

140 FERC ¶ 61,111  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER12-1920-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, ESTABLISHING  
HEARING PROCEDURES AND HOLDING PROCEDURES IN ABEYANCE

(Issued August 6, 2012)

1. Entergy Services, Inc. (Entergy), as agent and on behalf of the Entergy Operating Companies (collectively, Operating Companies),<sup>1</sup> submitted for filing rates pursuant to Service Schedule MSS-3 of the Entergy System Agreement (System Agreement) implementing the Commission's decision in Opinion Nos. 480 and 480-A.<sup>2</sup> In this order, we accept these proposed rates for filing, and suspend them for a nominal period, to become effective June 1, 2012, as requested, subject to refund. While we establish hearing procedures, we hold those procedures in abeyance pending a further Commission order, as discussed below.

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<sup>1</sup> The Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy Texas, Inc. (Entergy Texas), and Entergy New Orleans, Inc. (Entergy New Orleans). The generation and bulk transmission system of all of the Operating Companies is collectively referred to as the Entergy System.

<sup>2</sup> *La. 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), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

## I. Background

2. In Opinion Nos. 480 and 480-A, the Commission found that rough production cost equalization had been disrupted on the Entergy system. Opinion Nos. 480 and 480-A approved 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 and required annual bandwidth implementation filings beginning in June 2007. 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. The Commission stated that future production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26. The detailed breakdown and calculations of the production cost methodology reflected in the values shown in ETR-26 are found in Exhibit ETR-28. In its compliance filing implementing the directives of Opinion Nos. 480 and 480-A, Entergy included the formulas for implementing the rough production cost equalization bandwidth remedy required by Opinion No. 480 in Service Schedule MSS-3.<sup>3</sup>

3. On May 27, 2007, in Docket No. ER07-956-000, Entergy submitted its first annual bandwidth implementation filing that set forth rates pursuant to Service Schedule MSS-3 of the System Agreement, implementing the Commission's decisions in Opinion Nos. 480 and 480-A (2007 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2007, subject to refund.<sup>4</sup> The Commission also established hearing and settlement judge procedures, which produced an initial decision that the Commission affirmed in part and reversed in part in Opinion No. 505.<sup>5</sup> Entergy submitted a compliance filing in response to Opinion No. 505 on March 12, 2010. The Commission issued Opinion No. 505-A on May 7, 2012.<sup>6</sup> Also on May 7, 2012, the Commission issued an order accepting the Opinion No. 505 Compliance Filing, subject to a further compliance filing by June 6, 2012.<sup>7</sup>

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<sup>3</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006).

<sup>4</sup> *Entergy Services, Inc.*, 120 FERC ¶ 61,094 (2007).

<sup>5</sup> *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010).

<sup>6</sup> *Entergy Services, Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

<sup>7</sup> *Entergy Services, Inc.*, 139 FERC ¶ 61,104 (2012).

4. On May 30, 2008, in Docket No. ER08-1056-000, Entergy submitted its second annual bandwidth implementation filing based on calendar year 2007 data (2008 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2008, subject to refund.<sup>8</sup> The Commission also established hearing and settlement judge procedures. The parties submitted a partial uncontested settlement that was certified by the presiding judge on June 19, 2009,<sup>9</sup> and the presiding judge issued an initial decision on the remaining issues on September 9, 2009.<sup>10</sup> On October 7, 2011, the Commission issued Order No. 514 affirming, and reversing certain of, the presiding judge's findings and requiring a compliance filing.<sup>11</sup>

5. On May 29, 2009, in Docket No. ER09-1224-000, Entergy submitted its third annual bandwidth implementation filing based on calendar year 2008 data (2009 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2009, subject to refund.<sup>12</sup> The Commission also established hearing and settlement judge procedures. The hearing was held in April 2010 and the presiding judge issued an initial decision on August 5, 2010.<sup>13</sup> On May 7, 2012, the Commission issued Opinion No. 518 affirming certain of the presiding judge's findings, finding others had been rendered moot, and requiring a compliance filing.<sup>14</sup>

6. On May 27, 2010, in Docket No. ER10-1350-000, Entergy submitted its fourth annual bandwidth implementation filing based on calendar year 2009 data (2010 bandwidth calculation). The Commission accepted those rates for filing, suspended them for a nominal period and made them effective June 1, 2010, subject to refund.<sup>15</sup> The Commission also established hearing and settlement judge procedures and, noting the

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<sup>8</sup> *Entergy Services, Inc.*, 124 FERC ¶ 61,101 (2008).

