

153 FERC ¶ 61,303
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Tony Clark.

Entergy Services, Inc.

Docket No. ER10-1350-001

OPINION NO. 545

ORDER ON INITIAL DECISION

(Issued December 17, 2015)

1. This case is before the Commission on exceptions to an Initial Decision¹ issued September 19, 2014, and involves the fourth annual bandwidth filing, covering calendar year 2009, submitted by Entergy Services, Inc. (Entergy)² on behalf of the Entergy Operating Companies (Operating Companies).³ Entergy's filing was made pursuant to Service Schedule MSS-3 of the Entergy System Agreement (System Agreement),⁴

¹ *Entergy Servs., Inc.*, 148 FERC ¶ 63,015 (2014) (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 an agreement among the Operating Companies and Entergy that 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 those Operating Companies participating in the

(continued...)

implementing the Commission's bandwidth remedy based on calendar year 2009 data as provided for in Opinion Nos. 480 and 480-A. On July 23, 2010, the Commission issued an order accepting and suspending Entergy's proposed rates and establishing hearing and settlement judge procedures.⁵ In this order we affirm in part and reject in part the Initial Decision.

I. Bandwidth Remedy 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).⁶ The Louisiana Commission alleged that the System Agreement no longer operated to produce rough production cost equalization, as required by Commission precedent.⁷

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.⁸ 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

System Agreement. The Service Agreement has seven service schedules that provide formulas for how the costs and benefits are to be shared. Service Schedule MSS-3 (Exchange of Electric Energy Among the Companies) governs the exchange and pricing of energy among the participating 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 participating Operating Companies.

⁵ *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 (2010) (Hearing Order).

⁶ 16 U.S.C. § 824e (2012).

⁷ 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 (First Bandwidth filing), *Entergy Servs., Inc.*, 124 FERC ¶ 63,026, at PP 21-37 (2008).

⁸ *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) (*Louisiana PSC I*).

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. 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 (First Bandwidth filing) on May 29, 2007. On July 26, 2007, the Commission set the filing for hearing,¹⁰ and on September 23, 2008 an Initial Decision¹¹ was issued. On January 10, 2010, the Commission issued Opinion No. 505,¹² which affirmed in part and reversed in part the First Bandwidth Initial Decision.

5. Entergy made its second annual bandwidth filing (Second Bandwidth filing) on May 30, 2008. The Commission set the filing for hearing¹³ on July 29, 2008, and on September 10, 2009 an Initial Decision was issued.¹⁴ The parties also submitted a partial uncontested settlement, which was approved by the Commission on August 4, 2009. On October 7, 2011, the Commission issued Opinion No. 514,¹⁵ which affirmed in part and reversed in part the Second Bandwidth Initial Decision.

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

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

¹¹ *Entergy Servs., Inc.*, 124 FERC ¶ 63,026 (2008) (First Bandwidth Initial Decision).

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

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

¹⁴ *Entergy Servs., Inc.*, 128 FERC ¶ 63,015 (2009) (Second Bandwidth Initial Decision).

¹⁵ *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011), *order on reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013 (2013).

6. Entergy made its third annual bandwidth filing (Third Bandwidth filing) on May 29, 2009. The Commission set the filing for hearing¹⁶ on July 27, 2009, and on August 5, 2010, an Initial Decision was issued.¹⁷ On May 7, 2012, the Commission issued Opinion No. 518,¹⁸ which affirmed in part the Third Bandwidth Initial Decision.

II. Entergy's Fourth Annual Bandwidth Filing

7. On May 27, 2010, in the instant proceeding, Entergy made its fourth annual bandwidth filing (Fourth Bandwidth filing) in accordance with Service Schedule MSS-3 of the System Agreement and Opinion Nos. 480 and 480-A. In its filing, Entergy provided the bandwidth payments and receipts under the Service Schedule MSS-3 bandwidth formula using each Operating Company's calendar year 2009 production costs. The filing quantified the disparities¹⁹ in the production costs for each Operating Company and, based upon the quantities, determined the payments and receipts for each Operating Company consistent with the bandwidth formula. The production costs include direct fixed and variable costs of each 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.

8. For 2009, each Operating Company's allocated average system production costs are compared to that Operating Company's actual production costs to determine the dollar and percent disparity as seen below:

¹⁶ *Entergy Servs., Inc.*, 128 FERC ¶ 61,091 (2009).

¹⁷ *Entergy Servs., Inc.*, 132 FERC ¶ 63,005 (2010) (Third Bandwidth Initial Decision).

¹⁸ *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012), *order on reh'g*, 145 FERC ¶ 61,047 (2013).

¹⁹ "Disparity" means the ratio of actual production costs to system average production costs expressed in terms of the divergence from 100 percent.

Operating Company	% Initial Disparity (Before Remedy)	% Final Disparity (After Remedy)
Entergy Arkansas	-13.43 %	-11.00%
Entergy Gulf States Louisiana	4.50 %	4.50%
Entergy Louisiana	7.44 %	6.57%
Entergy Mississippi	8.58 %	6.57 %
Entergy New Orleans	5.70 %	5.70 %
Entergy Texas	-9.89 %	-9.89 %

9. Entergy Arkansas was the only Operating Company to have initial disparities exceeding the +/- 11 percent bandwidth during 2009. As such Entergy Arkansas made a \$12.9 million dollar payment to Entergy Louisiana and a \$14.4 million dollar payment to Entergy Mississippi.

10. On July 23, 2010, the Commission issued the Hearing Order, in which the Commission, among other things, listed specific issues described as issues that the Louisiana Commission acknowledged were pending in other proceedings before the Commission,²⁰ and listed other issues described as issues that the Louisiana Commission claimed were not pending.²¹ The Commission stated it would make no finding as to the Louisiana Commission's claims as to which issues were and were not pending, but the Commission directed the Presiding Judge not to allow re-litigation of issues that were the subject of other proceedings before the Commission.²² The Louisiana Commission requested rehearing of the Hearing Order.

²⁰ Hearing Order, 132 FERC ¶ 61,065 at P 25 (listing 14 issues, the seventh being "ADIT Associated with Waterford 3 Capital Lease Amounts").

²¹ *Id.* P 26, n.15 (listing seven issues, the third being "Waterford 3 Capital Lease Amortization").

²² *Id.* P 26.

11. The hearing commenced in October 2010. However, on January 28, 2011, the Presiding Judge issued an order²³ requiring the parties to file briefs to show cause why the instant proceeding should not be stayed pending the issuance of Commission decisions in prior bandwidth proceedings that remained unresolved. On March 3, 2011, after reviewing initial and reply briefs, the Presiding Judge issued an order²⁴ holding this proceeding in abeyance until certain issues that were pending before the Commission in various bandwidth proceedings reached final Commission determinations.

12. On October 6, 2011, the Commission issued an order²⁵ granting in part and denying in part the Louisiana Commission's request for rehearing of the Hearing Order. The Commission stated that bandwidth implementation proceedings are the proper forum for raising whether the required formula inputs were correctly applied in the bandwidth calculation, while FPA section 206 complaint proceedings or FPA section 205 filing proceedings are the proper forum for raising whether the formula is just and reasonable. The Commission specified that parties in a bandwidth implementation proceeding may challenge whether the calculation of inputs was consistent with the formula and the applicable accounting rules; whether the filing conforms with retail regulatory approvals where the formula requires use of values approved by retail regulators; where details are omitted from the Service Schedule MSS-3 formula, whether the filing conforms with the underlying details included in the method used in Exhibit Nos. ETR-26 and ETR-28; and the prudence of cost inputs to the bandwidth formula in this bandwidth proceeding.²⁶

13. On September 18, 2013, the parties in this proceeding filed a joint motion to reactivate this proceeding on the basis that the unresolved dockets cited in the Order Staying Hearing had either been decided or, to the extent not decided, would not preclude identifying issues discrete to this case.²⁷ The Chief Administrative Law Judge subsequently issued an order lifting the suspension and directing a new procedural schedule.²⁸

²³ *Entergy Servs., Inc.*, 134 FERC ¶ 63,008 (2011) (Show Cause Order).

²⁴ *Entergy Servs., Inc.*, 134 FERC ¶ 63,018 (2011) (Order Staying Hearing).

²⁵ *Entergy Servs., Inc.*, 137 FERC ¶ 61,019 (2011).

²⁶ *Id.* (citing Opinion No. 505, PP 9, 51-64).

²⁷ Louisiana Commission Sep. 18, 2013 Motion to Lift Stay at 1.

²⁸ *Entergy Servs., Inc.*, Order Lifting Stay, Docket No. ER10-1350-001, at 1-3 (October 18, 2013).

14. In November and December of 2013, several parties filed motions regarding the specific issues set for hearing, allowance of supplemental testimony, and other requests for clarification. As pertinent here, the Presiding Judge denied a request by the Louisiana Commission to consider an issue known as the Waterford 3 accumulated deferred income tax (ADIT) issue.²⁹

15. A hearing was held in March 2014 that resulted in the Initial Decision. After addressing the proper standard of review in annual bandwidth proceedings, the Initial Decision covered four issues: (1) whether Entergy included the proper fuel inventory balance as an input to the bandwidth formula in its bandwidth filing for the 2009 test year; (2) whether prior Commission approval was required for Entergy to reclassify casualty loss ADIT from Account 283, Accumulated Deferred Income Taxes – Other, to Account 282, Accumulated Deferred Income Taxes – Other Property, making it eligible as an ADIT input to the bandwidth formula in its Fourth Bandwidth filing; (3) whether Entergy properly accounted for the amortization period for the Waterford 3 sale/leaseback in recording this expense in Entergy Louisiana's FERC Form No. 1 and in using it in the Fourth Bandwidth filing; and (4) whether Entergy should be required to include an entry in the bandwidth calculation for contra-securitization ADIT related to storm restoration costs. The Presiding Judge also denied reconsideration of his earlier ruling to exclude the Waterford 3 ADIT issue from this proceeding.

16. Initial Briefs, Briefs on Exceptions, and Briefs Opposing Exceptions were filed by Entergy, the Louisiana Commission, the Arkansas Public Service Commission (Arkansas Commission) and Commission Trial Staff (Trial Staff).³⁰

III. Discussion

17. Having fully evaluated the Initial Decision, the parties' briefs, and the record before us, we affirm in part the Presiding Judge's findings. Specifically, we affirm the

²⁹ *Entergy Servs., Inc.*, Order Granting in Part and Denying in Part Motion of the Louisiana Public Service Commission, Docket No. ER10-350-001, at PP 26-32 (Dec. 20, 2013). Waterford 3 is a nuclear plant located in Killona, LA. ADIT refers to deferred balances resulting from adoption of the principle of comprehensive interperiod income tax.

³⁰ The Louisiana Commission also filed a motion to lodge *Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform System of Accounts, Form Nos. 1, 1-F, 2 and 2-A and Related Regulations*, Order No. 390, FERC Stats. & Regs. ¶ 30,586 (1984). Given that the Commission has knowledge of its own holdings, we find a motion to lodge prior Commission orders to be unnecessary.

Presiding Judge's finding that Entergy did not properly include the fuel inventory balance from the FERC Form No. 1 as an input to the bandwidth formula for the 2009 test year, although we disagree with one of the Presiding Judge's two remedies. We agree with the Presiding Judge that Entergy's entries to move casualty loss ADIT from Account 283 to Account 282 constitutes a transfer for which prior Commission approval was required. Additionally, we agree with the Presiding Judge that there was an error in the accounting for the amortization period for the Waterford 3 sale/leaseback. Lastly, we agree in part with the Presiding Judge that Entergy should be required to include an entry in the bandwidth calculation for contra-securitization ADIT related to storm restoration costs, but, contrary to the Presiding Judge's finding, we find that the contra-securitization ADIT related to storm restoration costs should not be limited to the liberalized depreciation.

18. In addition, we find that the Presiding Judge was correct to deny reconsideration of his exclusion of the Waterford 3 ADIT issue from this proceeding.³¹ The Commission explicitly stated in the Hearing Order that the Presiding Judge was not to allow re-litigation of issues that were the subject of proceedings already before the Commission, which included the Waterford 3 issue.³² We take administrative notice of the fact that this issue was set for hearing in Docket No. EL10-65-000.³³ Accordingly, we will not consider the Waterford 3 ADIT issue here.

³¹ *Id.* at P 31 & n.58 (stating that, in the Hearing Order, the Commission pointed specifically to issues being raised here that the Louisiana Commission “acknowledges are pending in other proceedings” . . . among which is the issue of ‘ADIT Associated with Waterford 3 Capital Lease Amounts.’”) (quoting Hearing Order, 132 FERC ¶ 61,065, at P 25 (2010)).

³² Hearing Order, 132 FERC ¶ 61,065 at 26.

³³ *La. Pub Serv. Comm'n v. Entergy Servs., Corp.*, 132 FERC ¶ 61,104, at P 38 (2010) (setting the Waterford 3 ADIT issue for hearing and settlement judge procedures, but holding the hearing and settlement judge procedures in abeyance pending the outcome of the second bandwidth proceeding in Docket No. ER08-1056). The Commission subsequently lifted the abeyance and directed that hearing and settlement judge procedures proceed to address the Waterford 3 ADIT issue. *La. Pub Serv. Comm'n v. Entergy Corp., Inc.*, 149 FERC ¶ 61,245, at P 49 (2014) (order denying rehearing and granting motion to proceed with hearing and settlement judge procedures); *see also Entergy Servs., Inc.*, 149 FERC ¶ 61,244, at P 36 (2014) (consolidating proceedings for purposes of settlement, hearing and decision). The hearing is currently ongoing.

19. Further, as discussed below, we also find that the Presiding Judge used the correct standard of review. To the extent a matter is not addressed in this order, we summarily affirm the Presiding Judge.

