can be distinguished from the *City of Cleveland* case because the Commission and all parties were made aware – or should have been aware – of the changes being made to Entergy's

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[29] *City of Cleveland Elec. Illuminating Co.*, Opinion No. 644, 49 FPC 118, 120 (1973).

[30] Louisiana Commission Brief on Exceptions at 26.

[31] *City of Cleveland*, 525 F.2d at 854.

tariff because the changes were made explicit by the definition of the bandwidth formula in Service Schedule MSS-3.[32]

17. Further, the Louisiana Commission's reliance on *East Tennessee* is similarly misplaced. In *East Tennessee*, the court stated that if the Commission had intended a dramatic policy departure, it would have accompanied its decision with a thorough explanation.[33] Although the orders accepting the April 2006 and December 2006 Compliance Filings did not contain a discussion of the changes to the Energy Ratio variable, as discussed above, in a protested compliance proceeding such as this one, parties should have been aware of the changes being made to Entergy's tariff. The Louisiana Commission protested the April 2006 and December 2006 compliance filings on other issues, but did not raise any concerns with respect to the Energy Ratio at the time the compliance filings were made. Because no party raised the Energy Ratio issue in a protest, it is not surprising that the Commission chose not to address the issue in its orders accepting the filings. Further, *East Tennessee* did not involve the lawfulness of a filed rate, as the Louisiana Commission contends, but instead the correct interpretation of a filed rate. The fact that in *East Tennessee* the Commission interpreted filed rates to be consistent with its regulations is not relevant to the Louisiana Commission's argument that a rate filed and accepted by the Commission may be unlawful. The Louisiana Commission's arguments, therefore, are merely collateral attacks on the Commission's orders accepting the compliance filings, and do not support the Louisiana Commission's argument that the tariff revisions were not explicitly recognized by the Commission and are therefore unlawful.

2. Union Electric's Contract with Entergy Arkansas

a. Opinion No. 505

18. In Opinion No. 505, the Commission reversed the Presiding Judge's finding that the 1999 Agreement allows Entergy Arkansas to collect an allocated portion of its bandwidth payments from Union Electric[34] through the purchased energy variable[35] in

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[32] The Louisiana Commission protested both of the compliance filings and raised numerous issues. One issue the Louisiana Commission raised regarding the April 2006 Compliance Filing concerned Entergy's inclusion of interruptible loads in the 12 coincident peak demand data used to allocate demand-related capacity costs and this issue was not discussed in Entergy's April 2006 Compliance Filing transmittal letter.

[33] *East Tennessee*, 631 F.2d at 799.

[34] Entergy Arkansas and Union Electric, a load-serving entity, entered into a service agreement effective April 1, 1999 (1999 Agreement) under Entergy's market-based rate tariff, prior to the implementation of the bandwidth remedy. The contract provides for the sale of 165 MW of capacity from Entergy Arkansas' White Bluff coal

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the rate formula set forth in the 1999 Agreement.[36] The Commission found that bandwidth payments cannot legitimately be characterized as a "purchased energy expense charged to Account 555," but instead are payments to roughly equalize production costs among the Operating Companies.

b. Requests for Rehearing

19. Entergy argues that the 1999 Agreement between Union Electric and Arkansas allows Entergy Arkansas to assess a portion of its bandwidth payment to Union Electric. It contends that the 1999 Agreement specifies that Union Electric is required to pay a fixed capacity charge and a variable energy charge to Entergy Arkansas. It further argues that bandwidth payments are payments for energy, and therefore may be assessed to Union Electric through the clause in the 1999 Agreement providing for a payment for fixed energy.

20. Entergy disputes the Commission's findings that bandwidth payments cannot legitimately be characterized as purchased energy expenses that are covered by the 1999 Agreement with Union Electric, but instead are payments to roughly equalize production costs among the Operating Companies.[37] Entergy contends that bandwidth payments must be purchased energy expenses, arguing that if it were otherwise the Commission would not have jurisdiction to require the payments in the first place.[38] Entergy asserts that under section 201 of the FPA, Commission jurisdiction applies to only two activities: wholesale sales of electric energy in interstate commerce, and the transmission of electric energy in interstate commerce. Entergy argues that bandwidth payments clearly do not

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plant to Union Electric. When White Bluff is unavailable Entergy Arkansas substitutes capacity from another plant.

[35] There is a fixed $11.25 per kW monthly rate for capacity and a variable energy rate based upon a formula, which is contained in Appendix A of the contract and calculates Union Electric's monthly energy charge based upon certain variable expenses for the billing cycle.[35] These variable expenses are fuel and purchased energy. Through the variable "PE" (purchased energy expense – Account 555), Entergy allocated a share of Energy Arkansas' 2006 bandwidth payments to Union Electric.

[36] Opinion No. 505, 130 FERC ¶ 61,023 at P 101.

[37] Entergy Request for Rehearing at 6 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 101).

[38] *Id*. at 7.

relate to transmission service, and therefore necessarily must constitute payments for wholesale sales among the Operating Companies.[39]

21. Entergy states that in Opinion No. 480, the Commission acted pursuant to FPA section 206, which provided the statutory authority for the establishment of the bandwidth remedy.[40] It continues that bandwidth payments are made pursuant to the rate formula contained in Service Schedule MSS-3, which is entitled "Exchange of Electric Energy Among the Companies." Entergy contends that, in Opinion No. 480-A, the Commission reaffirmed that it was acting pursuant to its authority to set wholesale rates for the sale of electric energy when it stated that "Opinion No. 480 concerns the Commission's authority to allocate costs among affiliated public utilities pursuant to its jurisdiction over wholesale power sale rates."[41] Entergy argues that it is thus clear that the bandwidth payments are made by Entergy Arkansas as part of the just and reasonable rate established by the Commission for the sale of electric power in interstate commerce. Entergy maintains that the Commission has no jurisdiction to simply require that the Operating Companies equalize their production costs if wholesale sales are not involved, and Entergy did not attempt to do so.

22. Entergy argues that Entergy Arkansas' bandwidth payments constitute a portion of the expense that Entergy Arkansas incurs for its share of the total system energy allocated to it under Service Schedule MSS-3. It contends that in Opinion No. 505 the Commission declined to attach any significance to the fact that it previously found that bandwidth payments are to be recorded in Account 555 (Purchased Power). Entergy argues that the costs recorded in Account 555 are costs associated with transactions, i.e., purchases and sales of power. It explains that, as such, these costs qualify as purchased energy expenses unless they involve the purchase of capacity.[42]

23. Entergy further supports its assertion that bandwidth payments are purchased energy expenses covered by the 1999 Agreement by arguing that Entergy Arkansas' 2007 bandwidth payments were entirely attributable to the disparity in energy costs. It contends that the record evidence shows that in 2006, only Entergy Arkansas' energy costs were below the system average and thus Entergy Arkansas' 2007 bandwidth payments were entirely attributable to the disparity in energy costs. Entergy states that although it is theoretically possible that, in another year with different costs, Entergy Arkansas' bandwidth payment could be caused by both capacity-related and energy-related costs if Entergy Arkansas were to be below the system average in both its fixed

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[39] *Id*.

[40] *Id*. (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 28).

[41] *Id*. at 8 (citing Opinion No. 480-A, 113 FERC ¶ 61,282 at P 130).