<sup>9</sup> This partial uncontested settlement was accepted by the Commission on August 24, 2009. *Entergy Services, Inc.*, 128 FERC ¶ 61,181 (2009).

<sup>10</sup> *Entergy Services, Inc.*, 128 FERC ¶ 63,015 (2009).

<sup>11</sup> *Entergy Services, Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011).

<sup>12</sup> *Entergy Services, Inc.*, 128 FERC ¶ 61,091 (2009).

<sup>13</sup> *Entergy Services, Inc.*, 132 FERC ¶ 63,005 (2010).

<sup>14</sup> *Entergy Services, Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012).

<sup>15</sup> *Entergy Services, Inc.*, 132 FERC ¶ 61,065 (2010).

other pending bandwidth-related cases, directed the presiding judge to not allow re-litigation of issues that are the subject of those other proceedings pending before the Commission.

7. On January 20, 2011, as supplemented on February 7, 2011, Entergy filed in the 2010 bandwidth calculation proceeding in Docket No. ER10-1350-000 a motion to strike testimony by the Louisiana Commission witnesses on the ground that their testimony re-litigated issues already being considered in other proceedings. On January 28, 2011, the presiding judge issued an order to show cause why the proceeding should not be stayed, pending the issuance of Commission decisions on the previous bandwidth cases. Following initial and reply briefs on the matter, the presiding judge issued an order on March 3, 2011 holding the hearing in Docket No. ER10-1350-000 in abeyance until the Commission rules on the issues pending before it in other proceedings.<sup>16</sup>

8. On May 27, 2011, in Docket No. ER11-3658-000, Entergy submitted its fifth annual bandwidth implementation filing based on calendar year 2010 data (2011 bandwidth calculation). In an order issued on July 26, 2011, the Commission accepted the proposed rates for filing and suspended them to become effective on June 1, 2011, subject to refund.<sup>17</sup> The Commission also established hearing and settlement judge procedures, but held the hearing in abeyance pending action on the annual updates from prior years in order to prevent the re-litigation of issues that are the subject of other proceedings pending before the Commission.<sup>18</sup>

## II. Entergy's Filing

9. On May 31, 2012, Entergy filed its sixth annual bandwidth implementation filing based on calendar year 2011 data (2012 bandwidth calculation) pursuant to section 205 of

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<sup>16</sup> *Entergy Services, Inc.*, 134 FERC ¶ 63,018 (2011) (Stay Order). On March 21, 2011, the Louisiana Commission filed a motion to permit interlocutory appeal of the Stay Order with the Presiding Judge, which was denied. *Entergy Services Inc.*, 134 FERC ¶ 63,025 (2011). On April 7, 2011, the Louisiana Commission filed an appeal to the Commission, arguing that the Stay Order likely will cause future bandwidth filings also to be stayed. On April 13, 2011, the Chairman, acting as Motions Commissioner, determined not to refer the interlocutory appeal to the full Commission. *Entergy Services, Inc.*, Notice of Determination by the Chairman, Docket No. ER10-1350-001 (April 13, 2011).

<sup>17</sup> *Entergy Services, Inc.*, 136 FERC ¶ 61,057 (2011).

<sup>18</sup> *Id.*

the Federal Power Act (FPA)<sup>19</sup> to implement the Commission's decision in Opinion Nos. 480 and 480-A.