A. Standard of Review in the Annual Bandwidth Proceedings

1. Initial Decision

20. In the Initial Decision, the Presiding Judge included a statement regarding the standard of review in the annual bandwidth proceedings. The Presiding Judge noted that the Commission institutes the bandwidth proceedings pursuant to Entergy's annual filings under section 205 of the FPA.³⁴ The Presiding Judge stated that, in this Fourth Bandwidth proceeding, Entergy has populated the formula inputs with actual 2008 data for the most part, but has proposed alternatives to some of the inputs. The Presiding Judge further stated that the Louisiana Commission and Trial Staff have proposed alternatives of their own to the input data. The Presiding Judge stated that, in general, a party filing a rate adjustment with the Commission under FPA section 205 bears the burden of proving that the adjustment is lawful.³⁵ The Presiding Judge found that, therefore, Entergy bears the burden of proving the accuracy, prudence, and justness and reasonableness of its proposed annual inputs to the bandwidth formula for test year 2009.

21. However, the Presiding Judge added that where other parties to the bandwidth proceeding propose alternative formula inputs of their own, they are subject to section 556 of the Administrative Procedure Act,³⁶ which imposes the burden of proof on "the proponent of a rule or order."³⁷ The Presiding Judge found that in that case those parties proposing alternative inputs would bear the burden of proving that: (1) the existing inputs produce a rate that is unjust, unreasonable, unduly discriminatory, or preferential; and (2) the proposed alternative rate will produce a just and reasonable rate.

³⁴ 16 U.S.C. § 824d.

³⁵ Initial Decision, 148 FERC ¶ 63,015 at P 41 (citing *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1993)).

³⁶ 5 U.S.C. § 556(d).

³⁷ Initial Decision, 148 FERC ¶ 63,015 at P 42. The Presiding Judge stated that, in this Fourth Bandwidth proceeding, Entergy has populated the formula inputs with actual 2008 data for the most part, but has proposed alternatives to some of the inputs. The Presiding Judge further stated that the Louisiana Commission and Trial Staff have proposed alternatives of their own to the input data. *Id.* P 40.

22. The Presiding Judge also found that Entergy bears no burden of proof to show that any bandwidth input or procedure that it intends to continue without change is just and reasonable, even in the face of alternative proposals by other parties. The Presiding Judge explained that courts have made clear that the statutory obligation of the utility is not to prove the continued reasonableness of unchanged rates or unchanged attributes of its rate structure.³⁸ The Presiding Judge added that the burden of promoting a change to the status quo in this Fourth Bandwidth proceeding therefore rests entirely with the challenger of the status quo.

2. Briefs on Exceptions

23. The Louisiana Commission argues that the Presiding Judge applied inherently conflicting rulings concerning the burden of proof. The Louisiana Commission explains that the Presiding Judge's initial ruling that Entergy must justify its inputs is contradicted by the Presiding Judge's ruling that parties that propose alternate inputs bear the burden of proving: (1) that existing inputs are unjust and reasonable; and (2) that the proposed alternative will produce a just and reasonable rate.³⁹ The Louisiana Commission contends that the Presiding Judge's rulings are contradictory. It argues that the justness and reasonableness of a cost input can only be put at issue if another party mounts a challenge, which necessarily entails an alternative to eliminate the unjust and unreasonable input.⁴⁰ The Louisiana Commission reasons that "Entergy thus could never bear the burden of proof for an input that becomes a contested issue. In effect, the Initial Decision overrules itself."⁴¹

24. The Louisiana Commission also argues that the Presiding Judge's determination conflicts with established precedent. It contends that the Commission's policy on formula rates provides that the utility bears the burden of proof with respect to the justness and reasonableness of cost inputs. The Louisiana Commission argues that if there is a challenge, the utility must demonstrate "the justness and reasonableness of the charges resulting from application of the formula."⁴² It contends that when a challenge to

³⁸ Initial Decision, 148 FERC ¶ 63,015 at P 43 (citing *Seminole Elec. Coop., Inc.*, 32 FERC ¶ 63,087, at 65,334 (1985).

³⁹ Louisiana Commission Brief on Exceptions at 13.

⁴⁰ *Id.* at 13-14.

⁴¹ *Id.* at 14.

⁴² *Id.* (citing *Pub. Serv. Elec. and Gas Co.*, 124 FERC ¶ 61,303, at P 17 (2008)).

an input is raised, the utility must demonstrate “the justness and reasonableness of the charges resulting from application of the formula rate.”⁴³ It notes that in *Virginia Electric and Power Company*,⁴⁴ the Commission ruled that “any challenge to the projected costs, True-up Adjustment or Material Accounting Change would not require the complainant to bear the section 206 burden of proof.”⁴⁵ The Louisiana Commission adds that the Presiding Judge’s use of the incorrect standard may have improperly affected several of his determinations.⁴⁶

3. Briefs Opposing Exceptions

25. Entergy responds that while it is true that the justness and reasonableness of a cost input will only be put at issue if another party mounts a challenge, it is not true that a challenge necessarily entails an alternative to eliminate the unjust and unreasonable input. Entergy explains that the Initial Decision correctly acknowledges that challengers to an existing rate are not required to propose an alternative rate and prove that it is just and reasonable. It further explains that under the FPA it is the Commission’s job – not the utility’s or a challenger to a utility’s rate proposal – to find a just and reasonable rate.⁴⁷ Entergy further argues that contrary to the Louisiana Commission’s claim, the Initial Decision does not imply that a challenge to the reasonableness of a formula input permanently shifts the burden of proof from the utility to the challenger.

26. Trial Staff contends that the Commission should reject the Louisiana Commission’s argument that the Initial Decision makes conflicting burden of proof rulings. Trial Staff explains that the Louisiana Commission incorrectly conflates two different burden of proof principles that apply to two different situations. It explains that in one situation, parties and Trial Staff challenge Entergy’s proposed bandwidth inputs. It further explains that in the other situation, parties and Trial staff challenge Entergy’s proposed bandwidth inputs and propose a new bandwidth input or bandwidth methodology for use in the bandwidth calculation. Trial Staff contends that the burden of proof rulings do not conflict because they apply to two different situations.

⁴³ *Id.* (citing *American Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306 at P 36.)

⁴⁴ 123 FERC ¶ 61,098 (2008) (*Virginia Electric*).

⁴⁵ Louisiana Commission Brief on Exceptions at 15 (citing *Virginia Electric*, 123 FERC ¶ 61,098 at P 47).

⁴⁶ *Id.* at 15.

⁴⁷ Entergy Brief Opposing Exceptions at 28.

4. Commission Determination

27. We find that the Presiding Judge properly allocates the burden of proof in accordance with Commission precedent and we affirm the Presiding Judge on this issue. Contrary to the Louisiana Commission's assertion, the Presiding Judge did not make conflicting rulings concerning the burden of proof. Entergy submits its annual bandwidth filings under FPA section 205, and the allocation of the burden of proof under FPA section 205 is well established. Under FPA section 205, "the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility."⁴⁸ The Commission presumes that a utility's expenditures are prudent in the absence of a challenge casting "serious doubt" on such prudence.⁴⁹ Once serious doubt is created, the burden of proof shifts to the utility to demonstrate that the expenditure in question was prudent.⁵⁰

28. In the Initial Decision, first the Presiding Judge finds – and no party disputes – that "Entergy bears the burden of proving the accuracy, prudence, and justness and reasonableness of its proposed annual inputs to the bandwidth formula for test year 2009."⁵¹ The Presiding Judge then finds that when other parties to the bandwidth proceeding propose alternative formula inputs of their own, they bear the burden of proving that: (1) the existing inputs produce a rate that is unjust, unreasonable, unduly discriminatory, or preferential; and (2) the proposed alternative will produce a just and reasonable rate.

29. We reject the Louisiana Commission's argument that the Presiding Judge's burden of proof findings are conflicting. The Presiding Judge's findings regarding Entergy's burden of proof under FPA section 205 and a challenger's burden under the Administrative Procedure Act apply to two separate situations. Under the first situation, should any party challenge Entergy's proposed bandwidth inputs, Entergy would bear the burden of proof to demonstrate that its proposed input is just and reasonable. Under the second situation, where a specific input or methodology is being continued from a previous bandwidth filing, any party proposing a different bandwidth input or bandwidth

⁴⁸ See 16 U.S.C. § 824d(e).

⁴⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 121 (2013).

⁵⁰ Opinion No. 505, 130 FERC ¶ 61,023 at P 52.

⁵¹ Initial Decision, 148 FERC ¶ 63,015 at P 41.

input methodology for use in the bandwidth calculation would bear the burden of proof.⁵² The Presiding Judge's burden of proof rulings do not contradict each other because they apply to different situations.

30. The Louisiana Commission is mistaken when it asserts that "Entergy could never bear the burden of proof for an input that becomes a contested issue" because "[t]he justness and reasonableness of a cost input can only be put at issue if another party mounts a challenge, which necessarily entails an alternative to eliminate the unjust and unreasonable attribute of the input."⁵³ The Louisiana Commission assertion is based on an assumption that when a party or Trial Staff challenges a bandwidth input or bandwidth input methodology, the challenger must propose a new bandwidth input or methodology. However, the Initial Decision contains no findings that the parties and Trial Staff are required to propose a new bandwidth input or methodology in order to challenge a bandwidth input proposed by Entergy. To the contrary, the Presiding Judge states that "[c]hallengers to an existing rate, however, do not have to propose an alternative rate and prove that it is just and reasonable if they do not want to."⁵⁴ In such case, Entergy would still bear the burden of proof to demonstrate that its proposed input is just and reasonable.

31. We are also not persuaded that the cases relied upon by the Louisiana Commission support its contention that the Presiding Judge made conflicting rulings concerning the burden of proof. The cases cited by the Louisiana Commission set forth the same general burden of proof standard set forth in the Initial Decision. Specifically, Entergy has the burden of proof to demonstrate the accuracy, prudence, and justness and reasonableness of its bandwidth inputs for test year 2009. We note that the Initial Decision also cites to *Entergy Services, Inc.*,⁵⁵ stating that in annual bandwidth proceedings, opponents of an annual update may challenge – and, consequently, Entergy must defend – the prudence of a cost input, as well as whether the formula was misapplied or miscalculated because the inputs were unjust and unreasonable.⁵⁶ Accordingly, the Louisiana Commission has not

⁵² We note that the bandwidth formula differs from most formula rates at the Commission insofar as its inputs are subject to approval via an annual section 205 filing. The presumption that prior inputs are correct, shifting the burden of proof to those disputing them, only applies where the Commission has approved the specific inputs in a section 205 proceeding and not as a general matter for formula rate inputs.

⁵³ *Id.* at PP 13-14.

⁵⁴ Initial Decision, 148 FERC ¶ 63,015 at P 43.

⁵⁵ 145 FERC ¶ 61,049 (2013) (Fourth Bandwidth Clarification Order).

⁵⁶ Fourth Bandwidth Clarification Order, 145 FERC ¶ 61,049 at P 8 and n.22.

persuaded us that the Presiding Judge failed to use the correct burden of proof standard in this proceeding.

B. Whether Entergy Included the Proper Fuel Inventory Balance as an Input to the Bandwidth Formula

1. Summary of Issue

32. The parties dispute whether Entergy used the proper fuel inventory balance as an input for the bandwidth formula. The bandwidth formula incorporates fuel inventory, which is derived from Account 151, Fuel Stock, in the Operating Companies' FERC Form No. 1s. The balances reported in Entergy Arkansas' Account 151 include the total book cost of coal inventory on hand for the Independence and White Bluff generating units.⁵⁷ Entergy Arkansas co-owns these plants with other Operating Companies. The operating agreements between the co-owners specify that 100 percent of the coal inventory at these plants is the property of Entergy Arkansas.⁵⁸ Entergy Arkansas records the full "book cost" of the fuel in Account 151 and also includes offsetting amounts in the account to represent advances from co-owners to pay for their shares of the fuel costs, lowering Entergy Arkansas' share of the cost of the fuel inventory.⁵⁹

33. Entergy Arkansas records co-owner advances in Account 151 at various times during the year, and therefore the account balances do not necessarily correspond at any given point in time to the share of the fuel that is owned by each co-owner. Consequently, Entergy Arkansas adjusts its input to the Fuel Inventory variable derived from Account 151 in the bandwidth formula in order to eliminate such timing differences and so that the input reflects only Entergy Arkansas' percentage ownership share, independent of the percentage shares of the co-owners.⁶⁰ In Workpaper 3.1.1 of the bandwidth formula calculation, Entergy Arkansas deducts co-owner advances from beginning and ending balances of Account 151, then subtracts from that an amount equal to the percentage ownership interest in that inventory that each co-owner holds in the respective facilities. The remainder equals the share of fuel inventory for which Entergy

⁵⁷ Ex. No. ESI-115 at 21:3-6 (Kenney).

⁵⁸ *Id.* at 21:16-17.

⁵⁹ *Id.* at 21:9-12.

⁶⁰ Ex. No. LC-101 at 22:8-12 (Kollen).

Arkansas is responsible.⁶¹ Entergy has determined the Fuel Inventory input this way in all previous annual bandwidth proceedings as well as in the instant proceeding.⁶²

34. The Louisiana Commission argued that Service Schedule MSS-3 does not authorize Entergy's adjustment to fuel inventory. The Louisiana Commission also contended that in Exhibit Nos. ETR-26 and ETR-28, the exhibits that formed the basis for the bandwidth remedy in the Opinion No. 480 proceeding, the co-owner advances were not removed from the Account 151 input.⁶³ It asserted that the ownership percentages were applied to the unadjusted balance. The Louisiana Commission also argued that Service Schedule MSS-3 does not authorize Energy's adjustment to fuel inventory.

35. Trial Staff contended that Entergy did not use the proper fuel inventory figure in the bandwidth formula due to two errors.⁶⁴ First, Trial Staff argues that, in violation of the bandwidth formula, Entergy adjusted the FERC Form No. 1 data for Account No. 151 even though such adjustments do not qualify under the "other supporting data" provision of Note 1 of Section 30.12 of the bandwidth formula.⁶⁵ Second, Trial Staff argues that Entergy improperly netted in Account 151 the co-owners' share of the coal purchases and the co-owners' advances, and that the resulting balance is inaccurate due to timing differences between the coal purchases and the co-owner advances.⁶⁶ Trial Staff proposes that the timing differences can be resolved by requiring Entergy to make corrective entries to and refile its 2009 FERC Form No. 1, through either of two potential methodologies described below.