[42] *Id.* at 13.

and variable costs, that was not the case with respect to Entergy Arkansas' bandwidth payments in this proceeding.[43]

24. Entergy argues that further support for its position that bandwidth payments are properly considered direct energy costs covered by the 1999 Agreement comes from the perspective of the payments received by the other Operating Companies. It contends that to the extent that wholesale customers of Operating Companies with above-average production costs have contracts with variable energy cost components, those Operating Companies have flowed through a pro rata share of their bandwidth receipts to their wholesale customers in order to ensure that the energy rate they pay is just and reasonable. Entergy maintains that Entergy Arkansas should be entitled to recover its bandwidth payments in its energy charge to Union Electric for the exact same reason. It argues that it is necessary to include the bandwidth payment in the energy charge to set that charge at a just and reasonable level.[44]

25. Entergy argues that the Commission failed to consider record evidence regarding intent and the public policy implication of its decision. For example, Entergy contends that Mr. Hurstell, who was in charge of power sales for Entergy and who gave directions to the Entergy Arkansas employees' negotiation with Union Electric, testified that Entergy Arkansas' intent in negotiating the 1999 Agreement was to eliminate a fixed energy component and make Union Electric subject to all fluctuations in fuel prices.[45] Entergy adds that Mr. Hurstell also testified that the formula rate in the 1999 Agreement recovers energy-related expenses associated with transactions with other companies.[46]

26. Entergy argues that bandwidth payments must be passed on to Union Electric to achieve the Commission's policy objective for the bandwidth remedy. It asserts that the bandwidth remedy contemplates that wholesale requirements customers should have responsibility for their allocated share of any payments or receipts. It contends that the purpose of the remedy – rough equalization of production costs – would be frustrated if wholesale requirements customers that caused a portion of production costs to be incurred were permitted to avoid the effects of the remedy.[47]

27. Entergy contends that under the Commission's holding Union Electric would receive an undeserved windfall compared to other Entergy Arkansas customers. It

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[43] *Id*. at 16.

[44] *Id*. at 17.

[45] *Id*. at 18.

[46] *Id*. at 19 (citing Tr. at 630).

[47] *Id*. at 20.

contends that, absent the bandwidth payments, Entergy Arkansas' production costs were 73 percent of system average, and therefore Union Electric's costs would be at about 73 percent of system average. Entergy contends that, with the bandwidth payments Union Electric would be the same as every other Entergy Arkansas customer at about 89 percent of system average.[48]

28. Lastly, Entergy contends that if Entergy Arkansas is not permitted to recover its bandwidth payments from Union Electric, Entergy Arkansas' bandwidth payments should be reduced. Entergy argues that Entergy Arkansas' shareholders gained no benefit from the relatively low level of production costs that were incurred by Entergy Arkansas in 2006 – it contends that that benefit was enjoyed by Entergy Arkansas' customers, including Union Electric, in terms of relatively lower rates. Entergy asserts that there is no justification for now requiring Entergy Arkansas' shareholders to bear the cost of making payments to other Operating Companies. It argues that, if the Commission does not act, Entergy Arkansas will be required to make bandwidth payments to other Operating Companies and at the same time be prevented from collecting Union Electric's pro rata share of the bandwidth payments. It contends that such a result would be inconsistent with the Commission's general policy against the trapping of costs.[49]

29. Union Electric argues that the Commission did not affirmatively state that Entergy is required to refund, with interest, the amounts that Entergy Arkansas improperly collected from Union Electric in contravention of the terms of the 1999 Agreement. Union Electric requests that the Commission clarify that Entergy is required to make the necessary refunds. Union Electric also asks that the Commission direct Entergy to include a refund report with its compliance filing.[50]

c. <u>Commission Determination</u>

30. We disagree with Entergy that the 1999 Agreement allows Entergy Arkansas to collect an allocated portion of its bandwidth payment from Union Electric through the purchased energy variable in the rate formula set forth in the 1999 Agreement. In addition, we disagree with Entergy that bandwidth payments are payments for energy that may appropriately be passed through to Union Electric through the purchased energy variable set forth in the 1999 Agreement, and deny Entergy's request for rehearing. As the Commission stated in Opinion No. 505, bandwidth payments cannot appropriately be

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[48] *Id.* at 21 (citing Tr. at 728).

[49] *Id*. at 22 (citing, e.g., *Midwest Independent Transmission System Operator, Inc*., 129 FERC ¶ 61,221 at P 44 (2009) (rejecting proposed tariff that could lead to trapped costs)).

[50] Union Electric Request for Rehearing at 6.

characterized as purchased energy expenses as contemplated by the 1999 Agreement, but instead are payments to roughly equalize production costs among the Operating Companies.[51]

31. Service Schedule MSS-3 contains a formula for determining bandwidth payments and receipts among the Operating Companies. This formula calculates each Operating Company's actual production cost and compares it to an allocated share of the Entergy system average production cost to determine if payments are required. As the Commission explained in Opinion No. 505, production costs are broken down into fixed and variable cost components.[52] The fixed production costs include the costs of both owned and purchased capacity and are allocated to each Operating Company based on a demand ratio. The variable costs include the costs of both self-generated and purchased energy and are allocated based on an energy ratio. The bandwidth payments are then calculated based on the net effect of demand-related and energy-related imbalances. Therefore, the bandwidth payments cannot be attributed solely to energy or purchased energy or described as strictly purchased energy expense, but are a combination of both demand and energy costs for all production resources, not just purchases.

32. In addition, we disagree with Entergy's argument that if bandwidth payments are not energy expenses, the Commission would lack the necessary jurisdiction to require the payments. Entergy contends that under section 201 of the FPA, the Commission has jurisdiction over only two activities: sales of electric energy and the transmission of electric energy in interstate commerce. It contends that because bandwidth payments cannot be considered transmission of electric energy, they must accordingly be considered sales of electric energy to fit into the jurisdiction of section 201. However, we find that Entergy views the scope of our jurisdiction too narrowly. Section 205(a) of the FPA gives the Commission authority to ensure that:

> [all] rates and charges made, demanded, or received by any public utility *for or in connection with* the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations *affecting or pertaining* to such rates or charges shall be just and reasonable . . . (emphasis added)

33. The Commission has discretion in determining what rules and practices are "for or in connection with," "affecting," "pertaining" or "relating to" jurisdictional services. Therefore, the Commission's exercise of jurisdiction over Entergy Arkansas' bandwidth payments arise not because a bandwidth payment represents an actual wholesale sale and

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[51] Opinion No. 505, 130 FERC ¶ 61,023 at P 103.

[52] *Id*. P 102.

purchase of power, but because that cost "affects" Entergy Arkansas' and other Operating Companies' rates. For example, in *Mississippi Industries v. FERC*, a case pertaining to the reallocation of costs among the Operating Companies, the court upheld challenges to the Commission's jurisdiction to allocate capacity costs, finding that unreasonable disparities in the shares borne by affiliates of the total system costs plainly "affect" the wholesale rates at which the Operating Companies exchange energy.[53] The court stated that while particular provisions of agreements that allocated generation costs among Operating Companies did not establish a wholesale rate, "their terms and conditions do directly and significantly affect the wholesale rates at which the operating companies exchange energy due to the highly integrated nature of the . . . system."[54]

34. Entergy argues that bandwidth payments should be considered purchased power expenses because the Commission allowed them to be recorded in "Account 555 (Purchased Power)" in the November 2006 Compliance Order. However, as the Commission has explained, it did not indicate at that time that bandwidth payments are in any way purchased energy expenses, or that they should be treated as such, simply because these payments are recorded in Account 555.[55] In fact, when the Commission allowed the recording of such payments in Account 555 it specifically distinguished the pricing of energy exchanged among the Operating Companies from the calculation of bandwidth payments.[56] Thus, Entergy's contention that bandwidth costs qualify as purchased energy costs because they are recorded in Account 555 is unavailing.

