

139 FERC ¶ 61,105
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. ER09-1224-001

OPINION NO. 518

ORDER ON INITIAL DECISION

(Issued May 7, 2012)

1. This case is before the Commission on exceptions to an Initial Decision¹ issued August 5, 2010, and involves rates filed by Entergy Services, Inc. (Entergy)² on behalf of the Entergy Operating Companies (Operating Companies)³ pursuant to Service Schedule MSS-3 of the Entergy System Agreement (System Agreement),⁴ implementing the

¹ *Entergy Services, Inc.*, 132 FERC ¶ 63,005 (2010) (Initial Decision).

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

³ At the time the Commission issued Opinion Nos. 480 and 480-A, the Operating Companies were Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Louisiana, Inc. (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Gulf States, Inc. (Entergy Gulf States). At the end of 2007, Entergy Gulf States was split into Entergy Texas, Inc. (Entergy Texas) and Entergy Gulf States Louisiana, LLC (Entergy Gulf States Louisiana). Accordingly, the Operating Companies involved with this proceeding are Entergy Arkansas, Entergy Gulf States Louisiana, Entergy Louisiana, Entergy Mississippi, Entergy New Orleans and Entergy Texas.

⁴ The System Agreement, a FERC approved tariff, is the contract among the Operating Companies and Entergy Services, Inc. which provides for a sharing of the costs and benefits of the joint planning, construction, operation and maintenance of the generation, transmission, and other facilities for the Operating Companies. There are seven service schedules attached to the contract that provide formulas for such sharing of

(continued...)

Commission's bandwidth remedy based on calendar year 2008 data as provided for in Opinion Nos. 480 and 480-A.⁵ On July 27, 2009, the Commission issued an order accepting and suspending Entergy's proposed rates and establishing hearing and settlement judge procedures.⁶ In this order, we affirm the Presiding Judge's rulings pertaining to out-of-period expenses, the rate of return on acquisitions that were made during the 2008 test year, and accumulated deferred income taxes (ADIT). We also find that one of the Presiding Judge's rulings has been rendered moot by a Commission order issued concurrent with this Initial Decision. We also find that another one of the Presiding Judges' rulings has been rendered moot by a Commission order issued subsequent to the Initial Decision.

I. Background

2. On June 14, 2001, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint against Entergy pursuant to section 206 of the Federal Power Act (FPA).⁷ The Louisiana Commission alleged that the System Agreement, a rate schedule that includes seven service schedules governing the allocation of certain costs associated with the integrated operations of the Entergy system, no longer operated to produce rough production cost equalization, as required by Commission precedent.⁸

costs and benefits. Service Schedule MSS-3 (Exchange of Electric Energy Among the Companies) governs the exchange and pricing of energy among the Entergy Operating Companies. Service Schedule MSS-3 also includes a rough production cost equalization (or bandwidth) formula to maintain production costs within a specified band among the Operating Companies.

⁵ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g*, *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part, sub nom. Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁶ *Entergy Services, Inc.*, 128 FERC ¶ 61,091 (2009) (2009 Hearing Order).

⁷ 16 U.S.C. § 791a *et seq.*, § 824 *et seq.* (2006).

⁸ A lengthy history of Commission precedent regarding rough production cost equalization can be found in the Initial Decision addressing Entergy's first filing implementing the Commission's bandwidth remedy based on calendar year 2006 data. *Entergy Services, Inc.*, 124 FERC ¶ 63,026, at P 21-37 (2008).

3. That complaint resulted in Opinion No. 480, in which the Commission found that rough production cost equalization had been disrupted on the Entergy system. In Opinion Nos. 480 and 480-A, the Commission accepted a numerical bandwidth of +/- 11 percent of the Entergy system average production cost in order to maintain the rough equalization of production costs among the Operating Companies. The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and that any equalization payments would be made in 2007 after a full calendar year of data became available. In Opinion No. 480, the Commission stated that Entergy must follow the methodology provided in Exhibit No. ETR-26.⁹ Exhibit No. ETR-26 reflects the historical production costs on the Entergy system and Exhibit No. ETR-28 provides the production cost analysis (the supporting details) for Exhibit No. ETR-26. These hearing exhibits were used to develop the formula for determining the actual annual production costs for each Operating Company in Docket No. EL01-88-001. Entergy is required, by June 1 of each year, to make a compliance filing implementing the bandwidth formula using the prior calendar year's production costs.

4. Entergy made its first annual bandwidth filing on May 29, 2007. On July 26, 2007, the Commission set the filing for hearing,¹⁰ and an initial decision¹¹ was issued on September 23, 2008. On January 10, 2010, the Commission issued Opinion No. 505,¹² which affirmed in part and reversed in part the initial decision.

5. Entergy made its second annual bandwidth filing on May 30, 2008. The Commission set the filing for hearing¹³ on July 29, 2008, and an initial decision¹⁴ was issued on September 10, 2009. The parties also submitted a partial uncontested settlement, which was approved by the Commission on August 4, 2009. On October 7,

⁹ Opinion No. 480, 111 FERC ¶ 61,311 at P 33.

¹⁰ *Entergy Services, Inc.*, 120 FERC ¶ 61,094 (2007).

¹¹ *Entergy Services, Inc.*, 124 FERC ¶ 63,026 (2008).

¹² *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010), *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

¹³ *Entergy Services, Inc.*, 124 FERC ¶ 61,101 (2008).

¹⁴ *Entergy Services, Inc.*, 128 FERC ¶ 63,015 (2009).

2011, the Commission issued Opinion No. 514,¹⁵ which affirmed in part and reversed in part the initial decision.

II. Entergy's Third Annual Bandwidth Filing

6. On May 29, 2009, in the instant proceeding, Entergy filed rates in accordance with Service Schedule MSS-3 of the System Agreement. This proceeding involves the third annual bandwidth filing required under the Commission's previously issued Opinion Nos. 480 and 480-A. In its filing, Entergy calculated the bandwidth payments and receipts under the Service Schedule MSS-3 bandwidth formula using each Operating Company's calendar year 2008 production costs. The compliance filing quantified the disparities¹⁶ in the production costs for each Operating Company, and based upon the calculation, determined the payments and receipts for each Operating Company, consistent with the bandwidth formula. The production costs include direct fixed and variable costs of the Operating Company's owned generating facilities, demand and energy costs associated with power purchases, and indirect or common costs, such as administrative and general expense, and the return of and on general and intangible plant functionalized to the production function.

7. For 2008, each Operating Company's allocated average system production costs are compared to the Operating Company's actual production costs to determine the dollar and percent disparity as seen below:

Operating Company	% Initial Disparity (Before Remedy)	% Final Disparity (After Remedy)
Entergy Arkansas	-33.65	-11.00
Entergy Gulf States Louisiana	10.11	3.17
Entergy Louisiana	9.90	3.17
Entergy Mississippi	5.48	3.17

¹⁵ *Entergy Services, Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011).

¹⁶ "Disparity" means the ratio of actual production costs to system average production costs expressed in terms of the divergence from 100 percent.

Entergy New Orleans	1.11	1.11
Entergy Texas	13.27	3.17

8. Entergy Arkansas and Entergy Texas were the only Operating Companies to have initial disparities exceeding +/- 11 percent during 2008. As shown below, as the only Operating Company with a negative disparity outside the bandwidth, Entergy Arkansas was the only Operating Company obligated to make payments, which totaled \$389.8 million:

Operating Company	2008 (Payment)/Receipt (\$ Millions)
Entergy Arkansas	(389.8)
Entergy Gulf States Louisiana	107.2
Entergy Louisiana	140.0
Entergy Mississippi	24.1
Entergy New Orleans	0.0
Entergy Texas	118.6

9. At the hearing, Entergy filed a motion to remove the depreciation expense inputs from this proceeding, based on the Commission's determination in Opinion No. 505 that any question as to whether depreciation rates should be adjusted "is a matter solely for a future section 205 or 206 proceeding."¹⁷ Based on the holding in Opinion No. 505, the Presiding Judge issued an order granting Entergy's motion on January 27, 2010, and vacated the procedural dates that had been established for depreciation issues. On February 12, 2010, the Louisiana Commission filed a motion to permit interlocutory

¹⁷ Opinion No. 505, 130 FERC ¶ 61,023 at P 173.

appeal of the Presiding Judge's order. The Commission denied the Louisiana Commission's request in a March 10, 2010 order.¹⁸

10. A hearing was held in April 2010 that resulted in the Initial Decision. Briefs were filed by Entergy, the Louisiana Commission, the Arkansas Public Service Commission (Arkansas Commission) and Commission Trial Staff (Trial Staff).