⁶¹ Ex. No. ESI-103 at 86.

⁶² Tr. 165:15-16 (Peters).

⁶³ Louisiana Commission Reply Brief at 5.

⁶⁴ Trial Staff Initial Brief at 6, 7-10.

⁶⁵ Note 1 of Section 30.12 (Actual Production Cost) of Service Schedule MSS-3 provides in relevant part (emphasis added):

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....

⁶⁶ Ex. S-103 at 22-25 (Nicholas).

2. Initial Decision

36. The Presiding Judge found that Entergy's method for correcting inputs from Account 151 is unjust and unreasonable. The Presiding Judge noted that Trial Staff and the Louisiana Commission agree that Entergy's adjustment of the Account 151 value reported in its 2009 FERC Form No. 1 violates the bandwidth formula and conflicts with the Commission's ruling in Opinion No. 518.⁶⁷ However, the Presiding Judge also found that the Louisiana Commission produced no evidence to corroborate its assertion that the method in Exhibit Nos. ETR-26 and ETR-28 did not remove co-owner advances.

37. The Presiding Judge supported changing to either of Trial Staff's alternatives to Entergy's method, finding that such a change would simplify the calculation of the bandwidth formula and allow for the elimination of Workpaper 3.1.1. The Presiding Judge explained that under Trial Staff's first alternative, Entergy Arkansas would continue to record in Account 151 100 percent of the purchase price of coal acquired for Independence and White Bluff. He further explained that Entergy Arkansas would also credit Account 151 for each coal purchase, presumably in a separate subaccount, for the co-owners' share of these purchases. The Presiding Judge stated that because these credits are recorded in Account 151, Account 186, Miscellaneous Deferred Debits, would be correspondingly debited. The Presiding Judge stated that co-owner advances would be recorded as credits to Account 186, which would reflect a net debit or credit representing the timing difference between the co-owners' share of coal purchases and the co-owners' advances to date.⁶⁸

38. The Presiding Judge explains that under Trial Staff's second alternative, Account 186 would also serve to account for the co-owners' share of coal purchases and the co-owners' advances. However, the Presiding Judge states that under this second alternative, when coal is purchased for the jointly-owned generating plants, Entergy Arkansas would only record in Account 151 its ownership share of the coal purchase. He states that according to Trial Staff, the remaining share of the coal would be debited directly to Account 186. This would eliminate the need for a separate 151 sub-account for the co-owners' shares of the purchases. When the co-owners' advances are received, the advances would be credited solely to Account 186.⁶⁹ The Presiding Judge notes that Entergy concurs with Trial Staff's alternatives, with one modification: rather than using Account 186 for the co-owners' share of coal purchases and the co-owners' advances,

⁶⁷ Initial Decision, 148 FERC ¶ 63,015 at P 71.

⁶⁸ *Id.* P 74.

⁶⁹ *Id.* P 75.

Entergy recommends that the co-owners' advances be recorded in Account 253, Other Deferred Credits. The Presiding Judge noted that Trial Staff agreed with this modification.

39. The Presiding Judge found that because either of Trial Staff's alternative methods result in the same outcome as Entergy's existing method, the Louisiana Commission has the burden of demonstrating that they are erroneous.⁷⁰ The Presiding Judge also found that Trial Staff adequately described how its alternative methods would cause the bandwidth formula to only reflect Entergy Arkansas' share of the coal inventory. The Presiding Judge found that either of Trial Staff's alternatives, as modified by Entergy's recommendation to substitute Account 253, Other Deferred Credits, for Account 186, are appropriate because they would ensure that Account 151 would be the only source of input for the Fuel Inventory variable. The Presiding Judge also supported Entergy's proposed modification to Trial Staff's alternatives.⁷¹

3. Briefs on Exceptions

40. The Louisiana Commission argues that the accounting adjustment ordered by the Initial Decision would create an accounting imbalance. Specifically, "[t]he debit entry in Account 186 (or 253) for co-owner purchase would be offset by the credit entry in Account 186 (or 253) for co-owner advances. But the credit in Account 151 for co-owner purchases would have no offsetting entry."⁷² The Louisiana Commission states that this result is unacceptable because in double-entry accounting every credit must be offset by a corresponding debit.

41. The Louisiana Commission also contends that the credit entry for co-owner purchases in Account 151 would violate the Commission's Uniform System of Accounts (USOA), which states that Account 151 shall "include the book cost of fuel on hand."⁷³ Consequently, because there is no dispute that 100 percent of the cost of coal inventory at co-owned plants is "fuel on hand," 100 percent of the coal inventory should remain in

⁷⁰ *Id.* P 82.

⁷¹ *Id.* P 87.

⁷² Louisiana Commission Brief on Exceptions at 82.

⁷³ *Id.* at 82-83 (citing USOA Account 151, 18 C.F.R. Part 101 (2013)).

Account 151. The Louisiana Commission also states that the first Trial Staff alternative presents the same problem.⁷⁴

42. The Louisiana Commission also argues that the Initial Decision fails to reflect the cost-free capital supplied by co-owners in the bandwidth calculation. The Louisiana Commission states that “[r]emoving co-owner advances from Account 151 would allow Account 151, a rate base account, to reflect non-investor capital in rate base and would permit [Entergy Arkansas] to earn a return on cost-free capital.” It states that since Entergy Arkansas receives the co-owner advances to finance the cost of the co-owners’ share of the coal, the advances are non-Entergy Arkansas-supplied capital. Consequently, according to the Louisiana Commission, the Initial Decision does not reflect Entergy Arkansas’ actual carrying charge responsibility and would produce an overstatement of actual cost responsibility for Entergy Arkansas. The Louisiana Commission argues that this result would violate Commission policy against allowing regulated utilities to earn a return on cost-free capital.⁷⁵

43. The Louisiana Commission disagrees with the Initial Decision’s finding that this concern is adequately addressed by the credit to Account 151 for co-owner coal purchases. The Louisiana Commission argues that it is the co-owner cash advances that are the concern. The Louisiana Commission asserts that, because co-owner cash advances would only be reflected in a non-bandwidth account in the method supported in the Initial Decision, Account 151 would reflect all of the investment in coal, including that which was made by co-owners through cash advances made to Entergy Arkansas. The Louisiana Commission argues that co-owner advances must be subtracted from Account 151 to accurately reflect Entergy Arkansas’ investment, which occurs in the existing bandwidth calculation without Entergy’s adjustment.⁷⁶

4. Briefs Opposing Exceptions

44. Entergy contends that the Initial Decision properly eliminates the effect of co-owner advances and co-owner shares from the calculation of Entergy Arkansas’ fuel inventory bandwidth variable. Entergy states that all parties agree that the method used by Entergy to calculate the fuel inventory balance for Entergy Arkansas yields an accurate measurement of Entergy Arkansas’ ownership share of the coal inventory at

⁷⁴ *Id.* at 83.

⁷⁵ *Id.* at 83-84 (citing *ARCO Pipe Line Co.*, 52 FERC ¶ 61,055 (1990); *Endicott Pipeline Co.*, 55 FERC ¶ 63,028, at 65,155 (1991)).

⁷⁶ *Id.* at 84-85.

Independence and White Bluff. Entergy points out the calculation advocated in the Initial Decision reaches the same result, only differing in the accounting method.⁷⁷ Entergy states that the Initial Decision advocates that “the *primary* Account 151 would include the entirety of the coal inventory (thereby reflecting Entergy Arkansas’ underlying full ownership of it) as a debit, whereas a *sub-account* of Account 151 would include the *co-owners’* share of that inventory as a credit.”⁷⁸ Entergy states that, alternatively, the co-owners’ share of the coal could be recorded directly into Account 186, not Account 151. Entergy states that in either of the alternatives advocated by the Initial Decision, on a net basis, only Entergy Arkansas’ ownership share of the coal inventory will remain in Entergy Arkansas’ Account 151. Entergy contends that, on a net basis, no co-owner share of the coal inventory, which the Louisiana Commission refers to as “cost-free capital”, will remain in Entergy Arkansas’ Account 151.

45. The Arkansas Commission agrees with the Initial Decision’s finding that the Louisiana Commission was incorrect in asserting that Trial Staff’s alternatives would result in cost-free capital for Entergy. It contends that without the adjustments made by Entergy or the adjustments supported in the Initial Decision, the Account 151 amount imputed for bandwidth purposes would include fuel stock associated not only with Entergy Arkansas but also with the co-owners. The Arkansas Commission also states that the Account 151 unadjusted balance also includes cash advances made by the co-owners. The Arkansas Commission avers that without adjustment, the net of fuel stock and cash advances would be less than the amount of fuel stock rightfully associated with Entergy Arkansas, causing Entergy Arkansas’ production costs to be lower than they really are, leading to excessive Entergy Arkansas bandwidth payments. Further, if cash advances were eliminated from Account 151, the fuel stock remaining in Account 151 would be more than it actually is because it includes fuel stock associated with co-owners, and thus Entergy Arkansas’ production costs would be higher than they really are. According to the Arkansas Commission, only by removing the co-owner cash advances and removing the fuel stock associated with co-owners from Account 151 is the amount of fuel stock in that account the correct amount for Entergy Arkansas.⁷⁹ Consequently, the Arkansas Commission argues, as the Presiding Judge found, the result must ensure that the coal expense for only Entergy Arkansas, and not of any co-owner, is included as the Fuel Inventory input in the bandwidth formula calculation.

⁷⁷ Entergy Brief Opposing Exceptions at 8-9.

⁷⁸ *Id.* (citing Initial Decision at, 148 FERC ¶ 63,015 at P 85 (emphasis original)).

⁷⁹ Arkansas Commission Brief Opposing Exceptions at 5-6.

46. The Arkansas Commission also argues that the bandwidth formula contains no provisions for including non-Operating Company costs as inputs, which the Louisiana Commission seeks. Additionally, the Arkansas Commission contends that because the bandwidth formula calculation requires exclusion of all non-Operating Company production costs, it is entirely reasonable and justifiable for Entergy Arkansas to adjust the actual amount for Entergy Arkansas' Account 151 balance as reported in the FERC Form No. 1 in preparing bandwidth formula inputs. The Arkansas Commission also points out that non-Entergy Arkansas co-owner fuel inventory costs have been removed from each bandwidth calculation.⁸⁰

47. Trial Staff disagrees with the Louisiana Commission's argument that Trial Staff's alternatives create an accounting imbalance or contravene Commission policy. Trial Staff asserts that the Louisiana Commission has provided no support for its claim that the credit in Account 151 for co-owner purchases would have no offsetting entry and thus that this is unacceptable double-entry accounting. Trial Staff also disagrees with the Louisiana Commission's contention that the credit entry for Account 151 would violate the USOA because it would remove fuel purchases attributable to co-owners. Rather, according to Trial Staff, under its first alternative, Entergy Arkansas would continue to record 100 percent of the purchase price of coal acquired for Independence and White Bluff in Account 151 and also record credit entries in Account 151 for each coal purchase (presumably in a sub-account) for co-owners' share of these purchases. Trial Staff explains that contra or debit entries would be made to Account 186 to offset the credit entries made to Account 151, and credits would be recorded to Account 186 along with contra debits to Account 131, Cash, or an accounts receivable account when Entergy Arkansas receives advances from its co-owner for coal purchases.⁸¹ Consequently, Trial Staff argues, Entergy Arkansas' Account 151 will correctly account for Entergy Arkansas' ownership share for jointly-owned generating units. Trial Staff also contends that the Louisiana Commission does not support its assertion that the same problem exists for Trial Staff's second alternative.

48. Trial Staff also disagrees with the Louisiana Commission's argument that the Initial Decision fails to reflect cost-free capital supplied by co-owners in the bandwidth formula calculation. Trial Staff reiterates the Presiding Judge's finding that the primary Account 151 would include the entirety of the coal inventory as a debit whereas a sub-

⁸⁰ *Id.* at 7-8.

⁸¹ Trial Staff Brief Opposing Exceptions at 10-12.

account of Account 151 would include the co-owner's share as a credit, such that combined they would only reflect Entergy Arkansas' share.⁸²

49. Trial Staff also contends that the Louisiana Commission contradicts itself when it argues that "co-owner advances must be subtracted out of Account 151 to accurately reflect Entergy Arkansas' investment" and that the "accounting Entergy employs makes this subtraction." Trial Staff then observes that the Louisiana Commission concludes that "[w]ith that accounting, the Fuel Inventory variable in the Bandwidth Formula appropriately captures Entergy Arkansas' actual investment in coal inventory and uses that for the Bandwidth calculation."⁸³ Trial Staff maintains that its alternatives achieve this result. Trial Staff points out that the Louisiana Commission states that "[t]he Fuel Inventory variable of the Bandwidth Formula should be applied without Entergy's *pro forma* adjustment."⁸⁴

5. Commission Determination

50. We partially affirm the Presiding Judge on this issue by affirming one of the two Trial Staff alternatives. Further we affirm the use of Account 253 in lieu of Account 186. We find that Entergy's adjustment of the Account 151 amounts through the use of Workpaper 3.1.1 is unjust and unreasonable and violates the bandwidth formula. We also find that Entergy Arkansas' accounting for advances from co-owners and co-ownership interests in fuel inventory is not in accordance with the USOA as discussed below.

51. First, we agree with the Presiding Judge and Trial Staff that the adjustments made to Account 151 through Workpaper 3.1.1 violate the bandwidth formula, which does not permit adjustments from the FERC Form No. 1 amounts. Account 151 represents the book cost of fuel on hand. We find that adjustments to the FERC Form No. 1 data in Workpaper 3.1.1, rather than using the data from the FERC Form No. 1, is not consistent with the formula's allowance for the use of "other supporting data." As noted above, Note 1 of Service Schedule MSS-3 of the bandwidth formula states that "[a]ll 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 No. 1 or such other supporting data as may be appropriate for each Company." As such, FERC Form No. 1 data should be used unless such data is

⁸² *Id.* at 13 (citing Initial Decision at, 148 FERC ¶ 63,015 at P 84-85).

