

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket No. EL01-88-004

v.

Entergy Services, Inc., *et al.*

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued November 17, 2006)

1. On April 10, 2006, Entergy Services, Inc. (Entergy) submitted a compliance filing pursuant to the Commission's orders dated June 1, 2005 and December 19, 2005.<sup>1</sup> The compliance filing includes amendments to the Entergy System Agreement (System Agreement) that seek to maintain rough production cost equalization among the Entergy Operating Companies (Operating Companies or Companies)<sup>2</sup> on the Entergy system. In this order, we will accept Entergy's compliance filing, as modified, and direct a further compliance filing, as discussed below.

**I. Background**

2. On June 14, 2001, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint in this docket pursuant to section 206 of the Federal

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<sup>1</sup> *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005) (Opinion No. 480), *aff'd*, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A).

<sup>2</sup> The Operating Companies are Entergy Arkansas, Inc. (EAI), Entergy Gulf States, Inc. (EGSI), Entergy Louisiana, LLC (ELL), Entergy Mississippi, Inc. (EMI), and Entergy New Orleans, Inc. (ENO).

Power Act (FPA).<sup>3</sup> The Louisiana Commission alleged that the System Agreement, a rate schedule that includes various service schedules that governs, among other things, the allocation of certain costs associated with the integrated operations of the Entergy system, no longer operated to produce rough production cost equalization.<sup>4</sup>

3. The Commission set the Louisiana Commission's complaint for hearing, and an evidentiary hearing was held from July 7, 2003 to August 22, 2003. An Initial Decision was issued in this proceeding on February 6, 2004, which held in part that the Entergy system was no longer in rough production cost equalization.<sup>5</sup> The presiding judge ordered that a numerical bandwidth of +/- 5 percent deviation from the system average on a rolling three year basis coupled with an annual bandwidth of +/- 7.5 percent be applied to restore rough equalization (*i.e.*, when the production costs of one Operating Company are above or below the bandwidth, those costs are shared among the other Operating Companies).

4. On June 1, 2005, the Commission issued Opinion No. 480 affirming in part and reversing in part the Initial Decision. The Commission agreed that rough production cost equalization had been disrupted on the Entergy system, but broadened the bandwidth to +/- 11 percent, finding that the narrower bandwidth would result in substantial cost

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<sup>3</sup> 16 U.S.C. § 824e (2000).

<sup>4</sup> In Opinion Nos. 234 and 292, the Commission applied a standard of "rough production cost equalization" to determine whether the Unit Power Sales Agreement and System Agreement, when taken together, were just and reasonable and not unduly discriminatory. Parties had argued, among other things, that because the Entergy system is highly integrated and generation facilities are planned and operated for the whole system, production costs among the Operating Companies should be "fully equalized," *i.e.*, shared, among the various Operating Companies. The Commission rejected the Louisiana Commission's proposal that full production cost equalization be adopted, finding that doing so was not necessary to remedy undue discrimination, and found instead that "rough equalization" was sufficient. *See Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305 (1985), *reh'g denied*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985), *aff'd in part sub nom. Mississippi Indus. v. FERC*, 808 F.2d 1525 (D.C. Cir. 1987), *rev'd in part and remanded*, 822 F.2d 1104 (D.C. Cir. 1987) (per curiam), *order on remand, System Energy Resources, Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh'g denied*, Opinion No. 292-A, 42 FERC ¶ 61,091 (1998), *aff'd sub nom. City of New Orleans v. FERC*, 875 F.2d 903 (D.C. Cir. 1989).

<sup>5</sup> *Louisiana Public Service Commission v. Entergy Services, Inc.*, 106 FERC ¶ 63,012 (2004) (Initial Decision).

shifting and that the rolling three-year bandwidth would be difficult to implement.<sup>6</sup> The Commission stated that the bandwidth would be implemented prospectively and would be effective for calendar year 2006, and clarified in Opinion No. 480-A that any equalization payments would then be made in 2007 after a full calendar year of data became available.<sup>7</sup>

## **II. Compliance Filing**

5. On April 10, 2006, Entergy submitted a compliance filing to implement the directives of Opinion Nos. 480 and 480-A into its System Agreement. To do so, Entergy proposes to amend certain provisions of one of the service schedules, Service Schedule MSS-3.

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

6. Notice of Entergy's filing was published in the *Federal Register*, 71 Fed. Reg. 25,835 (2006), with comments, protests or interventions due on or before May 31, 2006. The Mississippi Public Service Commission, the Council of the City of New Orleans, Occidental Chemical Corporation, and the Louisiana Energy Users Group filed notices of intervention or motions to intervene. The Louisiana Commission, the Arkansas Public Service Commission (Arkansas Commission) and the Arkansas Electric Energy Consumers (AEEC) filed motions to intervene and protests.<sup>8</sup> On May 31, 2006, the Arkansas Attorney General filed preliminary comments and a motion for an extension of time to file additional comments. On June 2, 2006 the Commission granted the extension of time. The Arkansas Attorney General filed timely supplemental comments and a protest. The Louisiana Commission filed a timely supplemental protest and a corrected version of its original protest that included inadvertently omitted pages. On June 19, the Louisiana Commission filed recording and transcript support for its supplemental protest. Entergy, the Louisiana Commission, the Arkansas Commission and the Arkansas Attorney General filed answers.<sup>9</sup>

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<sup>6</sup> Opinion No. 480 at P 138-39.

<sup>7</sup> Opinion No. 480-A at P 54.