11. The Initial Decision covered various issues, including whether: (1) the actual total cost calculation for each Operating Company in the bandwidth calculation should include interruptible load in the costs attributable to Service Schedules MSS-1, MSS-3, MSS-5 and section 4.02 allocations;¹⁹ (2) the bandwidth formula requires the removal of revenues and expenses included in the 2008 test year that were related to prior periods; (3) the return on rate base and the associated income taxes on the end-of-year plant balances related to Entergy Arkansas' and Entergy Gulf States Louisiana's acquisitions of new generation facilities should be reflected, given that the facilities were acquired for only part of the 2008 test year; (4) Entergy's accounting of the Spindletop Regulatory Asset was proper; (5) ADIT associated with Independent Power Producer (IPP) advances should be removed from the bandwidth calculation; and (6) ADIT associated with net operating losses should be included in the bandwidth calculation. In the Initial Decision, the Presiding Judge finds, *inter alia*: that there is no basis in Service Schedule MSS-3 for excluding out-of-period costs; that the bandwidth formula does not provide for part-year accounting for acquisitions made during the test year; and that all ADIT that is properly includable for cost of service purposes must be included in the bandwidth calculation. The Presiding Judge also includes a Statement of Principles detailing his interpretive principles underlying the annual bandwidth proceedings.

12. Having fully evaluated the Initial Decision, the parties' briefs, and the record before us, we affirm the Presiding Judge's findings that (1) that Service Schedule MSS-3 should not exclude out-of-period costs; and (2) Service Schedule MSS-3 does not permit partial-year accounting for acquisitions that were acquired during the test year calculation. We also find that two issues decided by the Presiding Judge – the interruptible load issue for Service Schedules MSS-1, MSS-3, MSS-5, and section 4.02 of the System Agreement, and the proper treatment of the Spindletop Regulatory Asset

¹⁸ *Entergy Services, Inc.*, 130 FERC ¶ 61,170 (2010) (Order Denying Interlocutory Appeal).

¹⁹ In this instance, section 4.02 (of the System Agreement) allocations refer to purchases of capacity and energy from outside sources for the joint account of all Operating Companies.

under the bandwidth formula – have been rendered moot by Commission orders issued concurrently with and subsequent to this Initial Decision. Specifically, we find that the Presiding Judge’s determinations regarding interruptible load have been rendered moot by a recent Commission order granting rehearing of an order on complaint concerning the treatment of interruptible load in allocating system costs in the bandwidth formula.²⁰ In that order, the Commission found, *inter alia*, that interruptible load should be removed from the System 12 CP ratio to allocate system average production costs in Section 30.13 of the Service Schedule MSS-3 bandwidth formula. Because the interruptible load issue has been fully considered in that order, we decline to address the issue further here.

13. With regard to the Spindletop Regulatory Asset, we find that the Presiding Judge’s determinations have been rendered moot by the Commission’s findings in Opinion No. 509.²¹ That order, which was issued subsequently to the Initial Decision in the instant proceeding, determined, *inter alia*, that the costs associated with the Spindletop Regulatory Asset should be included in the bandwidth calculation. Because issues pertaining to the Spindletop Regulatory Asset have been thoroughly considered by the Commission in Opinion No. 509 and subsequent orders, and in light of the fact that all parties agree the Spindletop issues in the instant proceeding are now moot, we will not consider these issues further here.

14. We affirm the Presiding Judge on both of his ADIT rulings in the Initial Decision. We affirm the Presiding Judge’s finding that the bandwidth calculation begins with the inclusion of all ADIT generally and properly includable for cost-of-service purposes, and the product of that total and the production plant ratio is the portion of the ADIT which is production related – no further steps to functionalize ADIT are required.²² Further, we affirm the Presiding Judge’s finding that casualty loss ADIT, recorded in Account No. 282, Accumulated Deferred Income Taxes – Other Property, should be included in the bandwidth calculation.

15. Lastly, the Commission notes that no parties excepted to the Presiding Judge’s ruling on ADIT associated with IPP advances. We summarily affirm the Presiding Judge on this issue.

²⁰ See *Louisiana Pub. Serv. Comm’n v. Entergy Corp.*, 139 FERC ¶ 61,100 (2012).

²¹ *Louisiana Public Service Comm’n v. Entergy Corp.*, 132 FERC ¶ 61,253, at P 34-41 (2010) (Opinion No. 509).

²² Initial Decision, 132 FERC ¶ 63,005 at P 275.

III. Discussion

A. Statement of Principles

1. Initial Decision

16. The Presiding Judge developed a Statement of Principles in the Initial Decision where he articulated his understanding of the principles that underlie the implementation of the bandwidth formula. The Presiding Judge noted that the Commission held in Opinion No. 505 that any modifications to the bandwidth formula or the underlying methodology in Exhibit Nos. ETR-26 and ETR-28 must be made through a section 205 or 206 proceeding.²³ The Presiding Judge noted that bandwidth payments are computed based on each Operating Company's actual production costs for the test year, and that these costs are taken directly from the FERC Form 1 data.

17. The Presiding Judge noted that the bandwidth formula in Service Schedule MSS-3 states in footnote 1 that "All Rate Base, Revenue and Expense items shall be based on the actual amounts of the Company's books for the twelve months ending December 31 of the previous year as reported in FERC Form 1 ..."²⁴ The Presiding Judge notes that the Order on Interlocutory Appeal reiterated Opinion No. 505's requirement that actual production costs must be used.²⁵ The Presiding Judge finds that the word "actual," as the Commission has used it in prior bandwidth cases, refers to the data as reported on the FERC Form 1 as of December 31 of the bandwidth test year, and that these data will be applied in determining the outcome of the issues in the instant case.²⁶

18. The Presiding Judge states that a related issue had been raised regarding the very next phrase in the footnote 1, quoted *supra*, which continues: ". . . or such other supporting data as may be appropriate for each Company." The Presiding Judge notes that the Louisiana Commission and Trial Staff argue for an expansive definition of "actual," in which the FERC Form 1 data may be changed by using the "such other supporting data" provision in instances in which the FERC Form 1 data may not accurately reflect significant changes in production costs that occur within the test year and which have not been carried on an Operating Company's books for the entire year.

²³ *Id.* P 15 (citing Opinion No. 505, 130 FERC ¶ 61,023 at n.166).

²⁴ *Id.* P 17 (quoting Exh. No. ESI-3 at 52, n.1 (emphasis added)).

²⁵ *Id.* (citing Order Denying Interlocutory Appeal, 130 FERC ¶ 61,170 at 20).

²⁶ *Id.* P 15.

The Presiding Judge finds that the “other supporting data” clause is to be employed to change FERC Form 1 data only where the bandwidth calculation requires use of data from sources other than the FERC Form 1 or when such other data are summarized at a higher level than required by Service Schedule MSS-3.²⁷

2. Briefs on Exceptions

19. Trial Staff and the Louisiana Commission argue that the Presiding Judge erred by adopting an overly narrow interpretation of footnote 1 that would preclude any correction of, or adjustment to, the “as reported” FERC Form 1 data from an Operating Company’s books, even if such adjustments are necessary to establish appropriate bandwidth formula input amounts that are consistent with Commission accounting and ratemaking practices. Trial Staff and the Louisiana Commission dispute the Presiding Judge’s finding that the word “actual” as used in footnote 1 of the bandwidth formula only refers to data “as reported on” FERC Form 1 at the end of a “bandwidth test year.”²⁸ The Louisiana Commission contends that the bandwidth formula’s use of an “actual” cost calculation requires use of other sources when the FERC Form 1s misportray the “actual” costs.²⁹ The Louisiana Commission adds that the bandwidth formula also provides that the tariff specifies that the data must be for “the twelve months ended December 31 of the test year.”³⁰ Trial Staff contends that in making his determination on the word “actual,” the Presiding Judge erred in conclusively finding that bandwidth calculations populated with FERC Form 1 data are per se just and reasonable until successfully challenged in a section 205 or 206 proceeding. Trial Staff contends that the Presiding Judge erred in finding that the justness and reasonableness of the bandwidth formula is not at issue in this proceeding and in suggesting that to challenge an input to the bandwidth formula is a challenge to the justness and reasonableness of the bandwidth formula itself.³¹

20. Trial Staff and the Louisiana Commission argue that the Presiding Judge erred in concluding that the Commission’s decision in Opinion No. 505 prohibiting changes to the depreciation rates in the context of a bandwidth proceeding should be applied to all

²⁷ *Id.* P 19.

²⁸ Trial Staff Brief on Exceptions at 13 and Louisiana Commission Brief on Exceptions at 10-11.

²⁹ Louisiana Commission Brief on Exceptions at 13.

³⁰ *Id.* at 12 (citing Exh. No. ESI-3 at 52).