35. We also disagree with Entergy's contention that the bandwidth payments at issue are purchased energy expenses because Entergy Arkansas' 2007 bandwidth payments were entirely attributable to the disparity in energy costs. Regardless of whether Entergy Arkansas' bandwidth payments are attributable to energy costs, the bandwidth payments are not payments for just energy. They are based on a calculation of total production costs, and that calculation includes both capacity and energy costs associated with purchases and each Operating Company's owned generation.[57]

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[53] *Mississippi Indus. v. FERC*, 808 F.2d 1525, 1541, *remanded on other grounds*, 822 F.2d 1104 (D.C. Cir. 1987).

[54] *Id*. at 1542.

[55] Opinion No. 505, 130 FERC ¶ 61,023 at P 104.

[56] November 2006 Compliance Order, 117 FERC ¶ 61,203 at P 31 ("Service Schedule MSS-3 will now be used both for pricing energy exchanged among the Operating Companies *and* also to calculate and provide for any rough production cost equalization payments" (emphasis in original)).

[57] Opinion No. 505, 130 FERC ¶ 61,023 at P 103.

36. In addition, Entergy argues that although the Commission found the 1999 Agreement ambiguous, it failed to consider record evidence that supports Entergy's position, such as testimony by Entergy witness Hurstell that Entergy Arkansas' intent in negotiating the 1999 Agreement was to make Union Electric subject to fluctuations in fuel prices. However, we find that the record does not signal intent that Union Electric was now going to be subject to all energy related charges. Rather, Union Electric negotiated an energy rate that, although it could fluctuate, was specific enough to capture only certain energy charges. For example, Union Electric witness Schukar testified that the 1999 Agreement and the purchased energy variable limit the costs that may be included in the purchased energy variable to a specific category of costs.[58] Staff witness Sammon also testified that the 1999 Agreement allows Entergy Arkansas to recover only the types of costs specified in the agreement.[59] He further testified that a bandwidth payment is nothing more than a payment made by an Operating Company with low production costs to an Operating Company with high production costs, and accordingly, is not a payment for energy envisioned by Mr. Hurstell when he testified about Union Electric's intent. Consequently, when viewing the record as a whole, Entergy's record evidence regarding Union Electric's intent does not outweigh the considerable support in the record for the Commission's finding that Entergy Arkansas should not be able to allocate its bandwidth payment to Union Electric through the 1999 Agreement.

37. We also disagree with Entergy that Opinion No. 505 frustrates the purpose of the bandwidth remedy. As the Commission stated in Opinion No. 505, we agree that the wholesale customers of Entergy's Operating Companies should be responsible for any bandwidth payments made by an Operating Company.[60] However, it does not follow that Union Electric may be allocated bandwidth payments through a purchased energy variable in a contract that does not provide for the passthrough of charges associated with bandwidth payments. The 1999 Agreement pre-dates the bandwidth remedy by several years, and its purchased energy terms cannot legitimately be characterized as including bandwidth payments.[61] Further, we note that Entergy could have modified the contract.[62] We also disagree that Union Electric receives an undeserved windfall compared to other Entergy Arkansas customers. It is not a windfall for Union Electric to avoid a charge that is not specified or otherwise applicable under the 1999 Agreement, nor is Entergy being deprived of any payment if it does not receive an amount it had not bargained for in the

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[58] Union Electric Initial Brief at 15 (citing Ex. AMN-11 at 6:9-11).

[59] Tr. 2288:15-17.

[60] Opinion No. 505, 130 FERC ¶ 61,023 at P 100.

[61] *Id*. P 101.

[62] The contract at issue expired in 2009.

1999 Agreement. If Entergy Arkansas is unable to recover an allocated portion of its costs from Union Electric because of its failure to negotiate a contract that would allow it to do so, it is not reasonable to characterize Union Electric as receiving a "windfall."

38. With respect to Entergy's contention that Entergy Arkansas' bandwidth payments should be reduced if it is not permitted to recover its bandwidth payments from Union Electric, the bandwidth formula is the filed rate and under the filed rate doctrine may only be changed under a section 205 or 206 proceeding, not in the annual bandwidth implementation proceeding. As Entergy's request would require modification to the bandwidth formula, it is therefore outside the scope of this proceeding.

39. With regard to Union Electric's concern regarding refunds, we hereby direct Entergy to refund to Union Electric all bandwidth payment amounts improperly collected from Union Electric, with interest consistent with section 35.19a of the Commission's regulations,[63] within 30 days of the date of this order. We also direct Entergy to file a refund report within 60 days of the date of this order detailing its computations of the refunds it makes to Union Electric.

3. Depreciation

a. Opinion No. 505

40. In Opinion No. 505, the Commission reversed the Presiding Judge's finding that Entergy erroneously calculated nuclear depreciation and decommissioning expenses and that the appropriate nuclear depreciation expenses should be based on the actual duration of the license in effect, including granted extensions.[64] The Commission further found that Entergy correctly accounted for 2006 nuclear depreciation and decommissioning

[63] 18 C.F.R. § 35.19a (2011).

[64] There are five nuclear units within the Entergy System. Entergy Arkansas' nuclear generating units Arkansas Nuclear Unit 1 (ANO-1) and Unit 2 (ANO-2) were granted 20-year license extensions by the Nuclear Regulatory Commission (NRC), in 2001 and 2005, respectively, for a new life use expectancy of 60 years. These units are regulated by the Arkansas Public Service Commission (Arkansas Commission), which has left the depreciation rate the same, reflecting a 40-year life, which is what Entergy used in calculating the bandwidth remedy. The Arkansas Commission had reflected the 20-year license extension in retail rates for decommissioning, but not depreciation purposes. However, the Louisiana Commission used 60 years for both decommissioning and depreciation for the Waterford 3 and River Bend units, which are owned by Entergy Louisiana and Entergy Gulf States, respectively.

expense data for the nuclear units owned by the Operating Companies by using the actual data that exists on the Operating Companies' books for 2006.[65]

41. The Commission found that, accordingly, Entergy calculated the bandwidth payments by using FERC Form 1 data that contained the depreciation and decommissioning expenses recorded and recovered in rates in calendar year 2006. The Commission noted that section 30.12 of the System Agreement contains two provisions that address depreciation source data and nuclear depreciation expense, and that both provisions require that Entergy use depreciation and decommissioning expenses recorded in specified accounts by the Operating Companies in FERC Form 1, and Entergy properly did so in its compliance filing. The Commission reiterated that any changes to the bandwidth formula require a section 205 or 206 filing.[66] The Commission further noted its policy for changing depreciation rates used in formula rates, stating that if Entergy desires to change the depreciation rates reflected on its books and to include such depreciation rate changes in its bandwidth calculation, it must make a section 205 filing.[67]

42. The Commission further ruled that the purpose of the proceeding was to establish the payments and receipts necessary under the bandwidth formula set forth in Service Schedule MSS-3, and was not about what production costs would have been if different depreciation rates had been in effect in 2006. The Commission added that while the Presiding Judge contended that adjusting the depreciation rates of the ANO-1 and ANO-2

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[65] Opinion No. 505, 130 FERC ¶ 61,023 at P 170.