<sup>8</sup> The Louisiana Commission also filed a separate complaint concerning sulfur dioxide emission allowances in Entergy's System Agreement. This complaint has been re-docketed to Docket No. EL06-78-000.

<sup>9</sup> Entergy filed separate answers on July 10, 2006, July 25, 2006 and September 7, 2006. The Louisiana Commission filed answers on July 10, 2006 and July 24, 2006. The Arkansas Commission filed two separate answers on July 25, 2006 and August 8, 2006. The Attorney General of Arkansas filed an answer on July 25, 2006.

7. On July 10, 2006, the Louisiana Commission filed a motion for summary disposition of certain issues. The Arkansas Commission, Arkansas Attorney General and Entergy filed answers to the motion.

8. On July 11, 2006, the Arkansas Commission filed an exhibit in support of its answer to the Louisiana Commission's supplemental protest.

9. On August 20, 2006, the Louisiana Commission filed a motion to lodge certain testimony concerning the dates payments must be made under Opinion No. 480 and 480-A. The testimony consists of statements by Hugh T. McDonald, president of EAI, filed with the Arkansas Public Service Commission, in which he states that Entergy's compliance filing will not require rough equalization payments by EAI until July 15, 2007. The Louisiana Commission contends that this is inconsistent with Entergy's compliance filing which states that "June 1 has been selected for the start of any payments."<sup>10</sup>

#### **IV. Discussion**

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

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention and timely, unopposed motions 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. § 385.213(a)(2) (2006), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of Entergy, the Louisiana Commission, the Arkansas Commission and the Arkansas Attorney General and will, therefore, reject them. The Commission also denies the Louisiana Commission's motion to lodge. As the Louisiana Commission recognizes, Entergy indicated in its compliance filing that "June 1 has been selected for the start of any payments . . . ." The Commission, as discussed below, accepts that start date for making payments. It is irrelevant what an Entergy witness may have stated in a separate proceeding.

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<sup>10</sup> Entergy Compliance Filing at 22.

## **B. Analysis**

### **1. Rate Impacts**

11. In Opinion No. 480, the Commission affirmed the presiding judge's determination that the System Agreement was not currently in rough production cost equalization. The Commission noted that large disparities among the Operating Companies had started to arise in 2000 and appeared likely to continue. The Commission noted further that the intent of the System Agreement is to balance costs over time through the assignment of new resources.<sup>11</sup>

12. The Commission agreed with the presiding judge's proposal to use a bandwidth to keep the system in rough production cost equalization. However, the Commission reversed the presiding judge on the actual bandwidth to be used as well as on the presiding judge's use of a three-year rolling average bandwidth. The Commission found that the presiding judge's proposal would result in substantial cost shifting across a multi-state region. The Commission stated that incorporating the presiding judge's remedy would result in a significant and immediate rate shock to below system average companies to the benefit of companies with costs currently above the system average.<sup>12</sup> The Commission thus adopted a wider bandwidth.

13. The Commission also noted that levels of production cost disparities among Operating Companies have always existed to some degree on Entergy's system and have varied over time. The pendulum of production cost disparities has swung back and forth from negative to positive among the Operating Companies. The Commission found that these swings have generally evened out over time, with certain Operating Companies enjoying lower production costs in some years and higher costs in other years.<sup>13</sup>

14. In Opinion No. 480-A, the Commission denied rehearing of its findings on rough production cost equalization and on the use of the bandwidth. The Commission stated that its decision to broaden the bandwidth from the presiding judge's recommendation was intended to mitigate the magnitude of cost shifts that might otherwise occur, which was a legitimate objective.<sup>14</sup> The Commission commented on the nature of the System Agreement and cost swings over time. It noted that an individual Operating Company under the Entergy System Agreement is not guaranteed all of the benefits of its specific generation for an infinite amount of time. Rather, the Commission stated that by the very

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<sup>11</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 28-29.

<sup>12</sup> *Id.* at P 136-139.

<sup>13</sup> *Id.* at P 141.

<sup>14</sup> Opinion No. 480-A, 113 FERC ¶ 61,282 at P 40.

nature of the System Agreement and the Operating Companies' participation in the System Agreement, benefits and burdens specific to each Operating Company have to be balanced with what is appropriate for the system as a whole.<sup>15</sup>

**a. Compliance Filing**

15. Entergy proposes to implement the +/- 11 percent bandwidth requirement of Opinion Nos. 480 and 480-A by providing for payments and receipts to be made among the Operating Companies. A Company's actual production costs, as calculated under proposed section 30.12, are to be compared to that Company's respective share of total system production costs, as calculated under proposed section 30.13, to determine if the Company's actual costs deviate by more than +/- 11 percent from its share of the system production costs.

**b. Comments**

16. AEEC argues that Entergy's proposed amendments to Service Schedule MSS-3 will result in rate shock to Arkansas ratepayers. AEEC states that Entergy estimates in a filing with the Securities and Exchange Commission that the impact of the 22 percent bandwidth will be average annual payments of \$293 to \$385 million by EAI during 2007 to 2010. AEEC states that Entergy's estimate indicates that the 22 percent bandwidth will impose far worse damage on Arkansas ratepayers than the \$130 million rate shock that the Commission had found to be unacceptable in Opinion No. 480.

17. AEEC also argues that Entergy's proposed Service Schedule MSS-3 changes give the Operating Companies and state regulators no real incentive to reduce their production costs. It states that an Operating Company could continue to operate inefficient generating units and assume that the rest of the Entergy system will subsidize its activity.