10. Entergy states that it calculated the payments and receipts under the Service Schedule MSS-3 bandwidth formula using data as reported in the Operating Companies' 2011 FERC Form No. 1 or such other supporting data as provided for in Service Schedule MSS-3.<sup>20</sup> Entergy states that it has calculated the Actual Production Costs of each Operating Company<sup>21</sup> and the Average Production Costs<sup>22</sup> of the System consistent with the terms and conditions of Service Schedule MSS-3. The System Average Production Costs were then allocated to each Operating Company to obtain each Operating Company's respective allocation of System Average Production Costs. Entergy also states that each Operating Company's allocated Average Production Costs was compared to the Operating Company's Actual Production Costs to determine the dollar and percent disparity.<sup>23</sup> It states that based on these calculations, Entergy Arkansas will make payments to Entergy Louisiana of \$41.3 million.

11. Entergy states that it has calculated the payments and receipts under Service Schedule MSS-3 using the same methodology as in the five previous annual bandwidth proceedings, incorporating the treatment of formula inputs required by Opinion No. 505 and Opinion No. 505-A and consistent with a recent order on Entergy's Opinion No. 505 compliance filing.<sup>24</sup> In addition, Entergy states that it has reflected all of the Service Schedule MSS-3-related amendments previously accepted or approved by the Commission.

12. Entergy requests that the Commission accept the proposed rates for filing, effective June 1, 2012, subject to the outcome of the issues previously litigated in bandwidth-related cases pending before the Commission. Should the Commission set this filing for hearing and/or settlement procedures, Entergy requests that the Commission hold the hearing in abeyance pending determinations on these existing issues already before the Commission, as was done for the 2011 annual bandwidth

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<sup>19</sup> 16 U.S.C. § 824e (2006).

<sup>20</sup> Service Schedule MSS-3, section 30.12, fn.1.

<sup>21</sup> Service Schedule MSS-3, section 30.12.

<sup>22</sup> Service Schedule MSS-3, section 30.13.

<sup>23</sup> Service Schedule MSS-3, section 30.11.

<sup>24</sup> See *Entergy Services, Inc.*, 139 FERC ¶ 61,104.

proceeding. Entergy argues that this would prevent the 2012 bandwidth calculation from proceeding ahead of the currently-stayed 2011 and 2010 bandwidth filing.

13. Entergy highlights nine items involving issues addressed in prior or ongoing bandwidth proceedings that are reflected in its current bandwidth filing. Entergy notes that other formula input issues are pending final resolution in the second and third annual bandwidth implementation filings<sup>25</sup> and that the hearings on issues in the fourth and fifth annual filings are pending, and currently held in abeyance.

14. The first item relates to the effects of Opinion No. 505 under which Entergy reflected the Accumulated Deferred Income Taxes (ADIT) associated with production-related storm cost-related net operating loss recorded in Account 190 (referred to as the “NOL Carryforwards”). In Opinion No. 505-A, issued May 7, 2012, the Commission provided further guidance on the assignment of ADIT associated with the NOL Carryforwards which Entergy says it has attempted to follow in the 2012 bandwidth calculation. The 2012 bandwidth calculation calculates the amount of the ADIT related to the NOL Carryforward to be included by using the ratio of net Utility Operating expenses to Total Expenses incurred during the period the NOL was recognized. Entergy states that because it is unclear if this is the ratio that was intended to be used by the Commission, Entergy would file a request for clarification or rehearing of Opinion No. 505-A on June 6, 2012.

15. Second, Entergy states that in Opinion No. 505, the Commission determined that the appropriate accounting treatment for the variable component of the Spindletop Regulatory Asset should be to record the amortization in Account 501 on Entergy Gulf States Louisiana’s books. Entergy states that while the Commission has modified the Spindletop Regulatory Asset accounting to include such amortization in Account 501, a bandwidth formula eligible account, Opinion No. 505 did not address the treatment of such costs in the bandwidth calculation. Entergy contends that in Opinion No. 505 the Commission explicitly noted that regardless of the accounting for the Spindletop Regulatory Asset, “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 EL08-51-000.” According to Entergy, in Opinion No. 505-A, the Commission provided clarification that Entergy must flow the amortization of the Spindletop Regulatory Asset through the bandwidth formula effective for the 2006 calendar year. Entergy also says the Commission stated that it did not intend to alter the bandwidth formula to include Account No. 114.