[66] *Id*. P 173.

[67] *Id.* n. 205, *see generally Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at n.25 (2000) (Order No. 618). In Order No. 618, the Commission established general rules for depreciation accounting and determined that utilities no longer needed to seek Commission approval for changes in depreciation rates for accounting purposes. Instead, changes in depreciation rates would be reviewed in section 205/206 proceedings involving proposals to change prices for jurisdictional service to reflect changes in depreciation rates. However, where a utility has a formula rate that references the FERC depreciation accounts as inputs, it must file under section 205 when it changes its depreciation rates for accounting purposes in order to receive approval to reflect the change in depreciation rates in the prices it charges pursuant to the formula rate. Therefore, the Commission generally requires that changes in depreciation accounting must be reviewed and approved under sections 205 before a utility can reflect such changes in rates.

nuclear units would be more equitable for ratepayers, that is a matter solely for a future section 205 or 206 proceeding, not this bandwidth remedy proceeding.[68]

b. Request for Rehearing

43. The Louisiana Commission argues that Opinion No. 505 arbitrarily retracts four of the Commission's previous orders that established the ground rules for the bandwidth cases and specifically required the litigation of depreciation issues in these cases.[69] It contends that in response to a 2006 complaint by the Arkansas Commission alleging that Entergy's production costs in some jurisdictions were excessive and imprudent, the Commission dismissed the complaint, holding that it was establishing the annual bandwidth proceedings to permit all interested parties the opportunity to address the prudence and reasonableness of all cost inputs for the formula.[70] The Louisiana Commission states that in setting the first bandwidth implementation filing for hearing, the Commission again made clear that the proceeding was established to allow the parties to litigate the reasonableness of all cost inputs to the tariff.[71] It contends that in 2008, in response to a section 206 complaint filed by the Louisiana Commission alleging that certain aspects of the bandwidth formula were unjust and unreasonable and that certain cost inputs in the first bandwidth implementation filing were unreasonable, including nuclear depreciation and other issues, the Commission dismissed the allegations and stated the issues should be litigated in the instant bandwidth case.[72] The Louisiana Commission argues that in 2009, in an order addressing a section 206 complaint filed by the Arkansas Commission regarding depreciation, the Commission ruled that the tariff language on depreciation was necessary so that the Commission could ensure the reasonableness of the depreciation inputs in the bandwidth cases.[73] The Louisiana Commission contends that these orders establish a rule that parties must address the

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[68] *Id*.

[69] Louisiana Commission Request for Rehearing at 8-13 (citing *Arkansas Pub. Serv. Comm'n v. Entergy Services, Inc*., 119 FERC ¶ 61,223 (2007); Hearing Order, 120 FERC ¶ 61,094; *Louisiana Pub. Serv. Comm'n v. Entergy Corp*., 124 FERC ¶ 61,010 (2008); and *Arkansas Pub. Serv. Comm'n v. Entergy Corp*., 128 FERC ¶ 61,020 (2009).

[70] *Id.* at 9 (citing *Arkansas Pub. Serv. Comm'n v. Entergy Services, Inc*., 119 FERC ¶ 61,223 (2007)).

[71] *Id.* (citing Hearing Order, 120 FERC ¶ 61,094 at P 16).

[72] *Id*. (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp*., 124 FERC ¶ 61,010, at P 27 (2008)).

[73] *Id*. (citing *Arkansas Pub. Serv. Comm'n v. Entergy Corp*., 128 FERC ¶ 61,020, at P 25 (2009)).

reasonableness of depreciation and other cost inputs in the annual bandwidth proceedings, and that Opinion No. 505 reverses these prior holdings. It argues that the Commission's ruling in Opinion No. 505 retroactively retracts the availability of any remedy for unduly discriminatory rates and is a retroactive recantation of a clear procedural directive that violates due process.[74]

44. The Louisiana Commission argues that the Commission is abdicating its statutory duty by finding in Opinion No. 505 that the Commission has the authority to change the depreciation and decommissioning expenses in the bandwidth formula, but declining to do so. It argues that the Commission, not retail regulators, has exclusive jurisdiction under the FPA to regulate all aspects of the bandwidth calculation. It argues that section 205 provides that the Commission must ensure that all rates and charges shall be just and reasonable and accordingly only the Commission has jurisdiction to set depreciation expenses under the tariff. [75]

45. The Louisiana Commission contends that the ruling conflicts with other holdings in Opinion No. 505. It maintains that Opinion No. 505 holds that specific language permitting the adjustment of depreciation rates cannot permit a change from the use of "actual" costs, but also finds that language respecting the inclusion of ADIT in the calculation does permit Entergy to deviate from "actual" costs. The Louisiana Commission contends that if the ADIT tariff language allows Entergy to adjust the actual data, then the depreciation tariff language requires the Commission to adjust unjust and unreasonable data.[76]

46. The Louisiana Commission states that in the Initial Decision in Docket No. ER08-1056-002 (addressing the second annual bandwidth filing), the Presiding Judge found that Entergy's depreciation studies are outdated and that the overall rates may be unjust and unreasonable.[77] It further notes that the Presiding Judge determined that Entergy's nuclear depreciation rates are not just and reasonable, and provided an extensive evidentiary analysis to support that finding. The Louisiana Commission argues that these findings should apply to the 2007 bandwidth remedy. The Louisiana Commission argues that by requiring a new section 206 filing to reconsider Entergy's depreciation expense, the Commission is blocking a remedy for the period up to the present. It notes that the Presiding Judge held in the Initial Decision that review of depreciation expense in this case was necessary to prevent tariff manipulation.[78] The Louisiana Commission argues

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[74] *Id*. at 12.

[75] *Id*. at 14.

[76] *Id*. at 15.

[77] *Id*. at 17 (citing *Entergy Services, Inc*., 128 FERC ¶ 63,015, at P 214 (2009)).

[78] *Id*. at 4 (citing Initial Decision, 124 FERC ¶ 63,026 at P 466).

that the Commission fails to explain how its decision to block a remedy can be reconciled with that finding.

47. The Louisiana Commission contends that Opinion No. 505 apparently overrules findings that Entergy's depreciation rates violate the FERC Uniform System of Accounts (USofA). It argues that the Commission adjusted Entergy's entries in the bandwidth formula for inconsistency with Commission accounting requirements, but approved incorrect accounting for depreciation expense. It contends that the Commission did not disturb the Initial Decision's citation of Trial Staff witness Nicholas that the Commission's rules require that depreciation rates be based on the useful life of the property, but nevertheless approved using what was actually on the books, even though the "actual" data violates the accounting standard.[79] It argues that the depreciation costs recorded by Entergy do not represent the actual cost of recovering the investment under the Commission's rules. The Louisiana Commission argues that, in *Ohio Edison Co*.[80] and *Midwest Power Systems Inc*.,[81] the Commission found that depreciation is based on the estimated useful life of the property or asset.

c. Commission Determination

48. We deny the Louisiana Commission's request for rehearing on depreciation. The Louisiana Commission claims that the Commission's ruling in Opinion No. 505 conflicts with prior cases in which the Commission stated that the reasonableness of all cost inputs in the bandwidth formula should be litigated in the annual bandwidth cases. However, as we emphasized in Opinion No. 505, the purpose of the annual bandwidth filings is to apply the specified formula using actual data to determine whether or not there was rough production cost equalization, and not to determine what production costs would have been if different depreciation rates had been in effect in the relevant period.[82] In other words, the purpose of annual bandwidth filings is simply to determine whether Entergy properly implemented the bandwidth formula. Subsequent to Opinion No. 505, the Commission addressed the depreciation issue in an order denying interlocutory appeal in the bandwidth proceeding in Docket No. ER09-1224-000 (the third annual bandwidth filing).[83] In that order, the Commission noted that the purpose of the bandwidth proceeding was to determine whether Entergy properly implemented the bandwidth

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[79] *Id*. (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 171).