**c. Commission Determination**

18. We find that Entergy has properly implemented the +/- 11 percent bandwidth remedy and has complied with Opinion Nos. 480 and 480-A. We find that AEEC's arguments concerning the magnitude of any possible rate impacts and the behavior of the Operating Companies are beyond the scope of this compliance proceeding.

19. We do note, however, that the Commission has expressed its concern about rate impacts at various times during the course of this proceeding. As noted above, the Commission reversed the presiding judge's proposed bandwidth on the grounds that it would result in a significant and immediate rate shock to below system average

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<sup>15</sup> *Id.* at P 106.

companies. The Commission thus adopted a wider bandwidth. While expressing its concern about rate shock, the Commission also found that the nature and history of the Entergy System Agreement indicate that production cost disparities have always existed to some degree among the Entergy Operating Companies and have varied over time. The Commission noted that these disparities have generally evened out over time, with certain Operating Companies enjoying lower production costs in some years and higher costs in other years.<sup>16</sup>

20. In short, while the Commission seeks to avoid undue rate increases to the customers of those Operating Companies that are below the system average, increases may be necessary given the nature and history of the Entergy System. As the Commission stated in Opinion No. 480-A, the nature of the System Agreement and the Operating Companies' participation in the System Agreement dictate that benefits and burdens specific to each Operating Company have to be balanced with what is appropriate for the system as a whole. An individual Operating Company under the Entergy System Agreement is not guaranteed all of the benefits of its specific generation for an infinite amount of time.

21. AEEC's arguments ignore the nature and the history of the Entergy System Agreement. They also ignore the Commission's findings on rough production cost equalization and the fact that a just and reasonable remedy must be applied to the System Agreement. While EAI may be currently under the system average and thus faced with making payments, history suggests that this may not always be the case.

## **2. Implementation of the Bandwidth Requirement**

22. Opinion Nos. 480 and 480-A required that Entergy implement a bandwidth remedy, but did not specify where in the System Agreement or under which service schedule the bandwidth requirement was to be implemented.

### **a. Compliance Filing**

23. Entergy proposes to modify Service Schedule MSS-3 to provide for payments and receipts under the bandwidth remedy in accordance with the provisions of Opinion Nos.

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<sup>16</sup> The Commission also noted that record evidence shows that EAI and EMI experienced higher than average production costs prior to 1994-95 and lower than average costs thereafter, while ELL experienced lower than average production costs prior to 1996 and higher than average costs thereafter. Opinion No. 480 at P 141.

480 and 480-A.<sup>17</sup> Section 30.01 currently states that the purpose of Service Schedule MSS-3 is to provide the method of pricing energy exchanged among the Operating Companies. The existing purpose stated in section 30.01 has not changed; however, new language has been added to section 30.01 to make it clear that Service Schedule MSS-3 is also designed to provide for payments and receipts in accordance with the provisions of Opinion Nos. 480 and 480-A. Thus, the amended section 30.01 states that MSS-3 is to be used *both* for pricing energy exchanged among the Operating Companies as well as to calculate and provide for any rough production cost equalization payments, if such payments are required.

24. Entergy also revised Service Schedule MSS-3 to include an amendment to existing section 30.09 and to add new sections 30.11 through 30.14. Section 30.09 is an existing section that states how payments are to be made among Operating Companies for exchange energy. Entergy added new subsection (d) to section 30.09: “Each Company shall pay or receive funds to the extent required to maintain Rough Production Cost Equalization in accordance with the provisions of sections 30.11 through 30.14 below.”

25. Section 30.11 is a new section that explains the general approach for calculating payments between the Operating Companies to the extent required to maintain rough production cost equalization pursuant to Opinion Nos. 480 and 480-A. This section provides the methodology for comparing production costs among the Operating Companies to determine if any Rough Production Cost Equalization payments are due or must be received. Section 30.11 provides that, to maintain rough production cost equalization, each Operating Company’s actual production costs, as calculated in section 30.12, are compared to that Company’s respective share of total system production costs, as calculated in section 30.13. For each Operating Company, actual production costs are compared to the level of production costs for that Operating Company were its production costs equal to its allocated share of the system average production costs. A comparison of an Operating Company’s production costs to system average production costs is made to determine if any Operating Company’s production costs deviate from its system average production costs by more than +/- 11 percent. If such a deviation exists in any calendar year subsequent to 2005, payments and receipts will be required under the bandwidth remedy.

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<sup>17</sup> Service Schedule MSS-3 provides for an after-the-fact, hour-by-hour allocation of the cost of energy from an Operating Company whose generation provided energy in excess of that company’s load to an Operating Company that produced less than its load. Such re-allocated energy sometimes is referred to as “Exchange Energy” or “Pool Energy.” Service Schedule MSS-3 prescribes the basis for allocating and pricing Exchange Energy.

26. Section 30.12 provides the formula for determining each Operating Company's actual production costs. An Operating Company's production costs are the sum of the Operating Company's actual variable production costs and actual fixed production costs.

27. Section 30.13 provides the methodology for determining the average production costs for each Operating Company. Each Operating Company's average production costs are calculated by adding each Operating Company's share of total system variable production costs, plus each Operating Company's share of total system fixed production costs. Average production costs for each Operating Company are compared with each Operating Company's actual production costs (from section 30.12) to determine each Operating Company's positive or negative disparity. Section 30.14 explains the billing procedures pursuant to section 30.09(d). The first year of payments, if any, under section 30.09(d) are based on calendar year 2006, consistent with Opinion Nos. 480 and 480-A. Entergy proposes that all amounts paid under section 30.09(d) are to be recorded in Account No. 555. Entergy notes that this account includes "net settlements" for exchange of energy and capacity reserves, among other things, and for transactions under pooling arrangements. Entergy asserts that recording such payments in this account is appropriate and consistent with the Uniform System of Accounts. Any receipts made pursuant to section 30.09(d) are to be recorded in Account No. 447. Entergy states that this is typical accounting treatment for such receipts under the Commission's Uniform System of Accounts.<sup>18</sup> If the Operating Companies are within the bandwidth established by the Commission, no payments will be required.