³¹ Trial Staff Brief on Exceptions at 17.

categories of bandwidth inputs. Trial Staff contends that nowhere in the Order Denying Interlocutory Appeal, upon which the Presiding Judge relies, did the Commission specifically preclude raising other issues in other annual bandwidth proceedings that may arise out of the nature of the accounting for, or the FERC Form 1 reporting of, inputs in the bandwidth calculation. Trial Staff further contends that the Commission never gave any indication that its ruling on depreciation rates should be applied beyond the subject of depreciation.³²

21. Trial Staff and the Louisiana Commission argue that the Presiding Judge erred in failing to consider the Commission's accounting regulations and other Commission precedent. The Louisiana Commission argues that prior Commission orders cited by the Presiding Judge do not necessarily preclude adjustments to inaccurate cost data. It notes that in Opinion No. 505, the Commission approved correcting a double count with respect to exclusion of administrative and general costs for the 30 percent unregulated share of the River Bend nuclear generator from the production costs of Entergy Gulf States Louisiana.³³ Likewise, Trial Staff notes that the Presiding Judge's conclusions are contrary to the Commission's accounting regulations and FERC Form 1 reporting requirements, Opinion No. 505 and other Commission precedent requiring the correction of formula rate inputs where such inputs contain errors and are not developed in a manner consistent with the Uniform System of Accounts (USofA). Trial Staff argues that from time to time, it may be determined that a utility's FERC Form 1 data are not correct and do not comply with the requirements of the USofA. It notes that in such instances, the Commission typically requires the correction of the "as reported" FERC Form 1 data. Trial Staff argues that "actual," as used in footnote 1, should not be interpreted simply to mean "as reported" in FERC Form 1 without affording others, including the Commission, an opportunity for review in an annual bandwidth proceeding for review to ensure that the data has been compiled in accordance with the requirements of the USofA and FERC Form 1.³⁴

22. Trial Staff argues that the Presiding Judge erred in finding that the use of the phrase "other supporting data" in footnote 1 can only be employed when the formula requires use of data from sources other than the FERC Form 1 or where "as reported" FERC Form 1 data are summarized at a higher level than required by Service Schedule MSS-3. Trial Staff contends that the Presiding Judge incorrectly dismissed Trial Staff's

³² *Id.* at 17.

³³ Louisiana Commission Brief on Exceptions at 11.

³⁴ Trial Staff Brief on Exceptions at 20.

and the Louisiana Commission's position that FERC Form 1 end-of-year data may be adjusted by virtue of the "such other supporting data" provision in instances in which the year-end FERC Form 1 data may not accurately reflect significant changes in production costs that occur within the test year and which have not been carried on an Operating Company's books for the entire year.³⁵

23. The Louisiana Commission adds that a tariff cannot anticipate all issues of inaccuracy that may arise in the recording of data. The Louisiana Commission argues that the Presiding Judge's rulings may cause prejudice to parties affected adversely by the use of incorrect data. It notes that absent relief in a bandwidth case, a party would have to file a section 206 complaint, which would presumably delay relief until a year or longer after the filing of the complaint.³⁶

3. Briefs Opposing Exceptions

24. Entergy argues that the Presiding Judge's Statement of Principles is correct and appropriate. Entergy contends that the bandwidth formula provides that actual amounts reported in the FERC Form 1 are to be used. It contends that the Statement of Principles allows for changes to correct inaccuracies in the recording of data as well as accounting errors. Entergy argues that unless there is an error in the recording of data or in the accounting, the actual FERC Form 1 data must be used in the bandwidth calculation.³⁷ Entergy argues that the "other supporting data" language in footnote 1 was not intended to ignore the requirements of the bandwidth formula. Entergy maintains that the Statement of Principles is consistent with the Commission's prior rulings.

4. Commission Determination

25. We find that the Statement of Principles is generally consistent with the Service Schedule MSS-3 bandwidth formula and prior Commission orders that addressed the scope of the annual bandwidth filings. The bandwidth formula states that: "All Rate Base, Revenue and Expense items shall be based on the actual amounts on the Company's books for the twelve months ending December 31 of the previous year as reported in FERC Form 1. . ."³⁸ As the Presiding Judge noted, the Commission

³⁵ *Id.* at 21.

³⁶ Louisiana Commission Brief on Exceptions at 13.

³⁷ Entergy Brief Opposing Exceptions at 9.

³⁸ Exh. No. ESI-3 at 52, n.1.

emphasized the requirement for the use of actual costs in Opinion No. 505, where the Commission stated (in the context of depreciation rates):

The purpose [of annual bandwidth proceedings] is to establish the payments and receipts under the bandwidth formula set forth in Service Schedule MSS-3. It is, thus, not about what 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. Indeed, while the Presiding Judge contends that adjusting the depreciation rates of ANO 1 and ANO 2 would be more equitable for ratepayers (and upon which we take no issue), that is a matter solely for a future section 205 or 206 proceeding, not this bandwidth remedy proceeding.³⁹

We reaffirmed this finding in the Order Denying Interlocutory Appeal, where we specifically addressed a disagreement over the interpretation of Entergy's bandwidth formula. In that order, we stated that "the justness and reasonableness of depreciation inputs is not at issue in Entergy's annual bandwidth filings . . . Rather, the issue is whether Entergy correctly applied the *actual* FERC Form 1 data and the depreciation rates effective for its annual bandwidth filings."⁴⁰ We explicitly stated that "[t]he focus is not whether the formula is just and reasonable."⁴¹ The Commission again reaffirmed this finding in Opinion No. 505-A.⁴²

26. Accordingly, we find that the Presiding Judge was correct to find that the word "actual" refers to data as reported in the FERC Form 1 as of December 31 of the test year where the formula specifies use of end-of-year values, and that this data reported in the FERC Form 1 as of December 31 of the bandwidth test year must be applied to the bandwidth formula. Trial Staff and the Louisiana Commission argue that this interpretation is overly-restrictive and does not allow the Commission the ability to correct inputs where the formula was not correctly applied. We disagree. As the Commission recently clarified,

³⁹ Opinion No. 505, 130 FERC ¶ 61,023 at P 173.

⁴⁰ Order Denying Interlocutory Appeal, 130 FERC ¶ 61,170 at P 19 (emphasis added).

⁴¹ *Id.* P 20.

⁴² Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

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 Exhibits ETR-26 and ETR-28. Further, with respect to whether or not particular costs were prudently incurred, consistent with Opinion No. 505, the Louisiana Commission and other parties may challenge the prudence of cost inputs to the bandwidth formula in this bandwidth proceeding.⁴³

27. We also agree with the Presiding Judge that the language in footnote 1 of Service Schedule MSS-3 that actual amounts recorded in the FERC Form 1s or “such other supporting data as may be appropriate for each company” should not be given an expansive interpretation that would allow parties to ignore the requirements of the bandwidth formula. At the hearing, Trial Staff witness Sammon offered a compelling rationale for why an expansive reading should be rejected. As Mr. Sammon stated, such an interpretation “could render the section 30.12 formula rate superfluous and make Entergy’s annual bandwidth filings a ‘free for all’ in which each party adjusts the FERC Form 1 data of the various Operating Companies to achieve what it believes should be the appropriate result.”⁴⁴

B. Out-of-Period Costs

1. Issue and Background

28. At the hearing, the Louisiana Commission attempted to exclude certain categories of revenues and expenses included in the bandwidth calculation for 2008 because they were not incurred in 2008. The parties requested that the Presiding Judge resolve whether it is appropriate to include or exclude out-of-period revenues and expenses in the bandwidth formula.

⁴³ *Entergy Services, Inc.*, 137 FERC ¶ 61,019, at P 13 (2011) (internal citations omitted).

⁴⁴ Exh. No. S-1 at 18.

2. Initial Decision

29. The Presiding Judge finds that the Louisiana Commission and Trial Staff's proposed adjustments for out-of-period revenues and expenses are inconsistent with both the language of section 30.12 of Service Schedule MSS-3 and the Commission's directives set forth in Opinion No. 505. The Presiding Judge finds that Service Schedule MSS-3's footnote 1 requires Entergy to use actual costs *recorded*, rather than actual costs *incurred*, by each Operating Company on its FERC Form 1 for the previous year. The Presiding Judge further finds that the "such other supporting data" provision of footnote 1 does not allow Entergy to make adjustments to the actual data on the FERC Form 1 for out-of-period revenues and expenses.⁴⁵ The Presiding Judge also rejects arguments that the methodology from Exhibit Nos. ETR-26 and ETR-28 supports the exclusion of out-of-period revenues and expenses.