[80] Louisiana Commission Request for Rehearing at 22 (citing *Ohio Edison Co*., 84 FERC ¶ 61,157, at 61,857 (1998)).

[81] *Id*. (citing *Midwest Power Systems Inc*., 67 FERC ¶ 61,076, at 61,207 (1994)).

[82] Opinion No. 505, 130 FERC ¶ 61,023 at PP 171, 173.

[83] *Entergy Services, Inc*., 130 FERC ¶ 61,170 (2010).

formula, not whether the bandwidth formula itself was just and reasonable. The Commission also stated that any modifications to the currently effective Service Schedule MSS-3 bandwidth formula must be made through a separate section 205 or 206 filing.[84] Additionally, the Commission stated that:

> We acknowledge, however, that prior to Entergy's annual bandwidth filings, when neither we nor the parties had any experience with such filings, the Commission did make some general statements that could be interpreted as suggesting that parties had the opportunity in Entergy's annual bandwidth filings to challenge the reasonableness of any cost inputs in the Service Schedule MSS-3 bandwidth formula, including the depreciation rates effective for Entergy's annual bandwidth filings. Such statements, however were made prior to final Commission action on the first annual bandwidth filing and thus did not benefit from experience in addressing these annual bandwidth filings.[[85]]

49. Any ambiguity, therefore, concerning the Commission's approach to the annual bandwidth filings was resolved in the order denying interlocutory appeal. That order, as well as Opinion No. 505 and other subsequent orders,[86] correctly explained that the purpose of the bandwidth filings:

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[84] Since the issuance of Opinion No. 505, the Commission has clarified its interpretation of the bandwidth formula depreciation variables in Opinion No. 514. Specifically, the definitions of those depreciation variables require depreciation rates approved by retail regulators to be reflected in calculations implementing the bandwidth formula. In an order on initial decision being issued concurrently with this order, the Commission finds that in light of this interpretation of depreciation variables in Opinion No. 514, it is unnecessary for Entergy to make a section 205 filing in order to seek approval to include revised depreciation rates adopted by any of its retail regulators in the bandwidth formula (i.e., the Commission's policy on changes in depreciation in formula rates established in Order No. 618 does not apply to the bandwidth formula) and the Commission reverses statements to the contrary in Opinion No. 505 and the Order Denying Interlocutory Appeal. *See* [CITATION PENDING for order on initial decision in Docket No. EL10-55-001 at P 25].

[85] *Entergy Services, Inc.*, 130 FERC ¶ 61,170 at P 20.

[86] *See Entergy Services, Inc*., Opinion No. 514, 137 FERC ¶ 61,029 at P 52. *See also Arkansas Pub. Serv. Comm'n v. Entergy Corp.*, 137 FERC ¶ 61,030 at P 23.

> is to establish the payments and receipts necessary under the bandwidth formula set forth in Service Schedule MSS-3. It is, thus, not about what the production costs would have been if different depreciation rates had been in effect in 2006, but simply about applying the formula using actual 2006 data.[[87]]

50. As we have previously explained, the bandwidth formula mandates the use of depreciation rates reported in the FERC Form 1, reflecting, in part, state regulator approved depreciation rates as provided in the bandwidth formula.[88] The Commission already found the bandwidth formula rate contained in Service Schedule MSS-3 to be just and reasonable when it approved that formula as being in compliance with Opinion No. 480.[89] Therefore, in this bandwidth proceeding, in order to calculate a just and reasonable rate Entergy was required to use the state regulator approved depreciation expenses as filed in FERC Form 1. We reject the Louisiana Commission's argument that the Commission is abdicating its statutory duty by declining to reconsider the inputs required by the bandwidth formula in an annual bandwidth proceeding. As the Commission recently explained, in determining whether Entergy has properly implemented the bandwidth formula using the required data inputs in a bandwidth filing, parties in a bandwidth implementation proceeding may challenge: (1) whether the inputs were calculated consistent with the formula and the applicable accounting rules; (2) conformance with retail regulatory approvals to the extent the formula requires use of values approved by retail regulators; and, (3) in instances where there are details omitted from the accepted Service Schedule MSS-3 formula, with the underlying details included in the methodology used in Exhibit Nos. ETR-26 and ETR-28.[90] Accordingly, the instant bandwidth implementation proceeding is the wrong forum in which to challenge the current bandwidth formula. The bandwidth formula is the filed rate and under the filed rate doctrine may only be changed in a section 205 or 206 proceeding.[91] The Louisiana Commission may file a section 206 proceeding to change the bandwidth formula; indeed it has done so.[92]

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[87] Opinion No. 505, 130 FERC ¶ 61,023 at P 173.

[88] Opinion No. 514, 137 FERC ¶ 61,029 at P 49, 54.

[89] April 2007 Compliance Order, 119 FERC ¶ 61,095 at P 50.

[90] *Entergy Services, Inc.*, 137 FERC ¶ 61,019, at P 13 (2011).

[91] Opinion No. 514, 137 FERC ¶ 61,029 at P 52.

[92] In response to the Louisiana Commission's argument that the Commission's action in Opinion No. 505 retroactively retracted the availability of any remedy for unduly discriminatory rates in violation of the Louisiana Commission's due process rights, we note that in response to a complaint filed by the Louisiana Commission in

(continued…)

51. We also reject the Louisiana Commission's argument that the Commission's ruling on depreciation is internally inconsistent with other sections of Opinion No. 505, specifically the section on ADIT. Section 30.12 of the bandwidth formula of Service Schedule MSS-3 establishes the requirement for determining each Operating Company's "Actual Production Cost" for bandwidth calculation purposes under the bandwidth remedy. Section 30.12 expressly provides that the bandwidth determination of production costs "be based on the actual balances on the Company's books as of December 31 of the previous year, except for Fuel Inventory, Materials & Supplies and Prepayments which shall be based on the average of the beginning and ending account balances on the Company's books." The language in section 30.12 of the bandwidth formula in Service Schedule MSS-3 requires Entergy to use the depreciation expense "as approved by Retail Regulators, unless the jurisdiction for determining the depreciation and the decommissioning rate is vested in the [Commission] under otherwise applicable law." Another provision of the bandwidth formula refers to the use of depreciation expense "approved by the retail regulator having jurisdiction over the Company, unless the [Commission] determines otherwise." In contrast, the bandwidth definition of ADIT requires Entergy, in performing the bandwidth calculation, to exclude from the calculation "amounts not generally and properly includable for [Commission] cost of service purposes."[93] Entergy cannot include amounts of ADIT that are inconsistent with Service Schedule MSS-3. Indeed, in Opinion No. 505, the Commission found that Entergy's exclusion of ADIT amounts was "fully consistent with the bandwidth formula."[94] If Entergy were to include amounts of ADIT that are "not generally and properly includable for [Commission] cost of service purposes" in the bandwidth calculation, Entergy would be in violation of the bandwidth formula. Consequently, there is no inconsistency. The bandwidth provisions concerning depreciation and ADIT are different, and the decision by the Commission to require the use of FERC Form 1 depreciation data that includes, in part, the retail regulator-approved depreciation rates as provided by the bandwidth formula, is consistent with its decision to uphold the provisions of the bandwidth formula requiring certain exclusions of FERC Form 1 ADIT data.