### **b. Comments**

28. The Louisiana Commission, the Arkansas Attorney General, AEEC and the Arkansas Commission protest the bandwidth remedy being incorporated into existing Service Schedule MSS-3. Protestors argue that a tariff designed to encompass all production costs through rough equalization among the Operating Companies should be adopted as a new and independent service schedule. They argue that because all production costs, including fixed costs, will be equalized to a specified bandwidth, not just excess energy costs, the provisions implementing this remedy should not be incorporated into a service schedule designed only to price energy exchanges among the Operating Companies.

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<sup>18</sup> Among other things, 18 C.F.R. Part 101, Account No. 555, Purchased Power, provides for the net settlements for transactions under pooling or interconnection agreements wherein there is a balancing of debits and credits for energy, capacity, etc.; 18 C.F.R. Part 101, Account No. 447, Sales for Resale, provides for the net billing for electricity supplied to other electric utilities or to public authorities for resale purposes.

29. The Louisiana Commission asserts that the compliance filing combines tariffs with different functions and will confuse ratemaking at both the wholesale and retail levels.

30. The Arkansas Attorney General and AEEC raise similar concerns regarding fixed production costs flowing through Service Schedule MSS-3. AEEC assert that the proposed amendment to Service Schedule MSS-3 will improperly tend to hide the impact of the production cost pass through remedy to ratepayers. AEEC states that Service Schedule MSS-3 costs in Arkansas are passed through to ratepayers in an Energy Cost Recovery Rider. This Energy Cost Recovery Rider, according to AEEC, is intended to allow EAI to pass through the costs of fuel and purchased energy used to supply electricity to Arkansas ratepayers. AEEC states that including the proposed rough equalization payments in Service Schedule MSS-3 will improperly combine those charges with the cost of fuel and purchased electricity acquired to serve Arkansas ratepayers. Therefore, AEEC asks that any rough equalization payment be carefully segregated from the actual cost of power and energy provided to ratepayers in Arkansas under the System Agreement. AEEC argues that this payment should be passed through in a separate rate schedule in a manner that allows recognition of capacity and energy components of the charges.

### **c. Commission Determination**

31. We will accept Entergy's proposal to include in Service Schedule MSS-3 the bandwidth remedy function as in compliance with Order Nos. 480 and 480-A. Service Schedule MSS-3 will now be used both for pricing energy exchanged among the Operating Companies *and* also to calculate and provide for any rough production cost equalization payments, if such payments are required.

32. To alleviate the concerns of the protestors that combining the two functions of Service Schedule MSS-3 will be confusing, we direct Entergy to make transparent and separate in its billing the amounts applicable to each of the two functions of Service Schedule MSS-3. We deny AEEC's request that the bandwidth payments need to reflect separate capacity and energy components of the production costs. Opinion Nos. 480 and 480-A did not require the capacity and energy components to be separated as part of the bandwidth remedy and we will not require Entergy to separate the components.

### **3. The Bandwidth Remedy**

33. In Opinions 480 and 480-A, the Commission imposed a bandwidth remedy to ensure rough production cost equalization within the Entergy system. The Commission chose a symmetrical bandwidth of plus or minus 11 percent disparity from the system average cost.

**a. Compliance Filing**

34. In its compliance filing, Entergy explains its proposed method of achieving rough production cost equalization. As explained above, proposed Section 30.11 of Service Schedule MSS-3 specifies that Companies with production cost disparities outside of the plus or minus 11 percent bandwidth will make or receive payments until the disparities fall within the bandwidth. Entergy includes numerical examples of its proposed implementation in the transmittal letter.

**b. Comments**

35. AEEC argues that Entergy's proposed amendments to Service Schedule MSS-3 are not just and reasonable. Citing the examples included in Entergy's filing, AEEC states that Entergy's application will not provide for a real 22 percent (plus or minus 11 percent) bandwidth. AEEC states that the bandwidth is below 22 percent in each of the tables included in the filing's transmittal letter. It alleges that the bandwidth mechanism as applied by Entergy will inherently push the Operating Companies' production cost disparities well below the 22 percent range. AEEC states that the Commission specifically rejected a narrower bandwidth proposal in Opinion No. 480 and must reject any proposal that results in a *de facto* reduced bandwidth. The Attorney General of Arkansas also states that Entergy's compliance filing imposes equalization requirements inside of the 22 percent bandwidth, and that such requirements are contrary to the Commission's Opinions 480 and 480-A. The Attorney General urges the Commission to require that Entergy delete any provision to make equalization payments inside of the 22 percent bandwidth.

**c. Commission Determination**

36. We will accept Entergy's proposed implementation of the bandwidth remedy as in compliance with Opinion Nos. 480 and 480-A.

37. AEEC and the Attorney General of Arkansas misunderstand the application of the bandwidth remedy. The Commission imposed a +/- 11 percent bandwidth, not a total 22 percent bandwidth. Under a +/- 11 percent bandwidth, a customer that is plus 18 percent and another customer that is minus 4 percent would require an adjustment to equalize costs. On the other hand, protestors would argue that no adjustment is necessary because both customers are within a total bandwidth of 22 percent. Accordingly, we reject AEEC's and the Attorney General of Arkansas's arguments.