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<sup>25</sup> Requests for rehearing of Opinion No. 514 and Opinion No. 518.

16. Entergy further notes that, upon consideration of the initial decision in Docket No. EL08-51-000,<sup>26</sup> the Commission issued Opinion No. 509 on September 22, 2010.<sup>27</sup> Entergy states that in Opinion No. 509, the Commission reversed the presiding judge's finding that costs associated with the Spindletop Regulatory Asset are not production costs. Entergy states that the Commission ruled that such costs must be included in the bandwidth calculation. The Commission also ruled that the annual amortization of the Spindletop Regulatory Asset that is booked to Account No. 501 should be included in the bandwidth calculation. Entergy states that the Commission further ruled that the return on the unamortized Spindletop Regulatory Asset is also a production cost that should be reflected in the bandwidth formula effective March 31, 2008, the established refund effective date. The Commission directed Entergy to make a compliance filing within 30 days of the date of the order to reflect the inclusion of this component.<sup>28</sup> Entergy states that it made the requisite Opinion No. 509 compliance filing in Docket Nos. ER11-2131, *et al.*, to make the rate change to include the fixed component in the formula. On May 7, 2012, the Commission issued two orders on these issues: (1) denying rehearing of Opinion No. 509<sup>29</sup> and (2) accepting the compliance filing in Docket Nos. ER11-2131, *et al.*<sup>30</sup> According to Entergy, as recently accepted in the Docket No. ER11-2131 Compliance Order, the 2012 bandwidth calculation reflects the Spindletop Regulatory Asset variable component in Account 501 and the Spindletop Regulatory Asset fixed components in a formula input (RSRA).<sup>31</sup>

17. Third, Entergy adds that several proceedings relating to the depreciation components of the bandwidth calculation are pending at the Commission and the depreciation-related inputs are subject to the outcome of those proceedings. It notes that on March 31, 2010, the Louisiana Commission filed a section 206 complaint in Docket No. EL10-55-000 seeking to change the depreciation and decommissioning-related inputs in the bandwidth formula, and that an initial decision has been issued in that

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<sup>26</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, 127 FERC ¶ 63,021 (2009).

<sup>27</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 509, 132 FERC ¶ 61,253 (2010).

<sup>28</sup> *Id.* PP 34-41.

<sup>29</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, 139 FERC ¶ 61,101 (2012).

<sup>30</sup> *Entergy Services, Inc.*, 139 FERC ¶ 61,106 (2012) (Docket No. ER11-2131 Compliance Order).

<sup>31</sup> RSRA is defined as the Return on the Spindletop Regulatory Asset as billed by Energy Texas, Inc. to Energy Gulf States Louisiana.

proceeding.<sup>32</sup> The initial decision dismissed the complaint after finding that the Louisiana Commission (and Commission Trial Staff) failed to demonstrate that the current bandwidth formula depreciation expenses, related depreciation inputs, and/or depreciation provisions are unjust, unreasonable, unduly discriminatory, or preferential.<sup>33</sup> In Opinion No. 519, the Commission recently affirmed the presiding judge's findings.<sup>34</sup> Entergy states that it has performed its calculations in accordance with Opinion No. 519. Entergy further notes that two related depreciation proceedings that have potential implications for the bandwidth formula inputs are being litigated in Docket Nos. ER10-2001 and ER11-2161.<sup>35</sup> Entergy states that the depreciation-related inputs in the 2012 bandwidth calculation for Entergy Arkansas and Entergy Texas are consistent with the effective dates established by the Commission in Docket Nos. ER10-2001 and ER11-2161.