⁸³ *Id.* at 13-14 (citing Louisiana Commission Brief on Exceptions at 84).

⁸⁴ *Id.* (citing Louisiana Commission Brief on Exceptions at 85).

unavailable, in which instance other supporting data may be used. FERC Form No. 1 data for Account 151 is available and should be used.

52. Second, we agree with the Presiding Judge that Entergy's method for recording fuel inventory balances in Account 151 is not consistent with the Commission's regulations for fuel inventory accounting. As Trial Staff witness Nicholas explained, if Entergy Arkansas correctly accounted for purchase of coal and advances from co-owners for the coal purchases for these generating units in accordance with the USOA, it would not need to adjust Account 151 balances reported in the FERC Form No. 1 for bandwidth calculation purposes. Account 151 balances, reported in Entergy Arkansas' FERC Form No. 1, should be revised to provide an accurate representation of Entergy Arkansas' fuel stock inventory.

53. Accordingly, we direct Entergy Arkansas to account for advances received from co-owners and purchases of fuel inventory as follows: (1) record co-owner advances for fuel inventory purchases as a debit to Account 131, Cash, and a credit to Account 253 when paid by co-owners; (2) record 100 percent of the fuel inventory purchases as a debit to Account 151 and a credit to Account 131 (or the appropriate accounts payable account); and (3) record the co-ownership interests in fuel inventory purchases as a debit to Account 253 and a credit to Account 151. This will ensure that Entergy Arkansas will correctly reflect in Account 151 its ownership share of coal inventory for the jointly-owned generating units. Entergy Arkansas must also resubmit its 2009 FERC Form No. 1 reflecting this accounting and recalculate the 2009 bandwidth formula using the revised account balances.

54. We note that the accounting above dispels the Louisiana Commission's concerns regarding a violation of the rules of double entry accounting and the USOA's requirement that Account 151 contain the book value of fuel on hand. The accounting directed above results in 100 percent of the costs of fuel purchases being recorded in Account 151 as a debit, which will then be netted against credits to Account 151 for the value of co-owner purchases. Accordingly, Entergy Arkansas' balances in Account 151 will be properly stated at its book cost of fuel on hand.

55. Finally, we disagree with the Louisiana Commission's argument that the Initial Decision, by employing Trial Staff's proposed alternatives, would result in rates that were not just and reasonable because they would allow a return on cash-free capital from co-owner advances. In both Trial Staff alternatives and the accounting directed above, co-owner advances are excluded from Account 151 and the bandwidth formula calculation. Thus, inclusion of the co-owner advances in the bandwidth formula calculation would require modification of the bandwidth formula itself, and, as we have repeatedly stated, modifications of the bandwidth formula are outside the scope of the annual bandwidth implementation proceedings.

C. Whether Commission Approval was Required to Transfer Certain Amounts from Account 283 to Account 282

1. Summary of Issue

56. The parties dispute whether prior Commission approval was required for Entergy to reclassify casualty loss ADIT from Account 283, Accumulated Deferred Income Taxes – Other, to Account 282, Accumulated Deferred Income Taxes – Other Property, making it eligible to be an ADIT input to the bandwidth formula in the Fourth Bandwidth filing. In Opinion No. 518 the Commission ruled that casualty loss ADIT recorded in Account 282 should be included in the bandwidth calculation.⁸⁵ However, in Opinion No. 518 the Commission specifically declined to rule on the issue of whether moving casualty loss ADIT from Account 283 to Account 282 violated the Commission’s accounting instructions, finding that all parties had entered into a stipulation agreeing it was appropriate.⁸⁶

57. The USOA specifically defines the rules governing “transfers” with respect to Account 283 (and Account 282) in association with the need for prior Commission approval in such situations.⁸⁷ Entergy explained at the hearing that in 2008 when completing an internal accounting review it discovered that it had incorrectly been recording the following items in Account 283 instead of 282: (1) casualty loss associated with damage to property from hurricanes; (2) capital expenditures qualified for research and experimental tax deductions; and (3) capital expenditures associated with the capitalization of overhead for income tax purposes. Entergy contended that this accounting change had to be initiated to correct what Entergy characterized as a recently discovered error.⁸⁸ Entergy argued at the hearing that prior Commission approval was not required for it to reclassify casualty loss ADIT from Account 283 to Account 282 because its action merely constituted a reclassification between ADIT accounts, as distinct from a transfer which would have implicated the need for prior Commission approval. The Louisiana Commission objected.

⁸⁵ Opinion No. 518, 139 FERC ¶ 61,105 at P 92.

⁸⁶ *Id.*

⁸⁷ Entergy Initial Brief at 11-12 (citing USOA Account 283, 18 C.F.R. Part 101).

⁸⁸ *Id.* at 10.

2. Initial Decision

58. In the Initial Decision, the Presiding Judge ruled that there is no meaningful difference between the words “transfer” and “reclassification” that is relevant to this proceeding.⁸⁹ He noted that a dictionary definition of the word “transfer” is “to carry or take from one person or place to another.”⁹⁰ He further noted that the word “reclassify” means “to move from one class, classification, or category to another.”⁹¹ The Presiding Judge explained that the word “transfer” in the context of Account 283 encompasses words like “reclassification.” The Presiding Judge added that the Commission has long exercised its authority to approve accounting transfers and reclassifications that were merely changes from one account to another. The Presiding Judge noted that in *Baltimore Gas & Electric Co.*,⁹² Baltimore Gas & Electric Co. (Baltimore G&E) successfully sought Commission approval to reclassify for accounting purposes all of its bulk power supply network facilities from distribution to transmission assets.⁹³ The Presiding Judge also noted that in *Boston Edison Co.*,⁹⁴ the Commission approved the transfer of certain expenses among various accounts. The Presiding Judge ruled that, accordingly, the reclassification of an entry from Account 283 to Account 282 is not exempt from the requirement of prior Commission approval. The Presiding Judge added that, rather, Commission approval is a precondition for it.⁹⁵

59. However, the Presiding Judge further ruled that although casualty loss ADIT was indeed transferred without prior Commission approval from Account 283 to Account 282, there is no reason to ignore the correct accounting result and exclude casualty loss ADIT as a bandwidth formula input. The Presiding Judge noted that no party denies that the line items were transferred to the correct account.⁹⁶ He added that the Louisiana

⁸⁹ Initial Decision, 148 FERC ¶ 63,015 at P 106.

⁹⁰ *Id.* (citing Webster’s Third New International Dictionary at 2426 (1986)).

⁹¹ *Id.* (citing Webster’s Third New International Dictionary at 1896 (1986)).

⁹² 111 FERC ¶ 61,313 (2005) (*Baltimore G&E*).

⁹³ Initial Decision, 148 FERC ¶ 63,015 at P 109 (citing *Baltimore G&E*, 111 FERC ¶ 61,313 at P 3).

⁹⁴ 77 FERC ¶ 61,319, at 62,460 (1996) (*Boston Edison*).

⁹⁵ Initial Decision, 148 FERC ¶ 63,015 at P 111.

⁹⁶ *Id.* P 112 (citing Entergy Reply Brief at 8; Trial Staff Initial Brief at 18).

Commission cites no Commission precedent that authorizes excluding the transferred casualty loss ADIT from the bandwidth calculation as a remedy for Entergy's failure to seek Commission approval for the transfer.⁹⁷ The Presiding Judge adds that, to the contrary, Commission precedent has allowed post hoc approvals in similar circumstances. The Presiding Judge cites *Hydro Development Group, Inc. and Pyrites Associates*,⁹⁸ explaining that in that case a hydro power project transferred a one-half interest in the project to an outside entity without seeking prior Commission approval of the transfer as required in its Commission-approved license application. The Presiding Judge noted that despite the violation, the Commission approved the transfer.⁹⁹

60. The Presiding Judge ruled that, “[a]s the Commission has explained on a number of occasions, accounting does not control ratemaking.”¹⁰⁰ The Presiding Judge found that even though Commission approval was not obtained for accounting purposes prior to Entergy's transfer of casualty loss ADIT from Account 283 to Account 282, that omission does not dictate the path to follow for ratemaking purposes in the Fourth Bandwidth proceeding. He concluded that that line item, therefore, will be included in the bandwidth formula calculation.¹⁰¹

61. The Presiding Judge also addressed what he referred to as a tangential matter: the Louisiana Commission's accusation that Entergy “misled the Commission as to the basis for the casualty Loss ADIT” and had the Commission “rel[y] on that information.”¹⁰² The Presiding Judge explained that the Louisiana Commission was essentially accusing Entergy of having defrauded the Commission by portraying the casualty loss ADIT as being related to storm cost expenditures. The Presiding Judge explained that the Louisiana Commission asserts that this purported misinformation induced the Commission in the Third Bandwidth proceeding to rule that casualty loss is related to

⁹⁷ *Id.* (citing Louisiana Commission Initial Brief at 7-11; Louisiana Commission Reply Brief at 9-13).

⁹⁸ *Hydro Dev.t Group, Inc. and Pyrites Assocs.*, 31 FERC ¶ 61,198 (1985) (*Hydro Development Group*).

⁹⁹ Initial Decision, 148 FERC ¶ 63,015 at P 113 (citing *Hydro Development Group*, 31 FERC at 61,408).

¹⁰⁰ *Id.* P 115 (citing Opinion No. 506, 130 FERC ¶ 61,026 at P 89).

¹⁰¹ *Id.*

¹⁰² *Id.* P 116 (quoting Louisiana Commission Initial Brief at 12).

storm damage costs, and therefore should be included in the bandwidth calculation. The Presiding Judge explains that the Louisiana Commission argued that Entergy's tax expert, Roberts, testified during the Fourth Bandwidth proceeding hearing that the casualty loss tax deduction is not based on such costs, while Entergy's Chief Accountant, Bunting, in the Third Bandwidth proceeding described the casualty loss tax deduction as based on "internal labor, contracted labor, and materials and supplies used to repair or replace damaged property."¹⁰³

62. The Presiding Judge found that the alleged contradiction is merely a misunderstanding of basic tax law on the Louisiana Commission's part. The Presiding Judge explained that both Bunting and Roberts spoke correctly in their respective proceedings. The Presiding Judge explained that the casualty loss tax deduction, as Roberts testified,¹⁰⁴ is technically a difference in the value of damaged property before and after the catastrophic event. The Presiding Judge further explained that the proxy that is properly used for tax purposes to represent the differential, since such values are difficult to determine, is the cost of repair, such as the "internal labor, contracted labor, and materials and supplies used to repair or replace damaged property" as Bunting testified in the Third Bandwidth Proceeding.¹⁰⁵ The Presiding Judge concluded by characterizing the Louisiana Commission's claim as "frivolous."¹⁰⁶

3. Briefs on Exceptions

63. The Louisiana Commission argues that the Initial Decision permits a clear violation of the Commission's accounting rules. It contends that under the USOA, a utility is prohibited from unilaterally moving amounts recorded in Account 283 to another account without prior approval. The Louisiana Commission notes that it is undisputed that Entergy did not seek prior approval from the Commission to transfer the casualty amounts from Account 283 to Account 282. It contends that the Presiding Judge's post hoc approval conflicts with the mandatory requirements of the USOA.

64. The Louisiana Commission notes that the Initial Decision criticizes the Louisiana Commission for citing "no Commission precedent that authorizes excluding the

¹⁰³ *Id.* (quoting Louisiana Commission Initial Brief at 13).

¹⁰⁴ Tr. at 219:18-220:18 (Roberts).

¹⁰⁵ Initial Decision, 148 FERC ¶ 63,015 at 118 (quoting Louisiana Commission Initial Brief at 13).

¹⁰⁶ *Id.*

transferred casualty loss ADIT from the bandwidth calculation as a remedy for Entergy's failure to seek Commission approval for the transfer."¹⁰⁷ The Louisiana Commission responds that the authority for excluding the amounts from the bandwidth calculation is Account 283 and the bandwidth formula itself. It argues that it could not be more clear that the amounts may not be transferred without prior Commission approval. The Louisiana Commission adds that Account 283 is not a bandwidth eligible account, and that if the Commission's accounting rules are to mean anything, then the amounts cannot be included in the bandwidth formula calculation.

65. The Louisiana Commission argues that the Initial Decision permits an unjust and unreasonable result in the bandwidth formula calculation. It contends that casualty loss ADIT should not be included in the bandwidth formula no matter what account it is recorded in. The Louisiana Commission explains that the bandwidth formula allows only ADIT that is "generally and properly includable for FERC cost of service purposes" to enter the formula.¹⁰⁸ The Louisiana Commission notes that Account 282 is a bandwidth eligible account, but that only amounts recorded in that account that are "generally and properly includable for FERC cost of service purposes" can be included in the bandwidth calculation.¹⁰⁹

66. The Louisiana Commission argues that the Commission's decision in Opinion No. 518 to include casualty loss ADIT in the bandwidth formula was based on Entergy's misportrayal of the source of the casualty loss ADIT. The Louisiana Commission explains that in the Opinion No. 518 proceeding, Entergy's witness Bunting testified that casualty loss ADIT is related to the cost of repairing damage from storms. The Louisiana Commission notes that in this case, Entergy witness Roberts testified that capital expenditures to replace damaged property are not the cause of the casualty loss for tax purposes.¹¹⁰ The Louisiana Commission states that Roberts explained that the casualty loss tax deduction is a calculation of how much value the existing property lost as a result of the storm.¹¹¹

¹⁰⁷ Louisiana Commission Brief on Exceptions at 64 (citing Initial Decision, 148 FERC ¶ 63,015 at P 112).

¹⁰⁸ *Id.* at 65 (citing Entergy System Agreement at § 30.12 (ADIT variable)).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 67 (citing Tr. at 219-20).