**4. Inclusion of Bandwidth Payments and Receipts in Current Year Production Cost Calculations**

**a. Compliance Filing**

38. In proposed section 30.12, Entergy provides for the exclusion of bandwidth payments and receipts, already received, from the cost calculations for the following year's bandwidth payments and receipts.

**b. Comments**

39. The Arkansas Commission argues that the bandwidth payments should be included in the calculation of the production costs of an Operating Company during the year that such a payment is made and that bandwidth remedy receipts should be deducted from the production costs of any Operating Company during the year that such a payment is received. The Arkansas Commission states that those production cost calculations will then be used for the following year's payments and receipts among the Operating Companies (*i.e.*, payments or receipts made in 2007 should be reflected in the calculation of 2007 production costs, which are then used to calculate 2008 payments or receipts). The Arkansas Commission argues that this treatment is consistent with the Commission's determination in Opinion No. 480-A that the equalization payments are not refunds or true-ups of past costs but rather that the payments are prospective. The Arkansas Commission argues that Entergy should be ordered to amend its compliance filing to treat payments under the Commission's bandwidth remedy as current production costs to avoid the unintended consequence that a refund process may be implemented.

**c. Commission Determination**

40. We find that Entergy's exclusion of bandwidth payments and receipts, made or received pursuant to proposed section 30.09(d), from the calculation of Variable Production Expenses in proposed section 30.12 is in compliance with Opinion Nos. 480 and 480-A. We reject the Arkansas Commission's suggestion to include bandwidth payments and receipts in current year production costs.

41. It is the Commission's intent that rough production cost equalization is to be undertaken in the year following the year in which the costs are incurred. Thus, as we said in Opinion No. 480-A, cost equalization for 2006 is to be undertaken in 2007. The correct implementation of the remedy is as follows: Entergy calculates production costs for 2006, payments and receipts for 2006 occur in 2007. In calendar year 2007, production costs are again measured and bandwidth payments and receipts for 2007 would occur in 2008. The bandwidth payments/receipts from 2006 should not be reflected in the 2007 production costs.

42. The Arkansas Commission's proposal, if implemented, would also lead to the possibility that payments could be skipped in every other year. If an Operating Company's bandwidth's payments are added to its costs in the following year, that Company's obligation to make any payments in that second year would be correspondingly reduced or perhaps cancelled out entirely. Such a scenario would defeat the purpose of rough production cost equalization espoused in Opinion Nos. 480 and 480-A.

### **5. Timing of the Bandwidth Payments**

43. In Opinion No. 480-A, the Commission ordered the bandwidth remedy to become effective for the calendar year 2006, with any equalization payments being made in 2007.<sup>19</sup>

#### **a. Compliance Filing**

44. Entergy filed a new section 30.14 setting forth the billing procedures to be used for the bandwidth remedy's payments and receipts. Entergy proposes that the billing parameters be in effect from June 1 to the succeeding May 31 based on the preceding year's results. For example, the 2006 calendar year data would be implemented starting June 1, 2007. The amounts payable would be paid on a monthly basis based on dividing the annual amount payable by twelve. Therefore, under Entergy's proposal, the 2006 payment would be implemented in monthly increments from June 1, 2007 through May 31, 2008.

#### **b. Comments**

45. The Louisiana Commission argues that Entergy can accumulate the relevant production cost data within the first half of January and that a delay of five months to commence equalization payments cannot be justified in an era in which accounting data is computerized. The Louisiana Commission urges the Commission to require that rough equalization payments be made no later than January 31 of the year succeeding the period for which the remedy applies. The Louisiana Commission notes that if estimates are necessary, the tariff should provide for true-up payments later in each year. The Louisiana Commission states that the payments should be made on a lump-sum basis, because they remedy cost imbalances for a prior period and are akin to refunds.

#### **c. Commission Determination**

46. We will accept Entergy's proposal for the payments to begin in June of every year to implement the preceding year's bandwidth payment as in compliance with Opinion Nos. 480 and 480-A. Entergy's annual Form 1 data is due in April of each year.

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<sup>19</sup> Opinion No. 480-A at P 53-54.

Implementing the bandwidth remedy billing in June gives Entergy a reasonable amount of time between its Form 1 filing and the bandwidth remedy billing. However, Entergy's billing proposal is not fully in compliance with Opinion No. 480-A, which directed Entergy to make the 2006 payments in 2007. We direct Entergy to make a compliance filing within 30 days of the date of this order to modify the billing procedure in section 30.14 so that the preceding year's bandwidth payments and receipts are made within the next calendar year. For example, payments as a result of 2006 data cannot be carried over into 2008. All payments as a result of calendar year 2006 data must be made entirely in 2007, commencing in June.

47. Further, the Louisiana Commission's request to require Entergy to use preliminary and estimated data to make provisional payments in January of each year unnecessarily complicates the process and would be unduly burdensome for Entergy. It would force Entergy to make two calculations, one calculation using preliminary data and a follow-up calculation using the Form No. 1 data. Also, we will deny the Louisiana Commission's request that the bandwidth payment be made in a lump sum because such an approach could result in significant rate shocks for individual Operating Companies.

## **6. Interest on Bandwidth Remedy Payments**

48. Opinion No. 480 provided that the payments made under the bandwidth remedy were prospective in nature<sup>20</sup> and did not order interest to be made on any payments.