18. Fourth, on March 29, 2012, Entergy filed to request specific Commission authorization to include under Service Schedule MSS-3 the cancellation costs of an Entergy Louisiana project to repower a generating unit at the Little Gypsy Facility that was cancelled for economic reasons. According to Entergy, consistent with that filing, the Little Gypsy costs are included in the 2012 bandwidth calculation.

19. Fifth, on November 18, 2011, Entergy filed an offer of settlement at the Commission to resolve a complaint of the Louisiana Commission in Docket No. EL10-65, to adjust the plant ratios in the bandwidth formula for both positive and negative acquisition adjustments. Though the Commission has not yet acted on this uncontested settlement, Entergy says it has incorporated this change for the 2012 bandwidth calculation subject to the outcome of Docket No. EL10-65.

20. Sixth, Entergy states that as a result of the Uncontested Settlement certified by the Settlement Judge in Docket No. ER10-1676, the effects of a positive Acquisition Adjustment for Acadia Energy Center, as recorded in FERC Accounts 114, 115, and 406

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<sup>32</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, 134 FERC ¶ 63,016 (2011).

<sup>33</sup> *Id.* PP 1-2.

<sup>34</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 519, 139 FERC ¶ 61,107 (2012).

<sup>35</sup> Docket No. ER10-2001-000 involves the production depreciation rates used by Entergy Arkansas. An Initial Decision was issued September 23, 2011, *Entergy Services, Inc.*, 136 FERC ¶ 63,105 (2011). Docket No. ER11-2161-000 involves the steam production depreciation rates used by Entergy Texas. An Initial Decision was issued on February 8, 2012, *Entergy Services, Inc.*, 138 FERC ¶ 63,010 (2012).

effective with the closing of the Acadia acquisition on April 20, 2011 are reflected in the 2012 bandwidth calculation.

21. Seventh, on May 7, 2012, the Commission issued an order in Docket No. EL07-52 granting in part and denying in part rehearing of an order on a complaint of the Louisiana Commission seeking changes, among other requests, to the inclusion of interruptible load in the load responsibility ratios of the bandwidth formula.<sup>36</sup> Entergy notes that the Commission required a compliance filing to remove interruptible load from the allocation of fixed production cost in section 30.13 of the bandwidth formula. Concurrent with the instant filing, Entergy states it has submitted a filing to propose a tariff revision to comply with this order. Entergy states that this revision will take effect on May 7, 2012 and therefore it has performed the 2012 bandwidth calculation incorporating this proposed revision to exclude the interruptible load from the load responsibility ratios in the bandwidth formula. Entergy states that this issue is subject to the outcome of the compliance filing in Docket No. EL07-52.

22. Eighth, on May 7, 2012, the Commission issued Opinion No. 518 in Docket No. ER09-1224.<sup>37</sup> Entergy states that in that order, the Commission affirmed the presiding judge's ruling pertaining to ADIT and found that the casualty loss ADIT recorded in Account No. 282 is to be included in the bandwidth calculation. Entergy states that it has reflected this finding in the 2012 bandwidth calculation.

23. Finally, Entergy states that in the order issued in Opinion No. 505-A, the Commission reversed its finding on the method used to remove the Administrative and General (A&G) costs for the 30 percent share of the River Bend Nuclear facility (River Bend). The Commission required Entergy to use the methodology found in Exhibit Nos. ETR-26 and ETR-28 to remove the A&G costs for River Bend 30. Entergy states that, concurrently with Entergy's instant filing, Entergy is submitting a filing to propose a tariff revision to comply with this order. Entergy states it has performed the 2012 bandwidth calculation incorporating this proposed revision to the methodology used to exclude River Bend 30 A&G costs. Entergy states that this issue is subject to the outcome of the River Bend 30 A&G compliance filing in Docket No. ER07-956.

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

24. Notice of Entergy's filing was published in the *Federal Register*, 77 Fed. Reg. 34,376 (2012), with interventions and protests due on or before June 21, 2012. The Louisiana Commission filed a notice of intervention and protest. The Council of the City

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<sup>36</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, 139 FERC ¶ 61,100 (2012).