¹¹¹ *Id.*

67. The Louisiana Commission argues that casualty loss ADIT is not generally and properly includable for Commission cost-of-service purposes because it results from a tax calculation that does not enter the utility's books or the FERC Form No. 1. The Louisiana Commission argues that it is unjust and unreasonable for ADIT that results from a tax calculation to be included in the bandwidth formula when it is not created by the deduction of expenses that are included in the bandwidth formula. The Louisiana Commission adds that the Presiding Judge is correct that accounting does not control ratemaking, but argues that given the information developed in this case, the proper ratemaking result is to exclude the casualty loss ADIT.¹¹²

68. Entergy argues that the Initial Decision errs in finding that a reclassification from an incorrect ADIT account to the correct ADIT account is a transfer that requires prior approval of the Commission. It contends that such a finding would put the Commission in the unenviable position of having to provide prior approval for all corrections of misclassified accounting entries among the ADIT accounts. Entergy notes that neither *Baltimore G&E* nor *Boston Edison* involved the reclassification of ADIT from one ADIT account to another, but in contrast involved the utility seeking to transfer or reclassify an entry from one type of account to a different type of account.¹¹³

69. Entergy contends that the issue of a classification error among ADIT accounts was addressed in a Commission audit. It argues that in *Long Island Lighting Co.*,¹¹⁴ in the context of a company audit, Commission staff used the term "reclassification" to describe the action taken where an ADIT amount was moved from an incorrect ADIT account to the correct ADIT account. It states that at no point did Commission staff suggest that such a reclassification from an incorrect ADIT account to the correct one was a "transfer" of a type that would require prior authorization by the Commission.¹¹⁵ Entergy contends that is unlikely that the Commission would want to undertake the burden of providing preapproval for the correction of ADIT classification errors.

¹¹² *Id.* at 69.

¹¹³ Entergy Brief on Exceptions at 8.

¹¹⁴ 36 FERC ¶ 61,117 (1986) (*Long Island Lighting*).

¹¹⁵ Entergy Brief on Exceptions at 9 (citing *Long Island Lighting*, 36 FERC ¶ 61,117 at P 11).

4. Briefs Opposing Exceptions

70. Trial Staff argues that the Louisiana Commission's and Entergy's exceptions should be rejected. Trial Staff contends that the Louisiana Commission's argument that the Initial Decision conflicts with the mandatory requirements of the USOA is unavailing because the seeking of prior approval is a procedural requirement. Trial Staff argues that failure to obtain prior approval for a transfer from one account to another does not automatically result in Commission disallowance of the transfer, as claimed by the Louisiana Commission. Trial Staff contends that Entergy's failure to obtain Commission approval does not dictate the path to follow for ratemaking purposes. Trial Staff adds that there is no record evidence for the Louisiana Commission's assertion that Entergy acted in bad faith.¹¹⁶

71. However, Trial Staff also argues that the Commission should reject Entergy's argument that routine reclassifications among ADIT accounts should not trigger the Commission's prior approval requirements. Trial Staff explains that this argument would in effect allow entities and not the Commission to determine what constitutes a classification error of an ADIT account and what does not. Trial Staff notes that while there may be instances when the Commission may not seek to actively involve itself in such matters, this discretion belongs with the Commission and not with Entergy.¹¹⁷

72. Entergy argues that the Louisiana Commission attempts to re-litigate the Commission's ruling in Opinion No. 518 that casualty loss ADIT is to be included in the bandwidth formula calculation. Entergy contends that the Louisiana Commission's arguments that including casualty loss ADIT in the bandwidth formula calculation is unjust and unreasonable are no different in substance than the arguments that the Louisiana Commission raised in the Third Bandwidth proceeding. Entergy notes that in that proceeding, the Louisiana Commission asked the Commission to rule that only a certain portion of casualty loss ADIT should be included in the bandwidth formula calculation. Entergy notes that the Commission denied the Louisiana Commission's request.¹¹⁸

¹¹⁶ Trial Staff Brief Opposing Exceptions at 37.

¹¹⁷ *Id.* at 38.

¹¹⁸ Entergy Brief Opposing Exceptions at 11 (citing *Entergy Servs., Inc.*, 145 FERC ¶ 61,047, at P 22 (2013) (order on rehearing and clarification in Third Bandwidth proceeding).

73. Entergy argues that the Louisiana Commission's accusation that Entergy intentionally manipulated the bandwidth calculation is baseless and inflammatory. Entergy contends that undisputed evidence demonstrates that the incorrect recording of casualty loss ADIT in Account 282 was nothing more than a classification error.¹¹⁹

74. The Louisiana Commission argues that Entergy's argument that it "reclassified" amounts but did not "transfer" them is a semantic argument with no discernable limit. The Louisiana Commission argues that if Entergy's position were accepted, changing the name of any transfer between accounts could evade the Commission's prohibition. The Louisiana Commission contends that Entergy cannot identify any authority to suggest that moving an entry from one account to another is not a "transfer."¹²⁰ The Louisiana Commission argues that Entergy's transfer of amounts between the two accounts is therefore void and should be excluded from the bandwidth calculation.

75. The Louisiana Commission argues that Entergy failed in its attempt to distinguish its actions from the actions in *Baltimore G&E* and *Boston Edison*, and that neither case is distinguishable in any meaningful way. It contends that in *Boston Edison*, at issue was a transfer of expenses from one FERC account to another. The Louisiana Commission contends that, unlike here, the utility sought and received prior Commission approval for that transfer. The Louisiana Commission further contends that in *Baltimore G&E*, the utility sought Commission approval to reclassify for accounting purposes its bulk power supply network from distribution accounts to transmission accounts. The Louisiana Commission explains that there is no undue burden in requiring a utility to seek approval to transfer a balance from one account to another.¹²¹

76. The Arkansas Commission argues that it is inappropriate for the Louisiana Commission to argue that casualty loss ADIT amounts should be excluded from the bandwidth calculation regardless of which account they are reported in, because the issue set for hearing in this proceeding is whether Commission approval was required for Entergy to make a reclassification from one account to another. It argues that in Opinion No. 518, the Commission *de facto* approved the casualty loss ADIT transfer from Account 283 to Account 282 when it approved a stipulation that the reclassification of ADIT amounts was not at issue.¹²² The Arkansas Commission contends that the

¹¹⁹ *Id.*

¹²⁰ Louisiana Commission Brief Opposing Exceptions at 5.

¹²¹ *Id.* at 8.

¹²² Arkansas Brief Opposing Exceptions at 11 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 92).

Commission acknowledged that it was aware of the issue, but did not accept the Louisiana Commission's arguments and let the stipulation stand.

5. Commission Determination

77. We affirm the Presiding Judge on his findings regarding the transfer of casualty loss ADIT from Account 283 to Account 282. First, the Presiding Judge is correct in finding that Entergy's entries to move casualty loss ADIT from Account 283 to Account 282 constitutes a transfer for which prior Commission approval was required. Account 283 of the USOA states in regards to transfers:

It shall not transfer the balance in the account or any portion thereof to retained earnings or to any other account or make any use thereof except as provided in the text of this account without prior approval of the Commission. Upon the disposition by sale, exchange, transfer, abandonment or premature retirement of items on which there is a related balance herein, this account shall be charged with an amount equal to the related income tax effect, if any arising from such disposition and account 411.1, Provision For Deferred Income Taxes – Credit, Utility Operating.¹²³

78. Entergy interprets this provision narrowly. It asserts that a "transfer" for which a utility must seek approval must be something more substantial than the correction of a classification error.¹²⁴ However, the Commission's USOA contains clear instructions on the circumstances which require a utility to obtain prior approval of its accounting entries to transfer ADIT amounts from Account 283 to any other account. A utility may not transfer the balance in Account 283 to retained earnings or to any other account or make any use thereof without prior Commission approval. Notwithstanding Entergy's characterization of its classification of its accounting as a "reclassification," the Operating Companies made entries to move the balances of casualty loss ADIT related to property from Account 283 to Account 282, which constitutes a "transfer" under the plain meaning of the USOA pertaining to Account 283.

79. We find that Entergy is correct in asserting that finding that prior approval was required for a reclassification from an incorrect ADIT account to a correct ADIT account would require the Commission to approve all reclassifications of accounting entries among the ADIT accounts. This Commission requires approval for such

¹²³ USOA Account 283, Accumulated Deferred Income Taxes – Other, 18 C.F.R. Part 101 (2015).

¹²⁴ Entergy Brief on Exceptions at 10.

reclassifications. Absent such approval, entities could, in effect, determine what constitutes a classification error of an ADIT account and what does not. While there may be instances where the Commission may not seek to involve itself in such matters, this discretion belongs with the Commission and not with Entergy.

80. We also affirm the Presiding Judge's finding that although casualty loss ADIT was transferred from Account 283 to Account 282 without prior Commission approval, the excluded ADIT should still be included in the bandwidth calculation. The Louisiana Commission argues that the Initial Decision undercuts the prior approval requirement of Account 283 and leads to an unjust and unreasonable result. However, as noted by the Presiding Judge, the Louisiana Commission cites no Commission precedent that authorizes, let alone requires, excluding the transferred casualty loss ADIT from the bandwidth calculation as a remedy for Entergy's failure to seek Commission approval for the transfer.¹²⁵

81. Here Entergy has violated the USOA by making an accounting transfer without prior Commission approval, and we reiterate that Entergy must seek Commission approval for such transfers in its bandwidth filings. Nonetheless, we also note that no party, including the Louisiana Commission, has argued that the reclassification was substantively incorrect; under the USOA and FERC Form No. 1 reporting requirements, the Operating Companies are obligated to report transactions in accordance with Commission accounting requirements. On balance, and because it is uncontested that casualty loss ADIT is correctly recorded in Account 282, we decline to ignore the correct accounting and exclude casualty loss ADIT as an eligible bandwidth formula input simply to remedy Entergy's violation of the USOA.

82. The Louisiana Commission also argues that casualty loss ADIT should be excluded from the bandwidth calculation because of alleged inconsistencies in the testimony of Entergy's witnesses. The Louisiana Commission claims that the Commission's decision in Opinion No. 518 to include casualty loss ADIT in the bandwidth formula was based on Entergy's misportrayal of the source of the casualty loss ADIT. The Louisiana Commission contends that in the Opinion No. 518 proceeding, Entergy witness Bunting testified that casualty loss ADIT is related to the cost of repairing damage from storms, whereas in this proceeding, Entergy witness Roberts testified that capital expenditures to replace damaged property are not the cause of the casualty loss for tax purposes. However, we find that this apparent discrepancy is not

¹²⁵ Initial Decision, 148 FERC ¶ 63,015 at P 112.

material and that casualty loss ADIT should be included in the bandwidth formula calculation as determined in Opinion No. 518.¹²⁶

83. This order constitutes Commission approval for Entergy to transfer the property related casualty loss ADIT amounts from Account 283 to Account 282.

D. Whether Entergy Properly Accounted for the Amortization Period for the Waterford 3 Sale/leaseback

1. Summary of Issue

84. The parties dispute whether Entergy's past accounting for the Waterford 3 sale/leaseback amortization constitutes an error, and how this error should be corrected. Waterford 3 is a 1,158 MW nuclear power plant located in Taft, Louisiana. The plant was licensed by the Nuclear Regulatory Commission (NRC) in 1984 for a period of 40 years, and is eligible for a 20-year extension at the end of that period. In 1985, when Waterford 3 was placed into commercial operation, Entergy Louisiana's predecessor owned and operated the entire plant. In 1989, Entergy Louisiana's predecessor entered into an agreement to sell and leaseback a 9.3 percent interest in Waterford 3 (Waterford 3 sale/leaseback). The lease runs for 27.5 years, terminating in 2017.

85. Until 2005, Entergy Louisiana or its predecessor used a 40-year estimated service life to compute the Waterford 3 sale/leaseback plant amortization expense. In 2005, Entergy Louisiana changed the period used to compute the amortization expense from 40 years to the 27.5-year initial term of the lease. However, Entergy now asserts that the use of a 27.5 amortization period is incorrect, and that the correct amortization period, from 2005 on, is 60 years. Entergy asserts that the discrepancy constitutes an accounting error.

86. The Louisiana Commission argued at hearing that there are no accounting errors to correct; the Waterford 3 sale/leaseback was correctly depreciated from 2005-2009 pursuant to a 27.5-year amortization period and the sale/leaseback was appropriately treated as a capital lease for FERC accounting purposes during this time.

2. Initial Decision

87. The Presiding Judge found that Entergy's past accounting for the Waterford 3 sale/leaseback amortization cannot be construed as anything but an error given the fact that the previously-used 27.5-year amortization period was a clear violation of the orders

¹²⁶ Trial Staff Brief Opposing Exceptions at 37.

from both the Commission and the Louisiana Commission. Specifically, the Presiding Judge contended that the 1992 FERC Audit Report issued by the Commission's Chief Accountant mandated that the leased portion of Waterford 3 be amortized in the same fashion as the owned portion, which is over the 40-year NRC license term (1992 FERC Audit Report).¹²⁷ The Presiding Judge further contended that the 2005 Louisiana Commission Order instructed Entergy Louisiana for retail ratemaking purposes to amortize both the owned and leased portions of Waterford 3 over the 40-year term of the plant's NRC license and its 20-year extension period, a total of 60 years.¹²⁸ The Presiding Judge found that, based on these dual pronouncements, as affirmed by subsequent precedent,¹²⁹ the proper amortization period to be used for the Waterford 3 leased plant was 60 years. The Presiding Judge also noted that the bandwidth formula had always required the retail-regulator approved service life to be used -- that is, from 2005 on, the Louisiana Commission approved 60-year life.¹³⁰ Because Entergy used 27.5 years, the Presiding Judge found that this discrepancy generated a mistake (error) during past periods.