### **a. Compliance Filing**

49. Entergy explains that because payments under section 30.09(d), if any, bring the Operating Companies within the Opinion No. 480 bandwidth on a prospective basis, these payments are not interest-bearing under the Commission's regulations. Therefore, no interest is due with respect to any such receipts and none is appropriate. Entergy states that such treatment is also consistent with Service Schedules MSS-1 (reserve equalization) and Service Schedule MSS-2 (transmission equalization). In those service schedules, the equalization payments are prospective and there is no interest component in any billings that are made under them.

### **b. Comments**

50. The Louisiana Commission argues that the Commission should incorporate interest to reflect the time value of money in implementing the bandwidth remedy. It asserts that interest should be applied throughout the rate effective period and should continue until the cash settlements in the form of payments and receipts are completed.

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<sup>20</sup> Opinion No. 480 at P 145.

### **c. Commission Determination**

51. The bandwidth remedy does not involve refunds. Rather, as Entergy explains, the bandwidth remedy payments made under section 30.09(d) bring the Operating Companies within the Opinion No. 480 bandwidth on a prospective basis. We have decided not to require interest because there is a necessary delay owing to the need to perform the calculations, and, once the calculations are completed, the Commission is requiring settlements to be made in a reasonable time period, i.e., before the end of the calendar year. Accordingly, we deny the Louisiana Commission's request that interest be applied to the payments.

#### **7. Re-pricing of Energy from the Vidalia Hydropower Project**

52. In Opinion No. 480, the Commission reversed the presiding judge on the issue of whether the contract price of energy from the Vidalia power plant should be fully reflected. The Commission concluded that the presiding judge had ignored various distinguishing factors regarding the Vidalia contract that warranted Vidalia being treated as an ELL-only resource.<sup>21</sup> The Commission also concluded that the Vidalia contract was not entered into to benefit the Entergy system as a whole. The hydroelectric plant was built to benefit Louisiana and that is where the production costs of the plant should stay.<sup>22</sup>

53. The Commission found that pricing the Vidalia energy at the Service Schedule MSS-3 rate for production cost comparisons was a reasonable adjustment that accounts for Vidalia making a minimal contribution (0.38 percent) to system capacity. By setting the Vidalia energy at the Service Schedule MSS-3 price, ELL is deemed to have paid for the purchase of power from all other Entergy resources had it not purchased energy from Vidalia. The Commission determined that future production cost comparisons among the

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<sup>21</sup> The distinguishing factors identified by the Commission included: (1) the unusual structure of the Vidalia contract, including the Louisiana Commission's finding of prudence and the guaranteed flow through of costs; (2) the significant cost shifts that would occur if the Vidalia contract were fully reflected; (3) Vidalia was not built as part of Entergy's overall system planning; and (4) subsequent to the contract being approved, the Louisiana Commission entered into a settlement with ELL under which significant tax benefits have flowed through directly to the retail customers of Louisiana. Opinion No. 480 at P 173.

<sup>22</sup> *Id.* at P 174.

Operating Companies should follow the methodology in Exhibit ETR-26, which accounts for Vidalia by re-pricing the energy at the annual [Service Schedule] MSS-3 rate.<sup>23</sup>

54. In Opinion No. 480-A, the Commission denied rehearing of its findings on Vidalia. The Commission stated that in calculating ELL's production costs for the rough production cost comparisons, the Vidalia contract will only be reflected up to the annual [Service Schedule] MSS-3 rate. The majority of the Vidalia costs (full contract costs minus the costs priced at the [Service Schedule] MSS-3 rate) will be borne exclusively by ELL and excluded from production cost comparisons among the Operating Companies.<sup>24</sup>

**a. Compliance Filing**

55. Entergy explains that the energy associated with ELL's Vidalia contract will be re-priced based on the average annual Service Schedule MSS-3 rate paid by ELL.<sup>25</sup>

**b. Comments**

56. The Louisiana Commission argues that Entergy is not in compliance with the Commission's directives to re-price the electricity that ELL receives from Vidalia at the annual price of the Service Schedule MSS-3 exchange. The Louisiana Commission states that Entergy has re-priced the cost of electricity at the annual price *paid by ELL* for purchases from the Service Schedule MSS-3 exchange, rather than the annual price for the Service Schedule MSS-3 exchange, as the Commission directed. The Louisiana Commission argues that Entergy's proposal will artificially lower the hypothetical Vidalia cost because ELL purchases disproportionately from the exchange at times when the price is low. Those purchases would drive up the overall Service Schedule MSS-3 exchange rate. The Louisiana Commission states that Entergy's proposal will result in a subnormal replacement cost because ELL would purchase more energy from the MSS-3 exchange at higher prices if it did not have access to Vidalia's energy.

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<sup>23</sup> *Id.* at P 32-33. Energy in Service Schedule MSS-3 is priced on an hourly basis. The annual Service Schedule MSS-3 rate would be an average rate determined by taking each individual hourly rate of Service Schedule MSS-3 and dividing it by 8760 hours in a year.

<sup>24</sup> Opinion No. 480-A at P 70.

<sup>25</sup> Each Operating Company, including ELL, purchases from Service Schedule MSS-3 on an hourly basis. If an Operating Company purchased energy from Service Schedule MSS-3 in every hour of the year, its annual Service Schedule MSS-3 rate would equal the system's Service Schedule MSS-3 rate. If an Operating Company purchases energy from Service Schedule MSS-3 less than 8760 hours per year, its annual Service Schedule MSS-3 rate would be different from the system's rate.