Docket No. EL10-550-001 subsequent to Order No. 505, the Commission finds, based on the record developed in a trial-type evidentiary hearing, that the Louisiana Commission has not met its burden under section 206 of the Federal Power Act to show that the depreciation variables in the existing bandwidth formula are unjust and unreasonable or unduly discriminatory or preferential. *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 519, 139 FERC ¶ 61,107 (2012).

[93] Ex. ESI-4 at 48D.

[94] Opinion No. 505, 130 FERC ¶ 61,023 at P 233.

52. We also disagree with the Louisiana Commission's argument that Entergy has failed to comply with Commission accounting requirements. The USofA requires that an entity allocate the cost of utility property over its service life in a systematic and rational manner.[95] The primary objective of recording depreciation expense is to allocate the consumption of an asset's service value over its remaining useful life.[96] The depreciation rates approved for use by Entergy Arkansas in the bandwidth formula allocate the consumption of ANO-1 and ANO-2 using the straight-line method of depreciation based on the service life of the assets as determined in a past depreciation study. The straight-line method of depreciation is a systematic method of depreciation. In addition, the depreciation rate used by Entergy Arkansas for accounting purposes is the same rate used for recovery of the costs in rates. This accounting matches capital costs with related revenues and is a rational accounting method. Thus, since Entergy Arkansas' depreciation accounting is both systematic and rational, in this instance, it is consistent with the accounting requirements of the USofA.

53. In calculating the bandwidth payments and receipts, Entergy was required by Service Schedule MSS-3 to use the depreciation figures currently recorded on the Operating Companies' FERC Form 1s that have been approved for use by Entergy Arkansas in the bandwidth formula. Entergy did not have the option under Service Schedule MSS-3 of considering whether other depreciation figures would have been more consistent with the Commission's accounting regulations. This ruling is not inconsistent with other sections of Opinion No. 505 that clarified various accounting issues. For example, Opinion No. 505 clarified the proper accounting of the recovery of hurricane storm costs because parties were in disagreement over which accounts should be used to record storm damages associated with Hurricanes Katrina and Rita.[97] However, with regard to depreciation, there is no disagreement over which accounts in FERC Form 1 are at issue; instead the point of contention is whether the actual costs recorded on the FERC Form 1 should be replaced with other costs. Finally, the cases cited by the Louisiana Commission in support of its position are irrelevant. While the Louisiana Commission argues that depreciation expense must be based on the estimated useful life of an asset,[98] it is irrelevant to this proceeding. Here, the Commission previously accepted the bandwidth formula, including how depreciation expenses are to

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[95] 18 C.F.R. Part 101, Electric Plant Instruction No. 22, *Depreciation Accounting*, (2011).

[96] *Depreciation Accounting*, FERC Stats. & Regs. ¶ 31,104, at PP 3, 164 (2000).

[97] Opinion No. 505, 130 FERC ¶ 61,023 at PP 129-222.

[98] Louisiana Commission Request for Rehearing at 21-22 (citing *Ohio Edison*, 84 FERC ¶ at 61,857 and *Midwest Power Systems*, 67 FERC ¶ at 61,207).

be reflected, and that bandwidth formula is the filed rate.[99] Thus, the Commission exercised its jurisdiction over the bandwidth formula and accepted the use of depreciation expenses determined by state regulators as a component of the just and reasonable rate. If an entity seeks to change that bandwidth formula, it must do so through a section 206 complaint filing or a section 205 filing.[100]

4. Functionalization of ADIT Related to Net Operating Losses

a. Opinion No. 505

54. In Opinion No. 505, the Commission affirmed, in part, the Presiding Judge's finding that Entergy properly excluded from the bandwidth calculation the ADIT amounts that are not includable for Commission cost of service purposes, finding that such exclusion is consistent with Service Schedule MSS-3.[101] However, the Commission reversed the Presiding Judge and agreed with the Louisiana Commission that ADIT amounts related to Net Operating Loss carry-forwards be included in the bandwidth calculation. It held that the Net Operating Loss carry-forwards are related to storm damage losses from Hurricanes Katrina and Rita and the storm damage losses are properly recorded in Account 182.3 and must be amortized to the appropriate functional operation and maintenance expense accounts as the costs are recovered in rates.

b. Requests for Clarification

55. Entergy states that the Commission did not address whether the Net Operating Loss ADIT amounts, once identified, should be functionalized consistent with all other ADIT amounts (in the Service Schedule MSS-3 bandwidth formula) or should be directly assigned to production. Entergy requests that the Commission clarify that the production-related ADIT associated with the Net Operating Losses resulting from storm damage be treated the same as all other ADIT, as provided in the Service Schedule MSS-3 tariff. [102]

56. The Louisiana Commission argues that the Commission should clarify that it did not intend to approve an amendment to Service Schedule MSS-3 to permit a direct assignment in its ruling. The Louisiana Commission notes that the Commission ruled that Net Operating Loss ADIT amounts are properly includable for Commission cost-of-

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[99] April 2007 Compliance Order, 119 FERC ¶ 61,095 at P 50.

[100] November 2006 Compliance Order, 117 FERC ¶ 61,203 at P 69.

[101] Opinion No. 505, 130 FERC ¶ 61,023 at P 233.

[102] Entergy Request for Rehearing at 23.

service purposes and that ADIT for Net Operating Loss carry-forwards associated with production storm damage expenses may not be excluded from the bandwidth calculation.[103] The Louisiana Commission argues that the bandwidth formula specifies how ADIT amounts properly includable for Commission cost of service are functionalized to production, and prescribes the use of a plant ratio to functionalize these costs. It contends that there is no provision in the Service Schedule MSS-3 tariff for a direct assignment to include or exclude costs.

57. Moreover, the Louisiana Commission asserts that Net Operating Loss carry-forwards result from the combined revenues and expenses of Entergy and cannot be identified with a particular function. The Louisiana Commission asserts that because Entergy cannot identify the Net Operating Losses attributable to the production function, it objects to Entergy's assertion, in the third bandwidth proceeding in Docket No. ER09-1224-001 that Opinion No. 505 authorizes Entergy to make a calculation of the Net Operating Loss ADIT it believes is attributable to production.[104]

c. Commission Determination

58. We grant Entergy's and the Louisiana Commission's requests for clarification and clarify that the Commission did not authorize an amendment to Service Schedule MSS-3 to provide for a direct assignment of ADIT associated with Net Operating Losses to the production function. We also provide further guidance and clarification on the functionalization of ADIT related to Net Operating Losses.

59. The language in Opinion No. 505 stating that the Net Operating Loss carry-forwards are related to storm damage losses[105] could have been interpreted incorrectly to mean that the only cause of the Net Operating Loss ADIT was storm damage. Accordingly, we are providing further guidance and clarifying how the ADIT associated with Net Operating Losses should be functionalized. The Net Operating Loss carry-forwards are the result of a calculation that combines all the revenues and expenses of Entergy. The Net Operating Loss is made up of many expenses, none of which, in isolation, can be considered the singular cause of the Net Operating Loss. Therefore, attributing ADIT related to the Net Operating Loss to a particular expense or function in isolation is arbitrary because the Net Operating Loss is not created by any single category of expenses.