3. Briefs on Exceptions

30. The Louisiana Commission argues that in order to compare the actual production costs for the test year 2008, out-of-period expenses and revenues must be removed, as they were in Exhibit Nos. ETR-26 and ETR-28. The Louisiana Commission contends that Service Schedule MSS-3 does not specify whether "actual" costs must be based on the recorded data even when that data reports costs that were not incurred in the test year, and notes that the Commission has ruled that when Service Schedule MSS-3 is ambiguous, Exhibit Nos. ETR-26 and ETR-28 should control. It contends that because in this instance the methodology is ambiguous, the Commission must follow Exhibit Nos. ETR-26 and ETR-28, which removed out-of-period expenses. The Louisiana Commission also argues that inclusion of out-of-period revenues and expenses frustrates the purpose of the tariff by distorting the results for the test year. The Louisiana Commission contends that the bandwidth formula provides a textual basis for the removal of out-of-period costs, specifically the provision that states that the bandwidth calculation shall be "based on the actual amounts on the Company's books for the twelve months ended December 31 of the previous year"⁴⁶

31. The Louisiana Commission argues that the principle that out-of-period expenses should be excluded from the bandwidth calculation was applied by the Commission in the November 2006 Compliance Order. It contends that in that proceeding, the Commission rejected arguments that the payments and receipts recorded in bandwidth

⁴⁵ Initial Decision, 132 FERC ¶ 63,005 at P 107.

⁴⁶ Louisiana Commission Brief on Exceptions at 16 (citing Exhibit No. ESI-3 at 52 n.1).

accounts to roughly equalize costs based on the prior test year should be included in the calculation.⁴⁷

32. The Louisiana Commission argues that both Entergy and the Arkansas Commission contended in a separate proceeding that it would be inappropriate to include out-of-period expenses in the bandwidth calculation. The Louisiana Commission contends that in Docket No. EL08-51-002, Entergy and the Arkansas Commission argued that costs associated with the Spindletop Regulatory Asset should not be included in the bandwidth calculation because they are out-of-period. The Louisiana Commission argues that the resulting order, Opinion No. 509, found that Spindletop Regulatory Asset costs are not out-of-period, but did not reject the principle that out-of-period costs should not be included in the bandwidth calculation.⁴⁸

33. Trial Staff argues that the Presiding Judge erred in finding that Entergy's 2008 bandwidth calculations populated with production costs that are taken directly from the FERC Form 1 are just and reasonable until successfully challenged in a section 205 or 206 proceeding. Trial Staff contends that under the Presiding Judge's ruling, Entergy's determinations regarding the "as reported" FERC Form 1 data are just and reasonable until successfully challenged. Trial Staff notes that this finding effectively makes Entergy the final arbiter of justness and reasonableness. Trial Staff continues that the Presiding Judge fails to explain how this finding may be challenged.⁴⁹ Trial Staff contends that under the Presiding Judge's ruling allowing inclusion of out-of-period costs, the 2008 test period will not be calculated in a manner that will effectuate the purpose of the bandwidth period, i.e., to roughly equalize yearly average production costs.⁵⁰

34. Trial Staff contends that the Commission has never applied a *per se* just and reasonable presumption with respect to "as reported" FERC Form 1 data. Trial Staff points out that in Opinion No. 505, the Commission directed Entergy to correct its accounting, i.e., adjust the FERC Form 1 data, for net operating loss carry-backs and interim storm damage costs. Trial Staff explains that, in other words, the fact that the Operating Companies incorrectly accounted for certain transactions and incorrectly

⁴⁷ *Id.* (citing November 2006 Compliance Order, 117 FERC ¶ 61,203 at 42).

⁴⁸ *Id.* at 17 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,253, at P 38 (2010)).

⁴⁹ Trial Staff Brief on Exceptions at 23.

⁵⁰ *Id.* at 25.

reported data in the FERC Form 1s did not prevent the Commission from directing changes to the Operating Companies' accounting records.⁵¹

35. Trial Staff argues that the Presiding Judge erred in finding that Trial Staff's proposed adjustments for out-of-period revenues and expenses are inconsistent with the language of Service Schedule MSS-3, noting that footnote 1 of Service Schedule MSS-3 provides that "such other supporting data as may be appropriate for each Entergy Operating Company."⁵² Trial Staff argues that this language may be applied to change FERC Form 1 data. Trial Staff argues that no party could credibly argue that upon discovery of an error in FERC Form 1 data, the incorrect FERC data input may not be changed and the incorrect data input must be used in the bandwidth calculation.⁵³

36. Trial Staff argues that Commission precedent with respect to errors contained in inputs to formula rates provides that corrections may be made upon discovery of the parties. Trial Staff argues that both *VEPCO*⁵⁴ and *PSE&G*⁵⁵ hold that under formula rates, parties have the right to challenge inputs. Trial Staff adds that a challenge to the correctness of "as reported" FERC Form 1 data inputs does not constitute a challenge to the bandwidth formula. Trial Staff asserts that out-of-period revenues and expenses typically are not included in a test-year analysis for purposes of ratemaking because the out-of-period revenues and expenses are not representative of the test period.⁵⁶

4. Briefs Opposing Exceptions

37. Entergy agrees with the Presiding Judge's holding not to exclude out-of-period revenues and expenses because the bandwidth formula requires Entergy to use the data actually recorded on the Operating Company books for the test year.⁵⁷ Entergy argues

⁵¹ *Id.* at 26-28.

⁵² *Id.* at 29.

⁵³ *Id.* at 31.

⁵⁴ *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098, at P 46 (2008) (*VEPCO*).

⁵⁵ *Public Service Electric and Gas Co.*, 124 FERC ¶ 61,303, at P 17 (2008) (*PSE&G*).

⁵⁶ Trial Staff Brief on Exceptions at 31-32.

⁵⁷ Entergy Brief Opposing Exceptions at 20.

that the out-of-period revenues and expenses were recorded on the books for the twelve months ending December 31, 2008. Entergy claims that despite the Louisiana Commission's arguments that certain expenses relate to previous years, it is undisputed that they were recorded on the Operating Company's FERC Form 1s for the test year.

38. Entergy contends that the Louisiana Commission misrepresents the Commission's ruling in its November 2006 Compliance Order in response to Opinion No. 480. Entergy notes that in that proceeding, the Commission rejected the Arkansas Commission's argument that bandwidth payments and receipts from one year should be included in the Operating Company's production cost calculations in the next year's calculation. It contends that the Commission found that such an approach would cause an Operating Company's bandwidth payment obligation in the second year to be reduced and would defeat the purpose of rough production cost equalization. Entergy contends that this holding only addresses the issue of how to treat the prior year's bandwidth payments and is not intended to disallow the inclusion of all out-of-period expenses from the bandwidth calculation.⁵⁸

39. Entergy argues that the Louisiana Commission's arguments regarding the Spindletop Regulatory Asset have no merit. Entergy contends that its statements in the Docket No. EL08-51-000 proceeding were made in the context of opposing a proposed amendment to the formula, not in describing the formula as it currently exists. Entergy contends that it expressed no opinion in the Docket No. EL08-51-000 proceeding as to whether the bandwidth formula requires the blanket exclusion of all out-of-period costs.⁵⁹

40. Entergy disputes the Louisiana Commission's argument that Exhibit Nos. ETR-26 and ETR-28 exclude out-of-period revenues and expenses. Entergy concurs with the Presiding Judge's finding that there is no need to consult Exhibit Nos. ETR-26 and ETR-28 because the formula is clear that actual costs are required.

41. Entergy contends that the two cases cited by Trial Staff, *VEPCO* and *PSE&G*, do not address the question of whether parties are free to ignore the requirements of a formula rate to exclude out-of-period revenues and expenses. Entergy argues that instead, the orders each deal with a proposal to establish a cut-off date for challenges to a company's formula rates. It contends that the issue in both cases is not whether errors in inputs should be corrected.

⁵⁸ *Id.* at 21.

⁵⁹ *Id.* at 22

42. The Arkansas Commission argues that the “such other supporting data” language of footnote 1 should not be used to allow exclusion of out-of-period costs. The Arkansas Commission contends that the Louisiana Commission and Trial Staff propose to adjust actual costs to remove out-of-period revenues. The Arkansas Commission contends that parties cannot seek either changes to the bandwidth formula or use of other cost inputs than required by the formula in the annual bandwidth compliance filing proceedings.⁶⁰

5. Commission Determination

43. We affirm the Presiding Judge’s finding that Service Schedule MSS-3 does not provide for the exclusion of out-of-period revenues and expenses. In this proceeding, the actual costs properly recorded on the Operating Company’s FERC Form 1s include out-of-period expenses and revenues. Because the revenues and expenses were properly recorded in accounts used in the bandwidth formula, Entergy included those revenues and expenses in the bandwidth calculation. Contrary to the arguments of the Louisiana Commission and Trial Staff, there is no provision in the tariff that would allow for an adjustment to remove out-of-period amounts, including the “other supporting data” provision of footnote 1. Footnote 1 provides in relevant part as follows:

All Rate Base, Revenue and Expense items shall be based on the actual amounts on the Company’s books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company.⁶¹

44. The Louisiana Commission and Trial Staff ask the Commission to exclude the out-of-period costs on the grounds that such exclusion would lead to a more reasonable result. However, the bandwidth proceeding is not the proper place to argue the justness and reasonableness of bandwidth formula provisions.⁶² Any change to the bandwidth formula must be made through an FPA section 205 or 206 proceeding.