57. The Louisiana Commission also argues that Entergy's proposal understates the replacement cost of Vidalia. It states that in 2005 the difference between Entergy's proposed method and the Commission-approved re-pricing would have been \$25 million. The Louisiana Commission states that the lowering of the Vidalia credit should not be approved because it fails to replicate the replacement cost of energy from all other Entergy resources.

58. The Arkansas Attorney General comments that Entergy's compliance filing does not explain how the Vidalia energy would be re-priced at the Service Schedule MSS-3 rate. The Arkansas Attorney General states that the Commission in Opinion No. 480 had denied requests to include Vidalia costs in the rough production cost equalization and had determined that Vidalia should be priced at the Service Schedule MSS-3 rate instead of the full contract rate. The Attorney General states that he is unable to find in the equalization formula the replacement of Vidalia costs with the non-Vidalia average rates paid under Service Schedule MSS-3. The Arkansas Attorney General states that the Commission should order Entergy to clearly replace all of the Vidalia production costs with the average energy rates under the pre-compliance filing Service Schedule MSS-3.

### **c. Commission Determination**

59. We will accept Entergy's re-pricing of the Vidalia energy based on the annual Service Schedule MSS-3 rate paid by ELL as being in compliance with Opinion Nos. 480 and 480-A. In Opinion No. 480, the Commission stated that "[f]uture production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26, which accounts for Vidalia by re-pricing the energy at the annual [Service Schedule] MSS-3 rate."<sup>26</sup> Contrary to protesters' arguments, Entergy's Exhibit ETR-26 includes the re-pricing of the Vidalia energy based on the annual Service Schedule MSS-3 rate paid by ELL.<sup>27</sup>

## **8. Including Interruptible Loads in the 12 Coincident Peak (CP) Demand Data**

### **a. Compliance Filing**

60. Entergy includes interruptible loads to measure the total production costs of each Operating Company for purposes of production cost comparisons.

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<sup>26</sup> Opinion No. 480 at P 33.

<sup>27</sup> See, e.g., Testimony of Bruce Louiselle (Exhibit ETR-23) at pp 41-42. "The second [analysis] re-prices the Vidalia purchases to what they would have been had the price been equal to the average cost per kWh incurred by ELI incident to its "purchases" under the MSS-3."

### **b. Comments**

61. The Louisiana Commission opposes the inclusion of interruptible loads in the 12 CP allocator used to allocate fixed capacity costs. In support, the Louisiana Commission cites to Opinion Nos. 468 and 468-A,<sup>28</sup> which excluded interruptible loads from the 12 CP allocator for purposes of calculating reserve equalization payments under Service Schedule MSS-1.

### **c. Commission Determination**

62. In the Opinion No. 480 proceeding, Entergy submitted Exhibit ETR-26, which includes interruptible load in the measurement of total production costs of each Operating Company for purposes of production cost comparisons. In Opinion No. 480, the Commission found that “[f]uture production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26.”<sup>29</sup> Entergy has complied with that directive. Accordingly, we reject the Louisiana Commission’s argument that Entergy should have excluded interruptible loads in its calculation of total production costs.

## **9. Additional Adjustments to the Methodology Reflected in Exhibits ETR-26 and ETR-28**

63. In Opinion No. 480, the Commission held that “[f]uture production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26, which accounts for Vidalia by re-pricing the energy at the annual [Service Schedule] MSS-3 rate.”<sup>30</sup> The detailed breakdown and calculations of the production cost methodology reflected in the values shown in ETR-26 are found in Exhibit ETR-28.

### **a. Compliance Filing**

64. Entergy explains that the formula in Section 30.12 includes certain adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28. Entergy proposes to allocate net general and intangible plant and related depreciation and amortization expenses on labor ratios, not plant ratios as initially calculated in Exhibits ETR-26 and ETR-28.

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<sup>28</sup> *Louisiana Public Service Comm’n v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004) (Opinion No. 468), *order on reh’g*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005) (Opinion No. 468-A).

<sup>29</sup> Opinion No. 480 at P33.

<sup>30</sup> *Id.*

Entergy proposes to include Entergy Operations, Inc. (EOI) (related to nuclear facilities operations) and Entergy Services, Inc. (ESI) payroll costs in each Operating Company's cost of labor. EOI's and ESI's labor costs were not included in Exhibits ETR-26 and ETR-28 as part of each Operating Company's labor ratios. Exhibits ETR-26 and 28 used only Louisiana's income tax rate. Entergy notes that it adjusted the tax rate for the EGSI Operating Company because EGSI operates in both Texas and Louisiana and thus both state tax rates should be reflected. Entergy notes that the formulas for calculating weighted average cost of capital and federal and state income taxes are consistent with other provisions in the System Agreement,<sup>31</sup> except for the cost of equity, which is set equal to the simple average of the approved retail rates of return on common equity. Entergy notes that this is consistent with Exhibits ETR-26 and 28.

### **b. Comments**

65. The Louisiana Commission argues that it is inappropriate to include the labor costs of EOI and ESI in the labor ratios used to allocate the general and intangible plant on the accounting books of the Operating Companies to the production function and urges the Commission to reject this change. The Louisiana Commission argues that this proposed change will substantially change the allocation of general and intangible plant to the production function compared to the use of labor ratios excluding the labor costs charged to the Operating Companies by ESI and EOI.

66. The Louisiana Commission, the Arkansas Attorney General and the Arkansas Commission all protest Entergy's proposal to use a simple average of the retail returns on equity. The Arkansas Attorney General and the Arkansas Commission suggest that an evidentiary hearing be held on the return on equity issue. AEEC suggests generally that an evidentiary hearing be held as to whether Entergy's proposed changes to Service Schedule MSS-3 are just and reasonable.