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[103] Louisiana Commission Request for Rehearing at 31 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 234).

[104] *Id.* (citing Docket No. ER09-1224, Ex. ESI-11 at 24, 27-29).

[105] Opinion No. 505, 130 FERC ¶ 61,023 at P 234.

60. Accordingly, to properly include Net Operating Loss ADIT amounts in bandwidth calculations, Entergy must multiply its Net Operating Loss carry-forward 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 carry-forward 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 by Service Schedule MSS-3.

5. Spindletop

a. Regulatory Asset

i. Opinion No. 505

61. In Opinion No. 505, the Commission disagreed with the Presiding Judge's finding that Entergy properly accounted for the annual amortization expense of the Spindletop Regulatory Asset.[106] The Commission found that Entergy should have amortized the Spindletop regulatory asset to Account 501, rather than Account 407.3.[107] The Commission emphasized that this finding was for accounting purposes only and was not dispositive of whether the amounts of the regulatory asset amortized to expense during 2006 are production expenses properly included in the 2006 bandwidth calculation. The Commission agreed with the Presiding Judge that the issue of whether or not the investment in the Spindletop Regulatory Asset should be included in Entergy Gulf States' production costs, and reflected in the 2006 bandwidth calculation, will be decided in Docket No. EL08-51-000.[108]

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[106] The Spindletop Storage Facility is a natural gas storage facility located in Sabine, Texas.

[107] Opinion No. 505, 130 FERC ¶ 61,023 at P 261.

[108] *Id.* Subsequent to the issuance of Opinion No. 505, the Commission issued Opinion No. 509 in Docket No. EL08-51-002. In that order, the Commission reversed the Presiding Judge's finding that costs associated with the Spindletop Regulatory Asset are not production costs, and, in any event, were incurred exclusively during pre-bandwidth years and therefore are not properly included in the bandwidth formula. The Commission found instead that such costs are production costs and should be included in the bandwidth calculation. *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 509, 132 FERC ¶ 61,253, at P 34 (2010).

ii. Request for Clarification

62. The Louisiana Commission asserts that the Commission states that its accounting ruling is not dispositive for the bandwidth calculation as that issue will be decided in Docket No. EL08-51-000. The Louisiana Commission states that the Commission's decision that the amortization of the Spindletop Regulatory Asset should be booked to Account 501 determines that it should be included in the bandwidth calculation because Account 501 is included in the bandwidth formula. The Louisiana Commission states that the complaint filed in Docket No. EL08-51-000 was not filed until 2008, and cannot have effect before its filing due to the provisions of section 206. The Louisiana Commission argues that in addition, if the Commission denies the complaint in Docket No. EL08-51-000, it will have no effect on the bandwidth calculation at all because that would not authorize a change in the tariff to remove costs properly included in Account 501. Instead, the Louisiana Commission argues, parties seeking a change would have to file their own section 205 or 206 case and carry the burden of proving a tariff revision is necessary.

iii. Commission Determination

63. We grant the Louisiana Commission's request for clarification. In Opinion No. 505, the Commission determined that the appropriate account for recording amortization of the Spindletop Regulatory Asset is Account 501, which is an account included in the bandwidth calculation as provided for in Service Schedule MSS-3.[109] Consistent with this finding, Entergy must flow the amortization of the Spindletop Regulatory Asset through the bandwidth formula effective for the 2006 calendar year. In an order on Entergy's Opinion No. 505 compliance filing being issued concurrently with this order, we direct Entergy to reflect the revised amounts in Account 501 in bandwidth payments and receipts for calendar year 2006 as required under the Service Schedule MSS-3 tariff provisions in effect for this period.[110]

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[109] Opinion No. 505, 130 FERC ¶ 61,023 at P 261.

[110] In its complaint in Docket No. EL08-51, the Louisiana Commission sought not only inclusion of the annual amortization of the Spindletop Regulatory Asset in the bandwidth formula, but also inclusion of a return on the unamortized regulatory asset. In Opinion No. 509, the Commission found that both the annual amortization of the Spindletop Regulatory Asset and a return on the unamortized regulatory asset should be included in the bandwidth formula. Because the bandwidth formula in effect for the 2006 calendar year does not include the unamortized regulatory asset in rate base, a return on the unamortized regulatory asset will not be included in bandwidth payments and receipts until implementation of the bandwidth formula for calendar year 2007, following the effective date of the modifications to the formula adopted in Opinion No. 509.

b. Acquisition Costs

i. Opinion No. 505

64. In Opinion No. 505, the Commission addressed the accounting treatment for the acquisition costs of Spindletop.[111] The Commission found that the Spindletop facility is an operating unit or system, and the costs of operations and construction have been included as a component of retail rates. Consequently, the Spindletop facility was previously devoted to public service, and the accounting for the transaction should follow the Commission's original cost rules.[112] The Commission found that the Spindletop facility should be recorded in Account 101 at its original cost and the related accumulated depreciation should be recorded in Account 108. The difference between the purchase price and the depreciated original costs of the facility must be recorded in Account 114, Electric Plant Acquisition Adjustments.[113] The Commission stated that this finding was for accounting purposes only and was not dispositive of whether the acquisition costs of Spindletop are production expenses properly included in the 2006 bandwidth calculation.[114]

65. In Opinion No. 505, the Commission did not determine whether the acquisition costs of Spindletop were properly included in the 2006 bandwidth calculation because the Presiding Judge found that this issue was set for separate settlement and hearing proceedings in Docket No. EL08-51-000.[115] Subsequent to the issuance of Opinion No. 505, the Commission issued Opinion No. 509 in Docket No. EL08-51-002. Although the issue of whether the Spindletop acquisition costs would be included in the 2006 bandwidth formula was set for hearing in Docket No. EL08-51-002, it was never raised nor litigated in that docket and thus the issue was not decided in Opinion No. 509.

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[111] The acquisition costs include the asset purchase price, closing costs, and certain legal and internal costs incurred when Entergy Gulf States exercised its right to purchase the Spindletop facility for one dollar in 2004, after it had fully paid off the capital costs of the facility on an accelerated basis through a component of fuel transportation rates. The acquisition costs are capitalized under the Uniform System of Acounts, and are separate and distinct from the costs which comprise the Spindletop Regulatory Asset.

[112] Opinion No. 505, 130 FERC ¶ 61,023 at P 265.

[113] *Id.*

[114] *Id.*

[115] Initial Decision, 124 FERC ¶ 63,026 at P 625.

ii. Request for Clarification

66. Entergy requests clarification as it relates to the Commission's ruling that the acquisition costs relating to the Spindletop facility should have been recorded in Account 114 instead of Account 101.[116] Entergy states that it will record the costs in the specified accounts as required in Opinion No. 505 and will refile Entergy Gulf States' 2006 FERC Form 1 to reflect the required accounting changes. Entergy maintains that once the costs are recorded in compliance with Opinion No. 505, however, the bandwidth formula in Service Schedule MSS-3 specifies how the costs recorded in those accounts are to be reflected in the calculation of the bandwidth payments.[117] Entergy requests clarification that the Commission did not intend to alter the bandwidth formula to include Account 114 in Service Schedule MSS-3 and that Entergy should reflect the revised amounts in bandwidth payments, as required under the Service Schedule MSS-3 tariff provisions.[118]

iii. Commission Determination

67. We grant clarification that the Commission did not intend to alter the bandwidth formula to include Account 114. Once Entergy has corrected the accounting entries for the Spindletop acquisition costs in compliance with Opinion No. 505 (by recording the difference between the purchase price and the depreciated original costs of the facility in Account 114 instead of Account 101), it should follow the Service Schedule MSS-3 formula and reflect the revised amounts in Account 101 in the bandwidth payments and receipts for the 2006 calendar year. In an order on Entergy's Opinion No. 505 compliance filing being issued concurrently with this order, we direct Entergy to submit a further compliance filing to make the appropriate changes to the bandwidth payments and receipts for the 2006 calendar year.