45. With regard to the Louisiana Commission’s cite to excerpts from Entergy’s briefs in Docket No. EL08-51-002 that oppose the inclusion of costs associated with the Spindletop Regulatory Asset, arguments made by parties in that proceeding are irrelevant here. That docket, rather than being an annual bandwidth proceeding, involved an

⁶⁰ Arkansas Commission Brief Opposing Exceptions at 7.

⁶¹ Exh. No. ESI-3 at 52-3 n.1.

⁶² *Entergy Services, Inc.*, 137 FERC ¶ 61,019, at P 10-13 (2011).

amendment to the formula. In the context of a change to the current formula, Entergy argued against the inclusion of out-of-period costs. However parties in that proceeding did not address whether the current formula requires the exclusion of all out-of-period costs.

46. In addition, we disagree with the Louisiana Commission's assertion that Exhibit Nos. ETR-26 and ETR-28 control over the clear requirements of the bandwidth formula. In Opinion No. 505, the Commission explicitly stated Service Schedule MSS-3 takes precedence in any conflict with the methodology found in Exhibit Nos. ETR-26 and ETR-28.⁶³ Although the methodology in Exhibit Nos. ETR-26 and ETR-28 apply when the bandwidth formula is not clear, we agree with the Presiding Judge's finding that "there is no need to consult Exhibit[s] ETR-26 and ETR-28 because the formula is clear that actual costs are required."⁶⁴ The fact that the bandwidth formula does not mention out-of-period revenues and expenses does not mean that the formula is ambiguous with regard to out-of-period costs; instead it means that the formula does not provide for any adjustments for out-of-period revenues and expenses.

47. Further, the sections of Opinion No. 505 cited by Trial Staff in reference to instances where the Commission found that Entergy had improperly booked amounts to incorrect accounts are not inconsistent with our finding concerning out-of-period adjustments.⁶⁵ In those instances cited by Trial Staff, the Commission found that Entergy had improperly booked amounts in the wrong accounts and thus the adjustments to the bandwidth calculations ordered by the Commission did not require a change to the Service Schedule MSS-3 bandwidth formula. Trial Staff is not arguing, nor has any party, that Entergy placed these out-of-period costs in the wrong account. Rather, the adjustments Trial Staff seek would require a change to the Service Schedule MSS-3 bandwidth formula to exclude amounts included in the proper accounts.

48. Lastly, the cases cited to by Trial Staff – *VEPCO* and *PSE&G* – do not support its position regarding out-of-period expenses. Neither of those cases addresses the issue of whether parties may ignore the requirement of a formula rate to exclude out-of-period revenues and expenses. Instead, the cited portions of the two cases address a proposal to establish a cut-off date for challenges to a company's formula rates. For example, in *VEPCO*, the Commission stated that should an error be discovered, the inputs to the

⁶³ Opinion No. 505, 130 FERC ¶ 61,023 at P 133.

⁶⁴ Initial Decision, 132 FERC ¶ 63,005 at P 109.

⁶⁵ Trial Staff Brief on Exceptions at 27.

formula must be corrected and formula re-calculated.⁶⁶ In *PSE&G*, the Commission held that parties must be free to correct errors in the inputs or the implementation of the formula.⁶⁷ However, the issue in this case is not whether errors should be corrected. No party has identified an error in the input data. Rather, the question is whether the input data specified in the formula should be changed in order to achieve a different result.

C. Return and Associated Income Taxes for Ouachita and Calcasieu Plants

1. Issue and Background

49. During the 2008 test year, two of the Operating Companies purchased two different generation facilities from unaffiliated independent power producers. Entergy Gulf States Louisiana purchased the Calcasieu Generating Facility (Calcasieu) on March 31, 2008, and Entergy Arkansas purchased the Ouachita Power Facilities (Ouachita) on September 30, 2008. Footnote 2 of section 30.12 of Service Schedule MSS-3 requires that “Rate Base values shall 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.”⁶⁸ The Louisiana Commission argued at the hearing that Entergy should account for Entergy Arkansas’ and Entergy Gulf States Louisiana’s respective holdings of Ouachita and Calcasieu on a partial rather than full-year basis for the purpose of the bandwidth calculation for Service Schedule MSS-3, because Entergy Arkansas and Entergy Gulf States Louisiana did not hold the Ouachita and Calcasieu assets for the entirety of bandwidth test year 2008.

2. Initial Decision

50. The Presiding Judge finds that Entergy has correctly included returns on rate base and associated income taxes for Entergy Arkansas’ investment in Ouachita and Entergy Gulf States Louisiana’s investment in Calcasieu as reflected in the FERC Form 1 data as of December 31, as required by the bandwidth formula. The Presiding Judge finds that this holding is consistent with his Statement of Principles, namely that “returns on rate base and the associated income taxes are properly includable in the bandwidth calculation if they are derived directly from the FERC Form 1 for the appropriate test year.”⁶⁹

⁶⁶ *VEPCO*, 123 FERC ¶ 61,098 at P 46.

⁶⁷ *PSE&G*, 124 FERC ¶ 61,303 at P 17.

⁶⁸ Entergy System Agreement, Service Schedule MSS-3, footnote 2.

⁶⁹ Initial Decision, 132 FERC ¶ 63,005 at P 17.

According to the Presiding Judge, the bandwidth formula relies on input from FERC Form 1 that gives full year accounting for return and tax calculation for assets that were held for only part of the bandwidth test year. The Presiding Judge says the Louisiana Commission's argument for partial year accounting is compelling, but holds that the appropriate forum for this matter is a FPA section 206 proceeding.

3. Briefs on Exceptions

51. Trial Staff and the Louisiana Commission argue that the Presiding Judge erred in holding Entergy correctly applied unadjusted FERC Form 1 data. They argue that the result is a double counting of Entergy Arkansas' and Entergy Gulf States Louisiana's cost for Ouachita and Calcasieu. Trial Staff argues that double counting occurs because the bandwidth formula includes both the full-year investment-related costs and purchase costs.⁷⁰

52. According to Trial Staff, the Presiding Judge bases his holding in both issues on his stated principle that "as reported" FERC Form 1 data must be used unless challenged successfully in a section 206 proceeding.⁷¹ Trial Staff argues, however, that the "such other supporting data as may be appropriate for each Company" language of footnote 1 of Service Schedule MSS-3 allows for adjustment to the FERC Form 1 data to reflect partial-year ownership of Ouachita and Calcasieu.⁷² Trial Staff further argues that the Presiding Judge fails to cite Commission authority which supports his holding that footnote 1 does not allow such an adjustment or that such adjustment is not required per standard practice by the Commission.⁷³ Trial Staff asserts it is challenging the Presiding Judge's interpretation of footnote 1 and is not seeking to change the bandwidth formula itself.⁷⁴

53. The Louisiana Commission claims that Entergy has included "non-existent costs" for Entergy Arkansas and Entergy Gulf States Louisiana related to the Ouachita and Calcasieu acquisitions because the Operating Companies did not own the facilities for the

⁷⁰ Trial Staff Brief on Exceptions at 6 and 34.

⁷¹ *Id.* at 36.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 37.

entire year.⁷⁵ The Louisiana Commission contends that Entergy also included in the bandwidth calculation tolling agreement fees paid in the test year by Entergy Arkansas and Entergy Gulf States Louisiana to the former owners of these facilities, prior to Entergy Arkansas and Entergy Gulf States Louisiana acquiring the facilities. The Louisiana Commission states that Entergy's use of unadjusted FERC Form 1 data results in both an overstatement and double counting of Entergy Arkansas' and Entergy Gulf States Louisiana's costs for Ouachita and Calcasieu.⁷⁶

54. The Louisiana Commission claims that, as a result, Entergy overstated Entergy Arkansas' production costs by \$18.416 million and Entergy Gulf States Louisiana's production costs by \$1.732 million.⁷⁷ The Louisiana Commission claims the overstated costs affect the bandwidth calculated payments and receipts and cites Trial Staff's witness Sammon as stating that the overstated production cost for Entergy Arkansas resulted in an underpayment of approximately \$14.4 million to other Operating Companies. The Louisiana Commission attributes the overstatement and double counting of costs related to Ouachita and Calcasieu to an incorrect interpretation of the tariff to include costs that Entergy Arkansas and Entergy Gulf States Louisiana "did not incur." As a remedy, the Louisiana Commission proposes "the calculation be corrected by adjusting the return requirements for the portion of 2008 that each unit was owned by an Entergy company."⁷⁸

55. According to the Louisiana Commission, the only reason the Presiding Judge offered for allowing the overstatement of production costs for Entergy Arkansas and Entergy Gulf States Louisiana is that the tariff allegedly required this calculation. Similarly, the Louisiana Commission suggests Entergy's only defense for its application of the formula was that "the tariff calls for the use of year-end rate base values," and that such a change in the calculation would require a modification to Service Schedule MSS-3.⁷⁹ The Louisiana Commission argues, however, that the tariff language specifies that "actual" cost for each Operating Company be determined and that the "actual amounts on the Company's books for the twelve months ended December 31 of the previous year..." be used. According to the Louisiana Commission, Entergy Arkansas and Entergy Gulf

⁷⁵ Louisiana Commission Brief on Exceptions at 24.