67. The Louisiana Commission raises several other issues: (1) Entergy has failed to specifically identify the accumulated deferred income taxes associated with the nuclear generating facilities; (2) the description of the adjustment to reflect the River Bend Deregulated Asset Plan is incorrect; and (3) Entergy needs to provide more specificity with respect to the retail treatment of ELL's Sale/Leaseback of Waterford 3.

68. The Arkansas Attorney General suggests that the compliance filing needs additional "computational specificity" and does not adequately explain the functionalization of costs by generic allocators.

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<sup>31</sup> See, e.g., System Agreement §§ 10.06, 20.06.

### **c. Commission Determination**

69. We will deny Entergy's request to make adjustments to the methodology reflected in Exhibits ETR-26 and ETR-28. This is a compliance filing and Entergy must comply with the requirements of Opinion Nos. 480 and 480-A. Future changes, however, to the methodology set forth in Exhibits ETR-26 and ETR-28 will not be automatic. Any time Entergy seeks to make a change, *e.g.*, a change to return on equity, it must make a section 205 filing with the Commission. Similarly, customers may file section 206 complaints if they seek to make a change, and the Commission may institute a section 206 proceeding on its own motion if it seeks a change.

### **10. SO2 Issue**

70. The Louisiana Commission notes that Entergy's Service Schedule MSS-3 includes an adder for the replacement cost of sulfur dioxide (SO<sub>2</sub>) allowances used to generate electricity for the Service Schedule MSS-3 exchange. The Louisiana Commission argues that this adder has no place in a tariff that is supposed to permit only the recovery of actual costs. The Louisiana Commission contends that because the Compliance Filing involves the MSS-3 tariff, and was made in the docket to which the Commission referred the sulfur dioxide issue in Opinion No. 468, that this proceeding is the appropriate forum to litigate the issue. Accordingly, the Louisiana Commission filed in this docket, in addition to its protest, a complaint arguing that the billing of SO<sub>2</sub> replacement costs through Service Schedule MSS-3 is unjust, unreasonable and unduly discriminatory.

### **Commission Determination**

71. The Louisiana Commission's complaint concerning treatment of SO<sub>2</sub> emissions under Service Schedule MSS-3, which was originally filed by the Louisiana Commission under the instant docket, has been re-docketed to EL06-78-000 and is pending before the Commission. Accordingly, we will not address the SO<sub>2</sub> issue here.

### **11. Rights and Obligations of the Parties**

#### **a. Comments**

72. The Louisiana Commission argues that because the rough equalization remedy ensures that the overall cost allocations on the Entergy system are just, reasonable and not unduly discriminatory, the tariff language should explicitly set forth the rights and obligations of the parties. The Louisiana Commission contends that the new Service Schedule for rough equalization should include the following language:

This Service Schedule constitutes an actual cost-of-service tariff to roughly equalize electric production costs among the operating companies, but with deferred billing. Thus, although the remedy is effective in the first year for calendar year 2006, payments will be made in 2007. The rights and obligations will become fixed in the periods in which the remedy is effective and cost differences are measured. Payments are receipts for these periods shall still occur even if this Service Schedule is amended or abrogated prospectively. If a party seeks to withdraw from the System Agreement, and the Commission permits its withdrawal, the party still will be required to make payments, if any are due, for the prior period in which the remedy was effective, or will be entitled to receive credits for that period if any are due. All payments under this tariff shall carry interest at the rate provided in the Commission's regulations for refunds, from the time the costs are incurred in the remedy period to the time the payments are made.<sup>32</sup>

73. The Louisiana Commission argues that this language is consistent with the Commission's determination regarding cost-of-service tariffs with deferred billing. The Louisiana Commission states that the Commission has previously stated that a cost-of-service tariff with deferred billing guarantees the full recovery of actual costs.<sup>33</sup>

74. The Louisiana Commission argues that in light of EAI's attempt to withdraw from the System Agreement (referring to EAI's December 19, 2005 notice to terminate its participation in the current System Agreement) EAI would escape responsibility for 17 monthly payments.<sup>34</sup> The Louisiana Commission claims that if EAI exits the System Agreement on December 19, 2013 it will have only made payments through July 2012 and will not have a carry-over obligation to make the deferred payments. The Louisiana Commission asserts that the EAI notice provides further reason for the Commission to establish clearly the rights and obligations of the parties under the rough equalization tariff, and to reject Entergy's attempt to neuter the remedy for a period of 17 months.

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<sup>32</sup> Louisiana Commission Protest at 11-12.

<sup>33</sup> Louisiana Commission Protest at 12 (citing *Appalachian Power Co.*, 11 FERC ¶ 63,021 (1980)).

<sup>34</sup> See System Agreement at § 1.01. An Operating Company can withdraw from the System Agreement upon 96 months notice.

**b. Commission Determination**

75. We note that all parties to the System Agreement are already bound by its provisions. Adopting language as proposed by the Louisiana Commission that would arguably alter those provisions and the obligations of the parties is beyond the scope of this compliance filing. If the Louisiana Commission believes that a party to the System Agreement is failing to meet its obligations under the System Agreement, then the Louisiana Commission should file a complaint.

The Commission orders:

(A) Entergy's compliance filing, as modified, is hereby accepted, to be effective June 9, 2006, as discussed in the body of this order.

(B) Within 30 days of the date of this order, Entergy is directed to make a compliance filing, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.