<sup>37</sup> *Entergy Services, Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012).

of New Orleans filed a motion to intervene. On June 19, 2012, the Arkansas Public Service Commission (Arkansas Commission) filed a notice of intervention and on June 21, 2012, it filed an answer. On July 6, 2012, Entergy filed an answer to the Louisiana Commission's protest. On the same date, the Arkansas Commission also filed an answer to the protest filed by the Louisiana Commission.

25. The Arkansas Commission states that it supports Entergy's request to hold the proceeding in abeyance pending determination of issues already before the Commission. It contends that a stay of the proceeding pending Commission determinations on issues common to multiple dockets is appropriate, consistent with the Commission's determination to hold the fifth bandwidth proceeding in abeyance,<sup>38</sup> and will avoid re-litigation of issues that are the subject of other proceedings.

26. The Arkansas Commission notes that with respect to Entergy's proposed inclusion of the Little Gypsy Repowering Project cancellation costs in the 2011 production costs of Entergy Louisiana for 2012 bandwidth formula calculation purposes, such inclusion is opposed for a number of compelling reasons argued by the Arkansas Commission in pending Docket No. ER12-1384-000. It states that Entergy's request to modify the bandwidth formula to permit the inclusion of the cancellation costs in the annual calculation of Entergy system production costs has been set for hearing by order issued May 31, 2012 in *Entergy Services, Inc.*, 139 FERC ¶ 61,167 (2012). The Arkansas Commission states that it seeks confirmation here that inclusion of the Little Gypsy Project cancellation costs in Entergy's 2012 calculation of any bandwidth payments to be paid by Entergy Arkansas remains subject to the final outcome and decision of the Commission in Docket No. ER12-1384-000. It states that if that is not the case, the Arkansas Commission opposes inclusion of those cancellation costs in this docket, for the same reasons set forth in its pleadings to date filed in Docket No. ER12-1384-000, and in consolidated Docket No. EL11-57-000.

27. The Louisiana Commission requests that the final determinations concerning issues the Louisiana Commission raised in other bandwidth cases be reflected in this bandwidth filing as well.<sup>39</sup> The Louisiana Commission states that it adopts and raises in its protest all issues it previously raised in Docket Nos. ER07-956, ER08-1056, ER09-1224, ER10-1350, and ER11-3658, as well as issues that it has raised in complaint dockets related to the bandwidth calculation to the extent that they are relevant to

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<sup>38</sup> Answer of the Arkansas Public Service Commission filed June 21, 2012 at 2 (citing *Entergy Services, Inc.*, 136 FERC ¶ 61,057 (2011)).

<sup>39</sup> Protest of the Louisiana Public Service Commission to Calculation of Payments and Receipts Under Bandwidth Remedy, filed June 21, 2012 at 1 (Louisiana Commission Protest).

Entergy's application in this docket.<sup>40</sup> The Louisiana Commission states that its protest focuses only on implementation issues - issues related to Entergy's non-compliance with the terms of the formula or Commission requirements. It states that it reserves reasonableness issues and requests that the Commission reflect final determinations in cases resolving those issues for this bandwidth filing as well.

28. The Louisiana Commission states that it anticipates this proceeding will be similar to the previous annual bandwidth dockets and that additional issues not addressed directly in its protest may be later discovered. The Louisiana Commission states that it reserves the right to raise additional issues that are revealed after further analysis and discovery in this docket. The Louisiana Commission requests that hearing procedures be established, discovery be permitted related to the application in this docket, and that the bandwidth remedy payments be re-calculated in accordance with the Louisiana Commission's protest and in compliance with Opinion Nos. 480 and 480-A.<sup>41</sup> The Louisiana Commission contends that the docket should not be held in abeyance, as requested by Entergy. The Louisiana Commission states that orders in related proceedings have resolved outstanding issues that were being litigated<sup>42</sup> and, therefore, no reasons exist to hold this docket in abeyance related to any new issues that are identified in discovery and in this protest.