⁷⁶ *Id.*

⁷⁷ *Id.* at 25 (citing Kollen at 13 and Louiselle at Tr. 3340).

⁷⁸ Louisiana Commission Brief on Exceptions at 28.

⁷⁹ *Id.* at 26 and 27.

States Louisiana owned Ouachita and Calcasieu for three months and six months of the test year, respectively. Furthermore, the Louisiana Commission argues that the tariff allows that “such other supporting data as may be appropriate” be used to supplement the FERC Form 1 data.

56. Finally, the Louisiana Commission argues that Entergy has already made similar adjustments on behalf of Entergy Arkansas. The Louisiana Commission argues that if the Commission disapproves the adjustments it is proposing, then the Commission should likewise disapprove the adjustments that the Louisiana Commission argues Entergy has made.⁸⁰ The Louisiana Commission contends that Entergy’s adjustments to the Entergy Arkansas FERC Form 1 amounts for Fuel Inventory involves a multi-step computation to remove the fuel inventory owned by a co-owner of one of Entergy Arkansas’ generating units. The Louisiana Commission argues that under the reasoning of the Initial Decision, this adjustment should be reversed. The Louisiana Commission argues that it would be ironic for the Commission to permit the utility to make adjustments to its FERC Form 1 data, but to preclude the Commission itself from making adjustments in a bandwidth proceeding to ensure accurate results.

4. Briefs Opposing Exceptions

57. The Arkansas Commission and Entergy argue the bandwidth formula allows a calculation of return and income taxes on Ouachita and Calcasieu as if they were owned for a full year and that a change to use partial-year accounting would require a section 206 proceeding. Entergy argues the Presiding Judge, therefore, correctly held that Entergy appropriately applied the end of year balances for Ouachita and Calcasieu as recorded on the FERC Form 1 data.⁸¹ Entergy further argues that even if the Commission finds that the provision in footnote 1 for use of other supporting data allows certain adjustments to FERC Form 1 data input to the bandwidth formula, that finding would not govern the treatment of Ouachita and Calcasieu, since footnote 2 does not contain a similar provision.

58. Finally, Entergy says that its treatment of Entergy Arkansas’ fuel inventory is not, as the Louisiana Commission contends, inconsistent with Entergy’s treatment of Ouachita and Calcasieu. According to Entergy, this is a case where the fuel inventory as recorded in the FERC Form 1 was reported at a higher level than is required by Service Schedule MSS-3.⁸² Entergy contends, therefore, that it correctly disaggregated the

⁸⁰ *Id.* at 29.

⁸¹ Entergy Brief Opposing Exceptions at 25.

⁸² *Id.* at 27.

amount in Account No. 151 to derive and apply only Entergy Arkansas' fuel inventory as required by Service Schedule MSS-3.⁸³

59. The Arkansas Commission agrees with the Presiding Judge that footnote 1 requires use of FERC Form 1 data as recorded. The Arkansas Commission and Entergy further argue that in Opinion No. 505 and the Order Denying Interlocutory Appeal, the Commission rejected a similar argument by Trial Staff concerning depreciation and says this new proposal to adjust the FERC Form 1 data should be similarly rejected.

60. The Arkansas Commission argues that Trial Staff would like to allow for any cost input data to be questioned for justness and reasonableness as part of the annual compliance filing proceedings. According to the Arkansas Commission, this would require a major hearing to evaluate each Operating Company's cost inputs without end on an annual basis, "negating the benefits of having a formula rate ... and destroying the underlying purpose of the bandwidth formula to calculate each Operating Company's actual production costs for the rough production cost equalization analysis."⁸⁴

5. Commission Determination

61. We find that the bandwidth formula only allows for assets on the books at the end of the calendar-year to be reflected in the bandwidth calculation as though they had existed for a full year and that Entergy is required to use the FERC Form 1 data for the applicable accounts in performing the Service Schedule MSS-3 calculations. Footnote 2 provides the specific instructions as to how Entergy is to value rate base items for purposes of the bandwidth calculation, and thus governs the treatment of Ouachita and Calcasieu. Footnote 2 requires that data recorded on the Operating Company's books as of the end of the year be used:

*[r]ate base values shall 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 actual balances on the Company's book.*⁸⁵

⁸³ *Id.* at 28.

⁸⁴ *Id.* at 8.

⁸⁵ Entergy System Agreement, Service Schedule MSS-3, footnote 2 (emphasis added).

The bandwidth formula does not provide Entergy with the discretion to do anything other than use the end-of-year rate base balances for the Operating Company's generation plants.

62. In addition, the Presiding Judge was correct in stating that a section 206 proceeding is the proper forum for the Louisiana Commission to make an argument for applying partial year accounting of assets held in less than 12 months of a bandwidth test year, because such a change would require a change to the bandwidth formula. As the Presiding Judge stated, returns on rate base and the associated income taxes are properly includable in the bandwidth calculation if they are derived appropriately from the end-of-year FERC Form 1 balances for the applicable test year.⁸⁶

63. In regards to Entergy's treatment of the Entergy Arkansas fuel inventory cited by the Louisiana Commission,⁸⁷ we find that this has no bearing on the issue presented here. We require that Entergy use the end-of-year values for the acquisition costs the Louisiana Commission seeks to adjust, and whether Entergy properly implemented the fuel inventory input has no bearing on the former issue and no party, including the Louisiana Commission, has sought to change Entergy's implementation of the fuel inventory input.

D. ADIT/Net Operating Losses

1. Issue and Background

64. This issue addresses what portion of the ADIT associated with Net Operating Loss carryforwards (net operating loss ADIT) should be included in the bandwidth calculation. The Commission addressed this issue in Opinion No. 505, finding that net operating loss ADIT should be included in the bandwidth calculation.⁸⁸ The issue in the instant proceeding concerns whether the Commission intended that net operating loss ADIT associated with storm damage expenses attributable to production should be the only amount of net operating loss ADIT included in the bandwidth calculation.

2. Initial Decision

65. The Presiding Judge finds that all ADIT generally and properly includable for cost-of-service purposes may be included in the bandwidth calculation. With regard to

⁸⁶ Initial Decision, 132 FERC ¶ 63,005 at P 147.

⁸⁷ Louisiana Commission Brief on Exceptions at 29.

⁸⁸ Opinion No. 505, 130 FERC ¶ 61,023 at P 233.

storm damage expenses, the Presiding Judge finds that only that portion which is attributable to production may be included in the bandwidth calculation.⁸⁹

66. In determining the proper input for net operating loss ADIT, the Presiding Judge explains that the fixed production rate base is factored into the bandwidth formula in determining fixed production costs. The Presiding Judge explains that as part of the calculation, ADIT is functionalized by multiplying it by the ratio of production plant in service to total plant in service, after excluding nuclear plant to total plant, intangible plant, and the Waterford 3 capital lease. The Presiding Judge finds that the ADIT bandwidth calculation begins with the inclusion of all ADIT that is generally and properly includable for cost-of-service purposes, and the product of that total and the production plant ratio is the portion of the ADIT total which is production-related. The Presiding Judge finds that, therefore, there is no need to further functionalize storm-related ADIT (including casualty loss ADIT) to production. The Presiding Judge also finds that casualty loss ADIT, recorded in Account No. 282 (Accumulated Deferred Income Taxes - Other Property), should be included in the bandwidth calculation. The Presiding Judge concludes that because the entire amount of net operating loss ADIT is to be included in the bandwidth calculation, there is no logical reason to exclude casualty loss ADIT.⁹⁰

67. The Presiding Judge states that the discussion of storm-related ADIT in Opinion No. 505 was intended to add emphasis to the bandwidth calculation process for functionalizing ADIT. The Presiding Judge finds that the discussion is a subset of the broader rule for functionalizing all ADIT to production. The Presiding Judge also finds that all net operating loss ADIT is includable in the bandwidth calculation.⁹¹

3. Briefs on Exceptions

68. The Louisiana Commission argues that with regard to casualty loss ADIT, the Initial Decision decides an issue not presented in hearing by deciding that inclusion of Account No. 282 casualty loss ADIT in the bandwidth calculation is proper. The Louisiana Commission argues that in the first annual bandwidth filing, which resulted in Opinion No. 505, Entergy did not include casualty loss ADIT in the bandwidth calculation, but rather included it in Account No. 283 (Accumulated Deferred Income Taxes – Other), which is not one of the ADIT accounts listed in the formula for rate

⁸⁹ Initial Decision, 132 FERC ¶ 63,005 at P 275.