88. The Presiding Judge noted that, in an effort to explain why a 27.5-year lease life was used, the Louisiana Commission submitted a memorandum (Accounting Memorandum) written in 2010 by an Entergy employee who attempted to discern the reasons for the corporate decision to amortize Waterford 3 over the lease term. The Presiding Judge noted that none of Entergy's witnesses vouched for the Accounting Memorandum, nor did the Louisiana Commission submit any corroboration. The Presiding Judge found that the views expressed in the Accounting Memorandum were

¹²⁷ Initial Decision, 148 FERC ¶ 63,015 at P 215 (citing Ex. No. ESI-109 at 10 (Jan. 16, 1992) (delegated letter order) *La. Power & Light Co.*, Docket No. FA90-44-000) (stating that the "definition of depreciation does not indicate that a method of financing should alter the depreciation rate.")).

¹²⁸ *Id.* P 145 (citing Ex. No. ESI-108 at 9:14-20 (Kenney Dir. Test.); Ex. No. ESI-110 (LPSC Order No. U-20925, May 25, 2005)).

¹²⁹ *Id.* P 215 (citing Opinion No. 514, 137 FERC ¶ 61,029 at P 49 ("The formula mandates the use of depreciation rates reported in the FERC Form No. 1, reflecting, in part, state regulator-approved depreciation rates, which the Commission has adopted for use in the bandwidth formula.")); *see also* Ex. No. S-102 at 4 (Sammon).

¹³⁰ *Id.* P 164 (citing Ex. No. ESI-107 at 53, 55).

“confused and unintelligible,” as well as hearsay statements that “fall below normal standards of reliability and trustworthiness as substantive evidence.”¹³¹

89. The Presiding Judge stated that the zero-sum bandwidth formula works in such a way that, over the period from 2005 through 2009, Arkansas ratepayers were unjustly overcharged while Louisiana ratepayers received an undue windfall as a result of this error. The Presiding Judge noted that the rule against retroactive ratemaking only applies to *post hoc* modifications of the formula itself and does not apply to the annual inputs that update the formula and determine the yearly charge because they are not part of the filed rate.¹³² Citing *Public Service Electric and Gas Co.*, the Presiding Judge found that this proceeding is authorized to order corrections to what was, in essence, Entergy Louisiana’s use of the wrong inputs in the depreciation components of the bandwidth formula during 2005 through 2009, and to require refunds for those past errors through adjustments to current bandwidth receipts and payments.¹³³

90. The Presiding Judge finds that in addition to correcting the error prospectively, corrections must be made to Entergy Louisiana’s FERC Form No. 1s for test years 2005 through 2009 (retroactively). The Presiding Judge found that failure to correct prior test years would allow \$32 million in excessive amortization charges that Entergy Louisiana extracted from ratepayers from 2005 through 2009, and in particular that Entergy shifted away from Louisiana ratepayers and onto Arkansas ratepayers by means of prior bandwidth calculations.¹³⁴

91. The Presiding Judge rejected arguments made by the Louisiana Commission that the proposed corrections qualify as a collateral attack against prior bandwidth orders, and are thus barred by collateral estoppel. The Presiding Judge found that the Commission has made clear that this proceeding is authorized to require refunds for errors in past bandwidth proceedings.¹³⁵ The Presiding Judge added that the issue considered here was

¹³¹ *Id.* P 148.

¹³² *Id.* PP 165-166 (citing *Pub. Serv. Co. of N.H.*, 6 FERC ¶ 61,299, at 61,710 (1979), *Pub. Utils. Comm’n of Cal. v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001)).

¹³³ *Id.* PP 167-168 (citing *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 17 (2008)).

¹³⁴ *Id.* P 175.

¹³⁵ *Id.* P 189 (citing *Entergy Servs., Inc.*, 145 FERC ¶ 61,047 at PP 8, 10).

expressly narrowed in order to distinguish it from issues that were already decided in other proceedings.¹³⁶

92. The Presiding Judge noted that Waterford 3's retail regulator-approved 60-year service life was operative as of the beginning of the bandwidth remedy on June 1, 2005. The Presiding Judge found, therefore, that it is appropriate to include 2005 partial year data in using the 60-year service life to compute the amortization amounts for bandwidth purposes. Accordingly, the Presiding Judge rejected the Louisiana Commission's suggestion to begin the Waterford 3 amortization input to the bandwidth calculation later than that date.¹³⁷

93. The Presiding Judge also rejected the Louisiana Commission's suggestion to include the Waterford 3 Leased Plant Excess Amortization as "additional financing costs" in Account 427, Interest on Long-Term Debt, and include this amount in Entergy Louisiana's bandwidth calculation of the cost of capital that is represented by the Cost of Money (CM) variable of the formula.¹³⁸ The Presiding Judge found that nothing justifies perpetuating Entergy's mistake by calling Waterford 3 amortization "interest" and billing ratepayers for it.

94. The Presiding Judge also rejected the Louisiana Commission's contention that Entergy Louisiana treated the Waterford 3 sale/leaseback during the 2005-2009 period exclusively as a capital lease, rather than as a financing transaction, for Commission accounting purposes. The Presiding Judge explained that while the Waterford 3 sale/leaseback actually has the trappings of both a capital lease and a financing transaction, it is useless to characterize the excess amortization as one thing or the other because "[w]e know for certain, however, that the excess amortization is a plain old accounting mistake."¹³⁹ The Presiding Judge added that there is no question that both the Commission and the Louisiana Commission deemed the Waterford 3 sale/leaseback to be only a financing transaction and not a capital lease.

95. The Presiding Judge also rejected the Louisiana Commission's argument that Entergy's correction of the amortization of Waterford 3 is not a response to an accounting error, but is instead a change in accounting estimate that Financial Accounting Standards

¹³⁶ *Id.*

¹³⁷ *Id.* P 192.

¹³⁸ *Id.* P 206.

¹³⁹ *Id.* P 200.

Board (FASB) guidelines direct should be recorded only on a prospective basis. The Presiding Judge found that the Louisiana Commission's argument fails because a change in accounting estimate is different from a past mistake. The Presiding Judge found that a "change in accounting estimate" is defined by FASB as being a "change that has the effect of adjusting the carrying amount of an existing asset or future assets or liabilities."¹⁴⁰ The Presiding Judge explained that, accordingly, a "change in accounting estimate" alters future accounting treatment, not past accounting treatment.

96. The Presiding Judge ordered: (1) Entergy Louisiana to revise and refile its FERC Form No. 1s for test years 2005 through 2009 in accordance with the Initial Decision; (2) Entergy to revise and refile its Fourth Bandwidth Filing in accordance with the refiled test year 2009 FERC Form No. 1 and the finding in the Initial Decision; and (3) Entergy to calculate the revised transfer payments and receipts among the Operating Companies for test years 2005 through 2008, in accordance with the refiled FERC Form No. 1s for those years and the findings in the Initial Decision, so that the appropriate refunds can be made to correct the excess amortization Entergy Louisiana recorded for the Waterford 3 sale/leaseback expense in years 2005 through 2008. The Presiding Judge states that the Initial Decision, which addresses the Fourth Bandwidth proceeding, is not ordering that all of the findings pertaining to the prior bandwidth proceedings must be redone; however, it is ordering that the necessary calculations and refunds be made for those prior years, given that Commission precedent does not bar the recoveries that flow from the Waterford 3 sale/leaseback issue raised in this bandwidth proceeding.¹⁴¹

3. Briefs on Exceptions

97. The Louisiana Commission argues that the Presiding Judge erred in concluding that Entergy's accounting for the Waterford 3 amortization, prior to 2010, constitutes an error. The Louisiana Commission contends that the accounting Entergy uses for the sale/leaseback at FERC treats it as a capital lease. The Louisiana Commission further contends that Account 404 requires leases be amortized over the period of benefit that the lease provides the utility. The Louisiana Commission argues that, absent a bargain purchase option, there was no basis to assume that the lease will extend any longer than the 27.5 year lease term, and certainly not 60 years.¹⁴² Therefore, the Louisiana

¹⁴⁰ *Id.* P 212 (citing Ex. No. ESI-16 at 2).

¹⁴¹ *Id.* P 221.

¹⁴² Louisiana Commission Brief on Exceptions at 20 (citing Ex. No. LC-169 at 21-22, § 13(c)).

Commission argues that the period of benefit to the utility (and the proper amortization period) is the 27.5 year lease term.

98. The Louisiana Commission also argues that the Presiding Judge erred by reopening past bandwidth cases and adjusting inputs already reviewed and approved by the Commission. The Louisiana Commission argues that the Presiding Judge's decision is an impermissible collateral attack on final Commission orders and constitutes retroactive ratemaking.

99. The Louisiana Commission asserts that there has never been any question that accounting issues may be contested in bandwidth cases. The Louisiana Commission contends that Trial Staff did not challenge Entergy's accounting for the Waterford 3 sale/leaseback amortization in 2006, 2007, or 2008,¹⁴³ and that the Commission has issued final orders approving the rates reflected in Entergy's filings, which included the 27.5-year amortization of the capital lease.¹⁴⁴ The Louisiana Commission further contends that once a rate-related ruling of the Commission becomes final, a party may not attempt to re-litigate the issues that could have been raised as to those rates in a subsequent proceeding.¹⁴⁵

100. The Louisiana Commission contends that the rule against retroactive ratemaking prevents the Commission from reopening rates that had prior Commission approval.¹⁴⁶ The Louisiana Commission contends that, in this case, the change to Entergy's accounting to make up the alleged underreporting of amortization for past years necessarily changes rate to make up the past years. The Louisiana Commission states that this is classic retroactive ratemaking.

101. The Louisiana Commission also contends that the Presiding Judge erred by ordering retroactive adjustments because they conflict with Opinion No. 519, in which the Commission held that it would not make retroactive changes to past depreciation inputs even if they were found unjust and unreasonable.¹⁴⁷ The Louisiana Commission

¹⁴³ *Id.* at 23-25.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 24-26 (citing *People of the State of Calif. ex rel. Brown v. Powerex Corp.*, 139 FERC ¶ 61,210, at P 15 and n.39 (2012)).

¹⁴⁶ *Id.* at 27-28 (citing *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 578 n.8 (1981)).

¹⁴⁷ *Id.* at 29 (citing *Entergy Servs., Inc. v. Entergy Corp.*, Opinion No. 519, 139 FERC ¶ 61,107, at P 26 (2012)).

argues that while that ruling applied to depreciation, in principle it applies to amortization as well.

102. The Louisiana Commission argues that for bandwidth formula calculations prior to 2010, Entergy's accounting for the capital lease was not an error. The Louisiana Commission contends that Entergy's direct testimony claim, that an error permitted a retroactive correction to balance sheet accounts, was based on lease accounting, that Entergy concluded it would exercise a "bargain purchase option" to repurchase Waterford 3.¹⁴⁸ The Louisiana Commission contends, however, that there is no bargain purchase option in the lease and that the lease provides for a purchase at fair market value. The Louisiana Commission further contends that in rebuttal Entergy changed its theory and asserted that the sale/leaseback is not a capital lease, but instead is a financing transaction.¹⁴⁹ The Louisiana Commission contends that Entergy chose to report the sale/leaseback at FERC as a capital lease, the Commission accepted that accounting for the bandwidth formula, and Entergy has recorded the asset in Account 101.1, Capital Leases, for two decades.

103. The Louisiana Commission contends that, when Entergy investigated the basis for its decision for adopting the amortization period of 27.5 years, it produced the Accounting Memorandum that was prepared by the manager of accounting policy in March 2010, and was later "[u]pdated" for this litigation when requested in discovery.¹⁵⁰ The Louisiana Commission contends that the Accounting Memorandum demonstrates that Entergy's basis for changing the Waterford 3 amortization period from 27.5 years to 60 years was that the sale/leaseback contained a bargain purchase option. The Louisiana Commission argues that, rather than recognizing that Entergy's entire reason for changing the balance sheet accounts retroactively was an erroneous theory, the Presiding Judge dismissed the Accounting Memorandum as hearsay and accorded it no weight, even though he relied on the same memorandum elsewhere as the basis for the error.¹⁵¹

104. The Louisiana Commission also contends that the Presiding Judge's dismissal of the Accounting Memorandum as inadmissible hearsay reflects a fundamental misunderstanding of the hearsay rule, as enacted in the Federal Rules of Evidence. The Louisiana Commission argues that no party in the case objected that the memorandum

¹⁴⁸ *Id.* at 30 (citing Ex. No. S-108 at 12).

¹⁴⁹ *Id.* (citing Ex. No. ESI-112 at 3-4).

¹⁵⁰ *Id.* at 32 (citing Ex. No. S-111; Ex. No. LC-167; Tr. at 299).

¹⁵¹ *Id.* at 35 (citing Initial Decision, 148 FERC ¶ 63,015 at P 213).

was inadmissible hearsay and that no party suggested it was inadmissible. The Louisiana Commission further argues that the memorandum was attached to Trial Staff's testimony as Ex. No. S-111, as well as admitted as Ex. No. LC-167.

105. The Louisiana Commission contends that the Accounting Memorandum meets the Federal Rules of Evidence's definition of an Opposing Party's Statement, and that the treatment of Opposing Party Statements as admissible rather than hearsay reflects the longstanding recognition in the common law of their value as evidence.¹⁵² The Louisiana Commission also argues that admissions such as Opposing Party's Statements have always been freely admissible as a necessary corollary to the adversary system.¹⁵³

106. The Louisiana Commission also contends that the Presiding Judge's hearsay ruling also misses the point of the exhibit, which the Louisiana Commission contends was not being offered to prove the "truth of the matter asserted," but to show that Entergy's premise for declaring a past error was itself entirely erroneous. The Louisiana Commission contends that the Accounting Memorandum was not offered for its truth, but to prove the actual content of the documentation that supported the decision.¹⁵⁴

107. The Louisiana Commission also contends that the Presiding Judge erred by, after dismissing the Accounting Memorandum as hearsay, relying on the same memorandum to find an accounting error. The Louisiana Commission contends that while the Presiding Judge determined that "[t]here is no question that both FERC and Louisiana Commission deemed the Waterford 3 sale/leaseback to be only a financing and not a capital lease," these assertions cannot be reconciled with the actual Commission accounting.¹⁵⁵ The Louisiana Commission contends that Entergy has treated the sale/leaseback as a capital lease in FERC Form No. 1 reports since 1994. The Louisiana Commission contends that Entergy has recorded the amortization in Account 404. The Louisiana Commission contends that the Commission has accepted Entergy's accounting for the asset as a capital lease. The Louisiana Commission also contends that, in 2007, Entergy filed for approval of including the asset in the bandwidth formula as a capital lease, and that the Commission accepted the filing, recognizing that the asset was the "Waterford 3 nuclear

¹⁵² *Id.* at 36-37 (citing Fed. R. Evid. 801(d)(2), Adv. Comm. Note.).