29. The Louisiana Commission states that it has identified one issue, involving Casualty Loss ADIT, where Entergy has not applied the correct formula inputs in the bandwidth calculation. The Louisiana Commission contends that Entergy's filing errs by including in the bandwidth calculation 100 percent of the Casualty Loss ADIT recorded in Account No. 282. The Louisiana Commission states that this violates the bandwidth tariff and the Commission's directive in Opinion No. 518 that ADIT properly includable

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<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.* at 9-10.

<sup>42</sup> *Id.* at 2-3 (citing the recent issuance of Opinion No. 505-A, "Order Granting Rehearing in Part, Denying Rehearing in Part, and Granting Clarification" in Docket No. ER07-956-000, *Entergy Services, Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012); Opinion No. 514, "Order Affirming In Part and Revising In Part Initial Decision" in Docket No. ER08-1056-002, *Entergy Services, Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011); Opinion No. 518, "Order on Initial Decision," in Docket No. ER09-1224-001, *Entergy Services, Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012); and Opinion No. 519, "Order on Initial Decision," in Docket No. EL10-55-001, *Entergy Services, Inc.*, Opinion No. 519, 139 FERC ¶ 61,107 (2012)).

for FERC cost-of-service purposes be calculated using the ratio of related expenses includable for FERC cost-of-service purposes to total expenses.<sup>43</sup>

30. The Louisiana Commission also raises a second issue related to Waterford 3 Sale-Leaseback ADIT. The Louisiana Commission contends that Entergy incorrectly excluded the Waterford 3 Sale-Leaseback ADIT from the bandwidth calculation. The Louisiana Commission states that this issue was litigated in Opinion No. 514 (Docket No. ER08-1056), but states that the rationale for the decision to exclude Waterford 3 Sale-Leaseback ADIT from the bandwidth calculation is inconsistent with the Commission's decision in Opinion No. 505-A (Docket No. ER07-956) that all Net Operating Loss ADIT related to expenses includable for FERC cost-of-service purposes are includable in the bandwidth calculation.<sup>44</sup> The Louisiana Commission contends that because this constitutes an apparent change or clarification of the applicable legal standard, the Commission should find that the Sale-Leaseback ADIT is properly includable in the bandwidth calculation.<sup>45</sup> The Louisiana Commission states that it has requested that the Commission also consider the inconsistency of these two rulings in the Louisiana Commission's Answer to Motion for Clarification of Entergy Services, Inc. filed in Docket No. ER07-956.<sup>46</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed in this proceeding and will, therefore, reject them.

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<sup>43</sup> Louisiana Commission Protest at 4 (citing Opinion No. 518, 139 FERC ¶ 61,105).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 8.

<sup>46</sup> *Id.* at 3-4.

**B. Hearing Procedures**

32. Entergy's proposed rates raise issues of material fact that cannot be resolved based on the record before us. These issues of material fact are more appropriately addressed in the hearing ordered below. While we establish hearing procedures on those issues, in order to prevent the re-litigation of issues that are the subject of other proceedings pending before the Commission, we will hold those procedures in abeyance pending a further Commission order.

33. Our preliminary analysis indicates that Entergy's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's proposed rates for filing, suspend them for a nominal period, make them effective June 1, 2012,<sup>47</sup> as requested, subject to refund, and set them for hearing. While we are setting these matters for a trial-type evidentiary hearing, as noted above, we will hold the hearing in abeyance pending further Commission order.

**The Commission orders:**

(A) Entergy's proposed rates are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2012, as requested, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Entergy's proposed rates pursuant to Service Schedule MSS-3 of the System Agreement implementing the Commission's decisions in Opinion Nos. 480 and 480-A.

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<sup>47</sup> *La. Pub. Serv. Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203, at P 10 (2006). See also *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

(C) The hearing discussed in Ordering Paragraph (B) shall be held in abeyance as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.