⁹⁰ *Id.* P 277.

⁹¹ *Id.* P 276.

recovery. The Louisiana Commission states that in 2008, Entergy moved casualty loss ADIT from Account No. 283 to Account No. 282. The Louisiana Commission states that Entergy's witness Bunting asserted that the transfer was disclosed in the FERC Form 1 reports, but failed to provide evidence that it was ever approved by the Commission.⁹² The Louisiana Commission states that Entergy did not include casualty loss ADIT in the "Ratemaking Balance" for Account No. 282 in its bandwidth filing, but did include it in the "Other" category.⁹³

69. The Louisiana Commission argues that because Entergy did not include casualty loss ADIT in the bandwidth calculation, the issue was not included in the issue list (Issue List) prepared by parties and Trial Staff prior to the hearing. The Louisiana Commission further states that the Presiding Judge did not list the issue of casualty loss ADIT on the Issue List.⁹⁴ The Louisiana Commission contends that had it known casualty loss would be an issue, it would have shown that the transfer of casualty loss ADIT from Account No. 283 to Account No. 282 violates the Commission's accounting instructions. The Louisiana Commission argues that the USofA prohibits the transfer of ADIT out of Account No. 283 without prior approval of the Commission.⁹⁵

70. The Louisiana Commission further argues that had it known casualty loss ADIT would be an issue, it would have pointed out that "contra-securitization" ADIT, also in Account No. 282, but not included in ratemaking balance by Entergy, offsets much of casualty loss ADIT. The Louisiana Commission uses the example of Entergy Louisiana which has a contra-securitization ADIT for "Katrina and Rita – Fed" of approximately \$108 million in positive ADIT. The Louisiana Commission contends that this is in contrast to Entergy Louisiana's negative ADIT for "Casualty Loss Deduction – Fed" of approximately \$254 million. The Louisiana Commission states that Entergy did not propose to include this contra-securitization ADIT, even though Entergy witness Mr. Louiselle testified that most storms costs would be securitized.⁹⁶

71. The Louisiana Commission also argues that it would have demonstrated that casualty loss ADIT and net operating loss ADIT are not equivalent. The Louisiana

⁹² Louisiana Commission Brief on Exceptions at 47.

⁹³ *Id.*

⁹⁴ *Id.* at 48.

⁹⁵ *Id.* at 49.

⁹⁶ *Id.* at 50.

Commission contends that net operating loss ADIT results from all taxable income and deductions on the tax return and that each deduction contributes to net operating loss ADIT. A “but for” analysis that was performed by Entergy attempted to show that but for the storm loss deductions there would have not been net operating loss ADIT. The Louisiana Commission states that this analysis is based on an assumption that the storm loss deductions were on the margin and that no other income or deduction could have resulted in net operating loss ADIT. The Louisiana Commission states that the “but for” analysis is inconsequential; there is still net operating loss ADIT.⁹⁷

72. Entergy argues that the Presiding Judge erred in finding that all net operating loss ADIT should be included in the bandwidth calculation. Entergy argues that the Presiding Judge ignored Opinion No. 505, which states that “only that portion [of storm-related ADIT] which is attributable to production may be included in the bandwidth calculation.”⁹⁸ Entergy states that based on this ruling, it conducted analysis to see if Hurricanes Gustav and Ike, which occurred in the 2008 test year at issue in this proceeding, similarly caused the net operating losses and, if so, to what extent those net operating losses were associated with production storm damage expenses. Entergy’s expert Louiselle determined that the net operating losses were in fact caused by Hurricanes Gustav and Ike, and then determined the amount of net operating loss ADIT that should be included in the bandwidth calculation.⁹⁹

73. Entergy argues the Presiding Judge fails to understand that ADIT not meeting the “generally and properly includable” test is excluded from the bandwidth calculation at the outset. It contends that instead, his analysis was based on the erroneous assumption that “the ADIT bandwidth calculation begins with the inclusion of all ADIT, and the product of that total and the production plant ratio is that portion of the ADIT total which is production-related, by definition.”¹⁰⁰ Entergy argues that based on this incorrect conclusion, the Presiding Judge went on to find that Opinion No. 505 was not intended to change how ADIT otherwise is treated in the bandwidth calculation, but “[r]ather, that discussion is a subset of the broader rule for functionalizing all ADIT to production.”¹⁰¹

⁹⁷ *Id.* at 51.

⁹⁸ Entergy Brief on Exceptions at 10.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 10 (citing Initial Decision, 132 FERC ¶ 63,005 at P 276).

¹⁰¹ *Id.*

4. Briefs Opposing Exceptions

74. Entergy argues that casualty loss ADIT was properly presented and considered as an issue in conjunction with net operating loss ADIT. Entergy explains that while it did not include casualty loss ADIT in the bandwidth calculation, it also did not include net operating loss ADIT. Entergy contends that the only reason casualty loss ADIT arose in this proceeding was that Trial Staff and the Louisiana Commission took the position that net operating loss ADIT should be included. Entergy explains that its position is that if net operating loss ADIT is included then casualty loss ADIT should be included as well.¹⁰²

75. Entergy notes that casualty loss was included in pre-filed testimony (testimony filed before the trial began). Entergy cites to Mr. Louiselle's pre-filed testimony in which he spent a page and a half addressing casualty loss ADIT. Entergy contends that the Louisiana Commission had opportunities to address Mr. Louiselle's statement on casualty loss ADIT in pre-trial discovery. Entergy notes that it cross examined both Louisiana Commission witness Kollen and Trial Staff witness Sammon on the casualty loss ADIT issue, giving both witnesses an opportunity to address the issue. Entergy finally states that the issue of casualty loss ADIT was properly included as a part of net operating loss ADIT on the Issue List, and did not need to be considered as a separate issue.¹⁰³

76. Entergy states that the Louisiana Commission's argument that the reclassification of casualty loss ADIT from Account No. 283 to Account No. 282 violated the Commission's accounting instructions should be dismissed. Entergy cites to the pre-trial agreement in which all parties agreed that, "the reclassification of certain ADIT Amounts from Account No. 283 to Account No. 282" would not be disputed at trial.¹⁰⁴

77. Entergy argues that the Louisiana Commission's assertion that it failed to include contra-securitization ADIT in the calculation as well is misguided. Entergy states that the testimony to which the Louisiana Commission cites discussing contra-securitization ADIT was an attempt by Entergy witness Louiselle to explain why net operating loss ADIT should not be included in the bandwidth calculation. Entergy states that if the Commission rules that net operating loss ADIT should be included then it would be inappropriate to reduce casualty loss ADIT by the amount of contra-securitization

¹⁰² Entergy Brief Opposing Exceptions at 43-44.

¹⁰³ *Id.* at 45-46.

¹⁰⁴ *Id.* at 48 (citing Joint Statement of Issues, Stipulated Issue No. 1).

ADIT.¹⁰⁵ Entergy witness Louiselle explains in his testimony in Exhibit No. ESI-29 that contra-securitization ADIT is ADIT that is securitized by Entergy and sold off. By selling off these storm costs (contra-securitization ADIT) Entergy allows another entity to recover those costs and therefore those related costs and tax effects are not includable in cost-of-service.¹⁰⁶

78. Entergy argues that the Louisiana Commission's argument the net operating loss ADIT is not storm related is in conflict with the Opinion No. 505 requirement for the inclusion of net operating loss ADIT. Entergy states that the Louisiana Commission's Brief on Exceptions focuses on the wrong category of ADIT, contra-securitized ADIT, and does not contest that casualty loss ADIT is storm-related.¹⁰⁷ In addition, Entergy argues that Entergy witness Louiselle performed the "but-for" analysis to demonstrate but-for the storms Entergy would not have generated the tax losses and thus not generated the net operating loss asset deferred tax balance that existed at the end of the year. Entergy states that after demonstrating that net operating loss resulted from the storms, Mr. Louiselle determined what portion of net operating losses was associated with the production-related storm damages. Entergy argues that this proves that net operating loss ADIT can be traced to Hurricanes Ike and Gustav.¹⁰⁸

79. Trial Staff concurs with the Louisiana Commission that casualty loss ADIT was not an issue in the Opinion No. 505 proceeding, but argues that the fact that casualty loss ADIT was not a specific issue addressed in Opinion No. 505 is not dispositive of whether a sufficient record exists in the instant proceeding upon which the Presiding Judge may base his ruling regarding casualty loss ADIT. Trial Staff argues that the Louisiana Commission's position on this issue is disingenuous as it acknowledges Entergy reclassified casualty loss from Account No. 283 (a non-bandwidth account) to Account No. 282 (a bandwidth account) well after the test period in which Opinion No. 505 is based.¹⁰⁹

80. Trial Staff disagrees with the Louisiana Commission's assertion that the Presiding Judge's findings regarding the inclusion of casualty loss ADIT should be

¹⁰⁵ *Id.* at 49.