¹⁵³ *Id.* at 37 (citing McCormick on Evidence at 448 (West Hornbook Series, 1992) (footnotes omitted)).

¹⁵⁴ *Id.* at 37-38.

¹⁵⁵ *Id.* at 39 (citing Initial Decision, 148 FERC ¶ 63,015 at P 209 (emphasis in original)).

plant subject to the sale/leaseback...”¹⁵⁶ The Louisiana Commission contends that at that time, Entergy amortized the capital lease over the 27.5 year lease life. The Louisiana Commission continues that if the Commission had treated the capital lease as a “financing,” an amendment to put it into the bandwidth formula in 2007 would have been unnecessary, and that Louisiana ratepayers would have received credit for the costs of the asset prior to the amendment.¹⁵⁷

108. The Louisiana Commission also contends that a determination that the sale/leaseback is not a capital lease would mean that the asset has been recorded in the wrong account for decades, and it would also mean that the asset should always have been in Account 101, Electric Plant in Service, and the amortization as depreciation in Account 403, Depreciation Expense, so the sale/leaseback should have been in the bandwidth formula for the June-December 2005 test period.

109. The Louisiana Commission also argues that U.S. Securities and Exchange Commission (SEC) accounting requirements do not control how costs are accounted for at the Commission. The Louisiana Commission contends that Entergy chose to report the sale/leaseback at the Commission as a capital lease, and the Commission accepted that accounting for the bandwidth formula.¹⁵⁸ The Louisiana Commission contends that while the Initial Decision also relied on the 1992 FERC Audit Report, which directed that the Waterford 3 sale/leaseback be amortized over the service life of the property, the audit treated the asset as a financing, not a capital lease, and referred to the annual expensing of the asset as “depreciation.”¹⁵⁹ The Louisiana Commission avers that the assumptions on which that report was based changed over time, as Entergy recorded the sale/leaseback as a capital lease. Moreover, the Louisiana Commission asserts that the 23-year old report directed depreciating the property over its “estimated service life,” which is not 60 years.¹⁶⁰

110. The Louisiana Commission also contends that the Presiding Judge erred by suggesting that the Louisiana Commission somehow directed Entergy to report the

¹⁵⁶ *Id.* at 40 (citing *Entergy Servs., Inc.*, 119 FERC ¶ 61,193, at P 7 (2007)).

¹⁵⁷ *Id.* at 41.

¹⁵⁸ *Id.* at 42.

¹⁵⁹ *Id.* (citing Ex. No. S-113 at 8).

¹⁶⁰ *Id.*

transaction as a financing transaction.¹⁶¹ The Louisiana Commission asserts that its approval of the sale/leaseback transaction only dealt with how the asset would be treated for retail ratemaking, and that the Louisiana Commission has never directed how Entergy should account for the sale/leaseback or, more specifically, how it should account for the asset at the Commission.¹⁶²

111. The Louisiana Commission also argues that Entergy could not have reasonably determined in 2005 that it would have an economic incentive to reacquire the leased plant at the end of the lease term. The Louisiana Commission explains that Waterford 3 had exhibited significant degradation as of 2005 and required huge expenditures that Entergy had to justify before the Louisiana Commission. The Louisiana Commission argues that since a formal order approving the expenditures was not issued until May 2010, it would have been unreasonable for Entergy to assume that the Commission's accounting rules permitted using a 60-year service life for Waterford 3 prior to 2010.¹⁶³

112. The Louisiana Commission contends that the Presiding Judge erred by making retroactive adjustments to a change in accounting estimate which can only be made on a prospective basis. The Louisiana Commission asserts that a change in depreciation or amortization of an asset, under Financial Accounting Standards, is a "Change in Accounting Estimate" and is supposed to be recorded only on a prospective basis. The Louisiana Commission contends the change in accounting estimate occurred in 2010 and therefore, even if Entergy's top-side entry were accepted, the change should have no effect prior to 2009.¹⁶⁴ The Louisiana Commission argues that Entergy had a lengthy evaluation that led to a change in assumption as to whether it would exercise the renewal option for the lease, and that this is a classic example of a process leading to a change in estimate. The Louisiana Commission maintains that later, in rebuttal testimony, Entergy changed to a new assumption in conflict with the Commission accounting for the lease. The Louisiana Commission argues that this type of extended analysis is made to support a change in accounting estimate; it is not the identification of an error, and therefore, it must be prospective.

113. The Louisiana Commission also contends that, even if Entergy's prior accounting was an error, the Presiding Judge erred because Commission regulations preclude

¹⁶¹ *Id.* at 43 (citing Initial Decision, 148 FERC ¶ 63,015 at P 209).

¹⁶² *Id.*

¹⁶³ *Id.* at 44 (citing Ex. No. LC-144 at 13).

¹⁶⁴ *Id.*

recording a corrective change in income accounts. The Louisiana Commission asserts that USOA General Instruction 7.1A precludes including adjustments to correct errors in prior period financial statements in income accounts for the current year.¹⁶⁵ The Louisiana Commission also claims that under GAAP, a change should not be made to prior period financial statements if it is not material.¹⁶⁶ The Louisiana Commission argues that because Entergy recorded entries to establish a regulatory asset for the difference between its retail and Commission accounting, there was no material effect on financial statements. The Louisiana Commission contends that while the Presiding Judge agreed that accounting changes to correct an error for a prior period cannot be made to income accounts, the Presiding Judge erred by attempting to solve the problem through unlawful retroactive ratemaking. The Louisiana Commission asserts that, despite the Presiding Judge's assertion that the Louisiana Commission suggested "a modification to Staff's methodology" to solve this problem, it never suggested that the Presiding Judge could retroactively recalculate Commission-approved rates. The Louisiana Commission states that it argued precisely the opposite point – that retroactive corrections would be unlawful.¹⁶⁷

114. The Louisiana Commission also argues that the Presiding Judge erred by accepting Entergy's use of a top-side entry. The Louisiana Commission contends that the decision to change the accounting in 2010 was made after the issuance of Entergy's financial statements, and at that point could not be made through a top-side entry. The Louisiana Commission avers that guidelines issued by the Center for Audit Quality defined "top-side" entries and specify that they must be made "before the financial statements are prepared."¹⁶⁸ The Louisiana Commission also asserts that footnote 1 to the bandwidth formula requires the use of "actual amounts on the Company's books for the twelve months ended December 31 of the previous year as reported in the FERC Form 1..."¹⁶⁹ The Louisiana Commission argues that Entergy's top-side entry creates a conflict between the books and FERC Form No. 1, and therefore the change should be rejected.

¹⁶⁵ *Id.* at 50-51 (citing USOA General Instruction 7.1A, 18 C.F.R. Part 101 (2013)).

¹⁶⁶ *Id.* at 52 (citing Ex. No. ESI-116 at 6, ASC 250-10-45-27).

¹⁶⁷ *Id.* at 53.

¹⁶⁸ *Id.* at 54-55 (citing Ex. No. ESI-120 at 12).

¹⁶⁹ *Id.* at 55-56 (citing Ex. No. ESI-107 at 52 n.1).

115. The Louisiana Commission also contends that the Presiding Judge erred by failing to require an adjustment for the fact that the capital lease was not in the bandwidth formula in 2005. The Louisiana Commission argues that it was incorporated in 2007, in which 2006 test year data were used, and therefore a correction that alters bandwidth payments based on a change to the 2005 amortization expense is unjust and unreasonable.¹⁷⁰

116. The Louisiana Commission argues that, if the 60-year service life is to be used to compute amortization amounts, then the Presiding Judge erred by failing to credit Entergy Louisiana for the higher rate base it would have had in each prior year if its amortization expense were lower, and fails to include the additional interest expense in the bandwidth calculation that would be required to recognize the larger difference between the lease life and the amortization life. The Louisiana Commission contends that the lease will still end in 27.5 years and that Entergy Louisiana needs to make provision for any unamortized investment that will exist at the end of the term. The Louisiana Commission argues that any reduction of the amortization expense necessarily produces an increased financing cost that needs to be included in the bandwidth formula.¹⁷¹ The Louisiana Commission contends that the annual reduction in amortization expense of more than \$8 million, beginning in 2005, means that the net investment at the end of the lease term will be greater by about \$100 million.¹⁷² The Louisiana Commission asserts that if Entergy Louisiana does not provide for that potential loss, it may incur a write-off at that time. The Louisiana Commission argues that in accordance with its own historic practice related to the capital lease, and the FERC audit requirement, an additional interest cost should be charged to Account 427 to provide for that potential loss.¹⁷³ The Louisiana Commission contends that even though the bandwidth formula sets no standard for how the cost of a debt in the CM variable is to be computed, the Presiding Judge denied reflecting the “bogus entry,” without explaining how Entergy can use a 60-year life to amortize a 27.5 year lease without recording a cost for potential loss on its books.¹⁷⁴

¹⁷⁰ *Id.* at 56-58.

¹⁷¹ *Id.* at 59 (citing Ex. No. LC-131 at 21).

¹⁷² *Id.* (citing Ex. No. LC-169 at 4-5 (lease terminates in 2017)).

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 61 (citing Initial Decision, 148 FERC ¶ 63,015 at PP 204-206).

117. Entergy takes exception to the Initial Decision in a limited manner to correct what it claims are factual misstatements in paragraphs 169, 199, and 200, arguing that these paragraphs should be rejected by the Commission.¹⁷⁵ Specifically, Entergy contends that the Presiding Judge implies that Entergy Louisiana was collecting amortization expense from its retail customers based on an amortization period that was something other than the Louisiana Commission-approved 60-year period. Entergy asserts that this is not the case. Rather, Entergy explains that Entergy Louisiana's excess amortization recorded on its books and records from 2005 through 2008 shifted *bandwidth* dollars from Entergy Arkansas customers to Entergy Louisiana customers. Entergy states that in essence, Entergy Louisiana's retail customers were paying retail rates based on a 60-year period, while bandwidth production costs were based on a shorter period. Entergy argues that it is this undue windfall to the customers of Entergy Louisiana that the Initial Decision's remedy is designed to address.¹⁷⁶

118. Regarding paragraphs 199 and 200, Entergy argues that the Presiding Judge misstates and improperly conflates the amount being properly recorded in Account 427 to address the potential end-of-lease liability and the *additional* amounts that the Louisiana Commission advocates being recorded to this account and reflected in the CM bandwidth variable.¹⁷⁷ Entergy asserts that no party contests the fact that, since the inception of the Waterford 3 sale/leaseback, Entergy Louisiana has been accruing a liability in Account 427 to reflect the amount of money that Entergy Louisiana may be obligated to spend at the end of the lease in order to comply with the Louisiana Commission's order that replacement power and energy be billed to Louisiana Commission-jurisdictional customers at no higher rates than if the sale/leaseback never occurred. Entergy asserts that the Louisiana Commission is in effect advocating that, as a result of the correction to the amortization period associated with the leased portion of Waterford 3, the amount recorded in Account 427 should be *higher* and that this incremental amount should be reflected in the CM bandwidth variable.¹⁷⁸

119. Entergy asserts also that while the Presiding Judge states that Entergy "presented no credible evidence that directly links the Waterford 3 Leased Plant Excess Amortization" to the potential end-of-lease liability, Entergy never attempted to establish such a link and in fact asserted the opposite. Entergy also asserts that while the Presiding

¹⁷⁵ Entergy Brief on Exceptions at 12.

¹⁷⁶ *Id.* at 12.

¹⁷⁷ *Id.* at 13.

¹⁷⁸ *Id.* at 12-13.

Judge states that Entergy has given no reason why the excess amortization erroneously recorded in 2005 through 2008 can or will cover future end-of-lease contingencies, Entergy agrees that there is no reason. That is, Entergy states that the amounts that have been consistently accrued in Account 427 since the inception of the lease are designed to address those future end-of-lease contingencies, while the amounts erroneously amortized to Account 404 in 2005 through 2008 are not related to the potential end-of-lease liability.

4. Briefs Opposing Exceptions

120. Entergy, the Arkansas Commission, and Trial Staff all argue that the Presiding Judge ruled correctly that Entergy has been required to use a 60-year amortization period since 2005. The Arkansas Commission argues that a 60-year amortization period has long been accepted and applied by the Louisiana Commission itself at retail in Louisiana for both the 9.3 percent Waterford 3 sale/leaseback share and the remaining 90.7 percent share of Waterford 3. The Arkansas Commission contends that, by advocating for its 27.5 years solution here, the Louisiana Commission attempts to hide from its own ratemaking/accounting practice at retail.¹⁷⁹ Entergy adds that the Commission held in the Second Bandwidth proceeding, and the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) upheld,¹⁸⁰ that the bandwidth calculation requires the use of depreciation and amortization expense as recorded in Accounts 403 and 404 and reported in the FERC Form No. 1, which includes depreciation and amortization expenses approved by retail regulators.¹⁸¹

121. Regarding the Louisiana Commission's claim that the Presiding Judge erred in finding that the Waterford 3 sale/leaseback is really a financing and not a capital lease, both the Arkansas Commission and Entergy contend that this claim is at odds with admissions by the Louisiana Commission's own counsel, GAAP guidance, and the opinion of the Commission's Chief Accountant.¹⁸² Regarding GAAP guidance, Entergy

¹⁷⁹ Arkansas Commission Brief Opposing Exceptions at 15.

¹⁸⁰ Entergy Brief Opposing Exceptions at 13 (citing *La. Pub. Serv. Comm'n v. FERC*, 761 F.3d 540, 551-55 (5th Cir. 2014) (*Louisiana PSC II*).