6. River Bend 30 A&G

a. Opinion No. 505

68. In Opinion No. 505, the Commission addressed which method should be used to properly remove the administrative and general expense (A&G) and other taxes

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[116] The acquisition cost which Entergy initially recorded in Account 101 (a bandwidth formula eligible account) will now be recorded in Account 114 (an account not included in the bandwidth formula).

[117] Amounts recorded in Account 101 are included in the bandwidth formula, while amounts recorded in Account 114 generally are not.

[118] Entergy Request for Rehearing at 24.

associated with the 30 percent share of the capacity of the River Bend[119] nuclear facility prior to functionalization of such costs in the 2006 bandwidth calculation. This was necessary because Entergy had made an error in its 2006 bandwidth calculation when it removed the A&G expenses associated with the River Bend 30. The Commission affirmed the Presiding Judge's rulings regarding the River Bend 30. The Commission agreed with the Presiding Judge that Entergy erroneously included the A&G costs associated with the unregulated portion of the River Bend nuclear unit, and upheld the Presiding Judge's finding that Entergy has appropriately corrected the error.[120] The Commission described Entergy's proposed remedy as follows: first, A&G costs for the River Bend 30 are subtracted from the total A&G costs for Entergy Gulf States. Then, Entergy Gulf States' residual A&G amount, i.e., the A&G that does not include the River Bend 30 is functionalized to production using a labor ratio that does not include the River Bend 30 labor.[121] The Commission found that a competing methodology proposed by the Louisiana Commission was inconsistent with the bandwidth calculation.

b. Request for Rehearing

69. The Louisiana Commission argues that the Commission's approval of Entergy's methodology conflicts with the Commission's determination that when bandwidth calculation issues arise that are not covered by the bandwidth formula found in Service Schedule MSS-3, "the underlying details included in the methodology in Exhibit Nos. ETR-26 and ETR-28 control."[122] It contends that Service Schedule MSS-3 provides no guidance on how to remove A&G costs for the River Bend 30 from the bandwidth calculation, and absent specific guidance, the adjustment must follow Exhibit Nos. ETR-26 and ETR-28. It explains that in those exhibits, there was no adjustment to the labor ratio itself to remove any labor associated with the River Bend 30. The Louisiana Commission argues that instead, in Exhibit Nos. ETR-26 and ETR-28, Entergy identified and removed all of the A&G attributable to the River Bend 30 from the subtotal through "a separate manual reduction."[123] It contends that because Entergy identified and removed all of the A&G attributable to the River Bend 30, this adjustment fully eliminated River Bend 30 A&G from the production cost calculation.

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[119] The River Bend Nuclear Unit was owned by Entergy Gulf States and operated by Entergy Operations, Inc. during 2006.

[120] Opinion No. 505, 130 FERC ¶ 61,023 at P 244 (citing Entergy July 31, 2008 Initial Brief at 26).

[121] *Id*.

[122] Louisiana Commission Request for Rehearing at 28 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 134).

[123] *Id*. at 29 (citing Ex. LC-42 at 8).

70. The Louisiana Commission argues that the methodology approved by the Commission produces almost no impact on the bandwidth calculation compared to the disapproved adjustment. It contends that the method approved by the Commission provides a double deduction which was described in Opinion No. 505:

> First, A&G costs for the River Bend 30 are subtracted from the total A&G costs for Entergy Gulf States (the company that owns River Bend). Then, Entergy Gulf States' residual A&G amount is functionalized to production using a labor ratio that does not include the River Bend 30 percent labor . . .[124]

71. The Louisiana Commission argues that this constitutes a double deduction "because removal of the River Bend 30 labor from the ratio is one deduction and removal of the costs is a second deduction."[125] The Louisiana Commission argues that if the Commission does not wish to change the adjusted labor ratio for the A&G calculation, it can leave Entergy's adjusted ratio in place and multiply the ratio times all of Entergy Gulf States' A&G costs. It contends that multiplying all of Entergy Gulf States' A&G costs times a ratio that does not include the River Bend 30 labor removes the River Bend 30 costs from the calculation.

c. Commission Determination

72. Upon further consideration, we will grant the Louisiana Commission's request for rehearing on this issue. Service Schedule MSS-3 does not itself detail how to remove the A&G costs for River Bend 30; instead, it provides that that adjustment be made pursuant to the production cost methodology set forth in Exhibit Nos. ETR-26 and ETR-28.[126] Therefore, Entergy must use the methodology in Exhibit Nos. ETR-26 and ETR-28 to remove the A&G costs for River Bend 30. The computation of the production labor ratio for Entergy Gulf States will be unadjusted for River Bend 30 and will be the labor ratio made up of labor charged directly from the Entergy Gulf States Operating Company, and the allocation of labor costs from Entergy Services, Inc. and Entergy Operations, Inc.[127] The labor ratio will be multiplied by the total A&G costs for

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[124] *Id*. at 30 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 244).

[125] *Id*.

[126] All Rate Base, Revenue and Expense items shall … include certain regulatory adjustments pursuant to the production cost methodology set forth in Exhibit ETR-26/ETR-28 filed in Docket No. EL01-88-001, including but not limited to: … (2) the regulated (70%) portion of River Bend for EGS." System Agreement at § 31.12 n.1.

[127] *See* Ex. LC-45.

Entergy Gulf States and then reduced by the directly assigned River Bend 30 A&G costs. This calculation follows the methodology in Exhibit Nos. ETR-26 and ETR-28.

73. Entergy's argument in its Brief Opposing Exceptions[128] that the Louisiana Commission's proposed method is inconsistent with the bandwidth methodology because it requires the use of two labor ratios for Entergy Gulf States – one labor ratio for allocating A&G costs, including the costs associated with River Bend 30, and a second labor ratio for other cost allocations in the formula – is unavailing. As noted above, the bandwidth formula in Service Schedule MSS-3 does not itself detail how to remove the A&G costs for River Bend 30, but instead incorporates by reference the production cost methodology set forth in Exhibit Nos. ETR-26 and ETR-28 for that purpose. The Louisiana Commission's proposal is the methodology that was used in Exhibit Nos. ETR-26 and ETR-28 and is thus consistent with the bandwidth methodology in Service Schedule MSS-3.

74. Further, because Entergy must use the method in Exhibit Nos. ETR-26 and ETR-28, the double deduction argument raised by the Louisiana Commission is now moot.

The Commission orders:

(A) The Louisiana Commission's request for rehearing as it pertains to the adjustment for A&G for River Bend 30 is hereby granted, the other requests for rehearing are denied, and certain requests for clarification are granted as discussed in the body of this order.

(B) We also direct Entergy to file a refund report within 60 days of the date of this order detailing its computations of the refunds it makes to Union Electric.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[128] Entergy Brief Opposing Exceptions at 31.