¹⁰⁶ *Id.* at 49 (citing Exh. No. ESI-29 at 13).

¹⁰⁷ *Id.* at 49.

¹⁰⁸ *Id.* at 49-50.

¹⁰⁹ Trial Staff Brief Opposing Exceptions at 24-25.

vacated as beyond the scope of the proceeding. Trial Staff argues that the issue of casualty loss ADIT is part of a larger issue of what portion of the ADIT associated with net operating losses should be included in the bandwidth calculation. Trial Staff argues that net operating loss ADIT and casualty loss ADIT are both storm-related costs. Trial Staff states that the Louisiana Commission has not shown any legal reason why casualty loss ADIT is outside the scope of the proceeding. Trial Staff argues that, more importantly, the record contains evidence on the relationship between casualty loss ADIT and net operating loss ADIT citing to cross examinations conducted on Commission Trial Staff witness Sammon by the Louisiana Commission on the relationship between net operating loss ADIT and casualty loss ADIT.¹¹⁰

81. The Louisiana Commission argues that the Initial Decision correctly found that ADIT for net operating losses should be functionalized to production once, using the applicable ratio in the formula, rather than twice as proposed.¹¹¹ The Louisiana Commission argues that Opinion No. 505 and Service Schedule MSS-3 require Entergy to include all net operating loss ADIT that is generally and properly includable in FERC cost-of-service and then use the formula's functionalization ratios. The Louisiana Commission contends that Entergy instead separated out the portions of net operating loss ADIT that it says are related to the production function and then functionalized those ratios.¹¹²

82. The Louisiana Commission further argues that Entergy misinterpreted Opinion No. 505 to mean that only net operating loss ADIT associated with storm costs that occurred in 2008 are includable in the bandwidth formula. The Louisiana Commission states that Opinion No. 505 clarified that net operating loss ADIT associated with storm costs could not be excluded. The Louisiana Commission continues by arguing that the Entergy proposal concludes that only storm costs resulted in net operating loss ADIT. The Louisiana Commission states that all taxable income and deductions, not just storm damage, on the tax return result in net operating loss ADIT.¹¹³

83. The Louisiana Commission argues that Entergy attempts to relate net operating loss ADIT to storm costs by comparing net operating loss ADIT to casualty loss, but provides no nexus between the two. The Louisiana Commission contends that

¹¹⁰ *Id.* at 27-28.

¹¹¹ Louisiana Commission Brief Opposing Exceptions at 3.

¹¹² *Id.* at 4.

¹¹³ *Id.* at 7-8.

Entergy's net operating loss ADIT argument is in direct conflict with its position regarding ADIT for IPP advances, in which Entergy includes all "IPP Advance" ADIT in the formula and functionalizes it using the applicable ratios. The Louisiana Commission notes that none of the IPP Advance ADIT is production related. The Louisiana Commission concludes that if it does not directly assign this ADIT to a different function then it cannot perform a direct assignment calculation to functionalize net operating loss ADIT.¹¹⁴

5. Commission Determination

84. We affirm the Presiding Judge on both of his ADIT rulings in the Initial Decision. First, the Presiding Judge is correct in stating that the bandwidth calculation begins with the inclusion of all ADIT generally and properly includable for cost-of-service purposes, and the product of that total and the production plant ratio is the portion of the ADIT which is production related – no further steps to functionalize ADIT are required.¹¹⁵ Second, we affirm the Presiding Judge's finding that casualty loss ADIT, recorded in Account No. 282, should be included in the bandwidth calculation.

85. With regard to the first issue, section 30.12 of Service Schedule MSS-3 requires that all ADIT balances contained in an Operating Company's FERC Form 1 be included in variable ADIT except amounts "not generally and properly includable for FERC cost of service purposes." We note that the Commission clarified its position on net operating loss ADIT in Opinion No. 505-A,¹¹⁶ issued concurrently with this order, stating that:

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

¹¹⁴ *Id.* at 9-10.

¹¹⁵ Initial Decision, 132 FERC ¶ 63,005 at P 275.

¹¹⁶ Opinion No. 505-A, 139 FERC ¶ 61,105.

the Net Operating Loss is not created by any single category of expenses.¹¹⁷

The Commission elaborated:

[t]o 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-3.¹¹⁸

86. We find the Presiding Judge's ruling in the Initial Decision is consistent with our ruling in Opinion No. 505-A, and accordingly affirm the Presiding Judge.

87. Entergy's argument that Opinion No. 505 required that, "only that portion [of storm-related ADIT] which is attributable to production may be included in the Bandwidth calculation" is incorrect.¹¹⁹ Entergy sought clarification in Opinion No. 505-A¹²⁰ on this very issue and our finding above answers this argument.

88. With regard to casualty loss ADIT, we affirm the Presiding Judge's ruling that there are ADIT amounts recorded in Account No. 282 that Entergy should include in the bandwidth formula calculations. Amounts recorded in Account Nos. 190 and 282 that are generally and properly includable for Commission cost-of-service purposes are included in rate base in the bandwidth formula. In Opinion No. 505, the Commission found that to the extent that storm damage costs are included in expense accounts that are included in the bandwidth formula (production storm damage expense), ADIT for net operating loss carryforwards associated with storm damage expenses should also be

¹¹⁷ *Id.* P 59

¹¹⁸ *Id.* P 60.

¹¹⁹ *Supra* P 73.

¹²⁰ Opinion No. 505-A, 139 FERC ¶ 61,105 at P 55.

included.¹²¹ For these reasons, both the ADIT related to the calculated net operating loss carry-forward balance recorded in Account No. 190 and the casualty loss ADIT recorded in Account No. 282 are to be included. We find this approach consistent with the findings of Opinion No. 505-A summarized above.

89. The Louisiana Commission also argues that Entergy failed to include contra-securitization ADIT in the calculation as well as the casualty loss ADIT. However, the Louisiana Commission has not explained how these ADIT amounts arise or demonstrated why they are “generally and properly includable for FERC cost of service purposes.”

90. The Louisiana Commission’s argument that net operating loss ADIT and casualty loss ADIT are not equivalent provides no basis for refuting our finding that casualty loss ADIT should be included in the bandwidth calculation. In Opinion No. 505-A the Commission found, and we further affirm in this proceeding, that all net operating loss ADIT includable for Commission cost-of-service purposes should be included in the bandwidth calculation.¹²²

91. The Louisiana Commission argues that the issue of casualty loss ADIT was not an issue in the Opinion No. 505 proceeding and was not properly presented before the hearing and therefore did not have the opportunity to brief or argue the issue at trial. However, the fact that casualty loss ADIT was not an issue in Opinion No. 505 is irrelevant as to whether a sufficient record exists to consider the issue here. As Entergy and Trial Staff argued, there was ample opportunity for the Louisiana Commission to address this issue during the hearing.¹²³ For example, Entergy witness Louiselle, in pre-trial testimony argued that if the Commission found that net operating loss ADIT was to be included in the bandwidth calculation then it would be appropriate to include casualty loss ADIT.¹²⁴ In addition, Entergy witness Louiselle was questioned during the proceeding by the Louisiana Commission’s counsel and by Entergy’s counsel on the inclusion of casualty loss ADIT in Account No. 282 and the effect of it on the bandwidth formula.¹²⁵ Further, Louisiana Commission witness Kollen was questioned

¹²¹ Opinion No. 505, 130 FERC ¶ 61,023 at P 234.

¹²² Opinion No. 505-A, 139 FERC ¶ 61,105 at PP 59-60.

¹²³ See Entergy Brief Opposing Exceptions at 43-44; Trial Staff Brief Opposing Exceptions at 27-28.

¹²⁴ Exh. No. ESI-29 at 12-15.

¹²⁵ Tr. 345-350 and 393-394.

on the appropriateness of inclusion of 100 percent casualty loss ADIT in the bandwidth formula.¹²⁶ Accordingly, we find little support for the Louisiana Commission's claim that the issue was not properly considered during the hearing.

92. Finally, with regard to the Louisiana Commission's argument that moving casualty loss ADIT from Account No. 283 to Account No. 282 violates the Commission's accounting instructions, we note that the reclassification issue was specifically raised in this proceeding and was one of the issues enumerated on the Issue List. In fact, according to the record evidence in the pre-filed testimony, all parties, including the Louisiana Commission, entered into the following stipulation that the reclassification was appropriate: "the parties agree that there is no dispute regarding the reclassification of certain ADIT amounts from Account 283 to Account 282."¹²⁷

The Commission orders:

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

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹²⁶ *Id.*, 491-493.

¹²⁷ Joint Statement of Issues, Stipulated Issue No. 1.