¹⁸¹ *Id.* (citing *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029, at P 49 (2011)).

¹⁸² Arkansas Commission Brief Opposing Exceptions at 17-20; Entergy Brief Opposing Exceptions at 16.

and the Arkansas Commission both point to Accounting Standards Codification (ASC) 840-40-25-4, which states:

If the seller-lessee retains, through a leaseback, substantially all of the benefits and risks incident to the ownership of the property sold, the sale-leaseback transaction is merely a financing.

122. Entergy and the Arkansas Commission contend that Entergy Louisiana has retained substantially all of the benefits and risks incident to the ownership of the property, given that Entergy Louisiana continues to take the output of 100 percent of the plant, continues to operate 100 percent of the plant, and continues to be responsible for 100 percent of the future decommissioning of the plant.

123. Entergy also notes that the Waterford 3 sale/leaseback has been reflected as a capital lease in Account 101.1 on Entergy Louisiana's FERC Form No. 1 only because the FERC Form No. 1 does not provide a line to capture a transaction of this nature. Entergy contends that the FERC Form No. 1 does not afford companies the opportunity to add or modify account titles, and therefore Entergy included the Waterford 3 sale/leaseback in "Property under capital lease" with a footnote.¹⁸³ However, Entergy contends that in all other respects, the refinanced portion of the Waterford 3 facility is identified as a refinancing in the FERC Form No. 1.

124. Entergy also notes that the liability associated with the Waterford 3 sale/leaseback is recorded and reported in Account 224, [Other] Long-term Debt, in the FERC Form No. 1. Entergy contends that if the Waterford 3 sale/leaseback were accounted for as a capital lease, that liability would be recorded in Account 227, Obligations Under Capital Lease – Noncurrent.¹⁸⁴

125. Entergy contends that there is no support for the Louisiana Commission's change-in-estimate argument,¹⁸⁵ and that there can be no mistake that the Louisiana Commission believed in 2005 and continues to believe that the expected service life of Waterford 3 is 60 years. Entergy argues that, as noted by Louisiana Commission witness Kollen, Entergy Louisiana actively opposed the extension of the Waterford 3 expected service

¹⁸³ Entergy Brief Opposing Exceptions at 18 (citing Tr. 250 (line 1) (Kenney Cross)).

¹⁸⁴ *Id.* at 18 (citing Tr. 250 (lines 11-14) (Kenney Cross)).

¹⁸⁵ *Id.* at 19.

life to 60 years,¹⁸⁶ but the Louisiana Commission believed it was just and reasonable to order the Waterford 3 facility to be depreciated over a 60-year estimated service life in 2005.¹⁸⁷ Entergy avers that it is disingenuous for the Louisiana Commission to now state that only in 2010 could the expected service life of Waterford 3 be 60 years.

126. Trial Staff contends that the crux of the Louisiana Commission's argument is that Entergy engaged in a change in accounting estimate which should be recorded on a prospective basis, and, therefore, the Initial Decision engaged in an impermissible "retroactive" accounting correction. Trial Staff asserts that the Initial Decision points out what is readily apparent from the record: "For ratemaking purposes, a retroactive change is needed in order to correct a long-standing mistake" and a "top-side entry" is appropriate here whereas a "change in accounting estimate" (which is prospective) is not.¹⁸⁸

127. With regard to the Louisiana Commission's argument that Entergy Louisiana was precluded from correcting its 2009 books and records after its 2009 SEC Form 10-K was issued, Entergy and the Arkansas Commission argue that the Initial Decision correctly finds that Entergy's top-side entry was used appropriately. Entergy and the Arkansas Commission contend that GAAP guidance (specifically ASC 855-10-25-4) expressly contemplates that an entity may make adjusting entries to its general ledger to recognize events occurring between the time the financial statements were issued and the time the financial statements are reissued to a regulatory agency if "required by GAAP or regulatory requirements,"¹⁸⁹ and that this is exactly what happened with regard to the correction of the Waterford 3 sale/leaseback expense.¹⁹⁰

128. The Arkansas Commission also argues that the Commission's Chief Accountant faced a similar situation in his 1992 audit of the Waterford 3 sale/leaseback, where he

¹⁸⁶ *Id.* at 20 (citing Tr. 386 (lines 14-17) (Kollen Cross)).

¹⁸⁷ *Id.* at 17 (citing Tr. 386 (lines 18-21) (Kollen Cross)).

¹⁸⁸ Trial Staff Brief Opposing Exceptions at 33 (citing Initial Decision, 148 FERC ¶ 63,015 at P 218).

¹⁸⁹ Arkansas Commission Brief Opposing Exceptions at 21 and Entergy Brief Opposing Exceptions at 23 both cite Ex. No. ESI-117 at 5 (Financial Accounting Standards Board, Topic 855 Subsequent Events).

¹⁹⁰ Arkansas Commission Brief Opposing Exceptions at 21 and Entergy Brief Opposing Exceptions at 23, both cite Ex. No. ESI-115 at 6 (Kenney Rebuttal).

disagreed with the manner in which Louisiana Power & Light Company (LP&L) (predecessor to Entergy Louisiana) recorded the “additional financing costs.” The Arkansas Commission contends that when the Commission ruled that the financing costs should have been recorded in Accounts 427 and 253 rather than Accounts 404 and 111, Accumulated Provision for Amortization of Electric Utility Plant, the Chief Accountant ordered the correcting entry (Entry No. 2) to reclassify the financing costs between Accounts 111 and 253 for the financing costs recorded in 1989 and did not require LP&L to make an equal and offsetting entry to Account 404.¹⁹¹

129. Regarding the Louisiana Commission’s suggestion that the excess amortization that Entergy Louisiana accrues in Account 427, Interest on Long-term Debt, should be reflected in the CM variable of the bandwidth formula, Trial Staff contends that the Presiding Judge correctly addressed this issue.¹⁹² Trial Staff notes that the Presiding Judge points out that there is no standard for how the cost of debt in the CM variable is to be computed, and that there is “[n]othing in the record that demonstrates that the Waterford 3 leased plant excess amortization is supposed to replace or supplement the proxy that [Entergy Louisiana] chose to use – at [the Louisiana Commission]’s behest – for the CM variable.” Trial Staff contends that the Louisiana Commission has not demonstrated otherwise.¹⁹³

130. Entergy supports the Initial Decision’s determination that the Accounting Memorandum is irrelevant and harmless. Entergy contends that the Presiding Judge does not exclude the draft memorandum from evidence as inadmissible hearsay. Entergy argues that the Accounting Memorandum was admitted as Exhibit No. LC-167. Entergy further contends that the Initial Decision makes clear that the Presiding Judge considered the Accounting Memorandum.¹⁹⁴ Trial Staff agrees that the Presiding Judge does not reject the Accounting Memorandum because it is hearsay.¹⁹⁵ Trial Staff contends that regardless of whether the Accounting Memorandum is characterized as hearsay, its fundamental problem is that, as explained by the Presiding Judge, the “views in the

¹⁹¹ Arkansas Commission Brief Opposing Exceptions at 21 (citing Ex. No. ESI-109 at 5 and 11).

¹⁹² Trial Staff Brief Opposing Exceptions at 33-34 (citing Initial Decision, 148 FERC ¶ 63,015 at PP 197-206).

¹⁹³ *Id.*

¹⁹⁴ Entergy Brief Opposing Exceptions at 21.

¹⁹⁵ Trial Staff Brief Opposing Exceptions at 23.

memo appear on their face to be confused and unintelligible” and “fall below normal standards of reliability and trustworthiness as substantive evidence.”¹⁹⁶

131. The Louisiana Commission contends that Entergy’s Brief on Exception contains several factual misstatements regarding its Waterford 3 capital lease accounting and ratemaking. The Louisiana Commission contends that the record established that Entergy properly accounted for the Waterford 3 capital lease as a capital lease for Commission purposes. The Louisiana Commission argues that Entergy decided to change its approach and amortize the capital lease over the longer 60-year period on the basis of an erroneous premise – that the lease contains a bargain purchase option. The Louisiana Commission contends that when this premise proved false, however, Entergy changed its entire rationale, deeming the accounting as an error.¹⁹⁷ The Louisiana Commission asserts that Entergy did so to minimize bandwidth payments to Entergy Louisiana.

132. The Louisiana Commission contends that Entergy’s claim that Paragraph 169 of the Initial Decision contains a factual error and that Entergy Louisiana’s ratepayers received an undue windfall through the bandwidth formula as a result of the 27.5-year amortization period is a misrepresentation that is belied by the fact that Entergy’s own accounting used the 27.5-year lease period to amortize the asset for Commission purposes. The Louisiana Commission argues that any undue windfall was Entergy’s own creation, and that in any event Entergy Louisiana’s customers have received no windfall.¹⁹⁸

133. The Louisiana Commission asserts that Louisiana retail ratemaking assumes that there is no capital lease, and Louisiana requires the amortization of the asset over the expected life of the asset, and therefore, at retail, Entergy Louisiana amortizes the asset over 60 years. The Louisiana Commission also contends that, under Entergy’s capital lease accounting at the Commission, at the end of the 27.5-year lease term there will be no more capital lease to be included in wholesale rates. The Louisiana Commission claims, however, that after the end of the lease, Louisiana ratepayers will still have the remaining investment attributable to the leased plant to support with a return and associated depreciation expense. The Louisiana Commission argues that requiring the amortization of the leased plant over 60 years for the bandwidth has the effect of imposing on Commission accounting the Louisiana retail fiction that there was no

¹⁹⁶ *Id.* at 24 (citing Initial Decision, 148 FERC ¶ 63,015 at P 148).

¹⁹⁷ Louisiana Commission Brief Opposing Exceptions at 11-12 (citing Tr. at 310 (Kenney)).

¹⁹⁸ *Id.* at 15.

sale/leaseback transaction. The Louisiana Commission contends that the Commission's capital lease accounting reflects the reality that there was a sale of the asset that was leased back to Entergy under a capital lease.¹⁹⁹

134. The Louisiana Commission also contends that Entergy did not include the capital lease in the bandwidth tariff until 2007, and thus the capital lease was not included as a cost of Entergy Louisiana in the bandwidth formula for 2005. The Louisiana Commission argues that if the Commission adopts the retroactive changes recommended by the Initial Decision, the capital lease should be included for 2005 with the retail amortization and all other costs.²⁰⁰

135. The Louisiana Commission avers that Entergy's claims regarding errors in paragraphs 199 and 200, that the entries to Account 427 are not related to the difference between the capital lease term and the period Entergy used to amortize the asset, conflict with the Commission's Chief Accountant's audit findings,²⁰¹ as well as Entergy's own prior explanation of what the amounts recorded in Account 427 represent.²⁰² The Louisiana Commission contends that for 17 years Entergy has reflected any difference between the amortization it records and amortization according to the lease life as interest in Account 427, and that, even under Entergy's latest description of the character of the amounts recorded in Account 427, those amounts *are* related to the difference in amortization periods.²⁰³

136. With regard to the proposed remedy, Entergy argues that, from a ratemaking perspective, the Presiding Judge's adopted solution will remedy the accounting error that was made.²⁰⁴ Entergy further contends that the Initial Decision correctly identifies the equity concerns that support the calculation in stating, "Arkansas ratepayers were

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 15-16.

²⁰¹ *Id.* at 16 (citing Ex. No. ESI-109).

²⁰² *Id.* (citing Ex. No. LC-166 at 2).

²⁰³ *Id.* at 17 (emphasis in original).

²⁰⁴ Entergy Brief Opposing Exceptions at 13.

unjustly overcharged while Louisiana ratepayers received an undue windfall as a result of this error. That state of affairs is inherently unjust and unreasonable.”²⁰⁵

137. Trial Staff similarly argues that the bandwidth payments and receipts among the Operating Companies were based on incorrect accounting, and therefore, rough production cost equalization was not maintained among the Operating Companies from partial year 2005 (effective as of the beginning of the bandwidth remedy on June 1, 2005) through 2008. Trial Staff contends that the Presiding Judge is correct in saying that “[i]t cannot be the right answer, then, to just do nothing and perpetuate Entergy’s mistake by leaving things the way they are, as Louisiana Commission advocates.”²⁰⁶ Trial Staff asserts that, in effect, the Louisiana Commission is seeking to limit the right of parties, Trial Staff, and the Commission to correct errors to the bandwidth inputs or implementation to a prospective basis. Trial Staff argues that the bandwidth formula contains no such limitations and for the Louisiana Commission to accomplish such an outcome, the Louisiana Commission’s remedy is to file an FPA section 206 complaint to change the bandwidth formula.

138. With regard to the Louisiana Commission’s collateral estoppel argument, Trial Staff asserts that the Initial Decision reaches the correct conclusion that the Louisiana Commission has already given assurances that it and the other parties do not view this proceeding as an opportunity for a collateral attack on any prior bandwidth case.²⁰⁷ Trial Staff, Entergy, and the Arkansas Commission all contend that the question of the right amortization period for the sale/leaseback share of Waterford 3 has not been litigated and decided in any bandwidth proceeding before now, and therefore no collateral estoppel argument can apply.²⁰⁸ Trial Staff also notes that the logical extension of the Louisiana Commission’s collateral estoppel argument is that no accounting issues may be contested where Entergy used the same methodology in any prior bandwidth filing in which the Commission has issued a final order.

²⁰⁵ *Id.* (quoting Initial Decision, 148 FERC ¶ 63,015 at P 170).

²⁰⁶ Trial Staff Brief Opposing Exceptions at 34-35 (citing Initial Decision, 148 FERC ¶ 63,015 at P 170).

²⁰⁷ Entergy Brief Opposing Exceptions at 26-27 (citing Initial Decision, 148 FERC ¶ 63,015 at P 189).

²⁰⁸ Arkansas Commission Brief on Exceptions at 24; Trial Staff Brief on Exceptions at 26-27; Entergy Brief on Exceptions at 31-32.

139. Trial Staff contends that such an outcome is contrary to Commission precedent on formula rates. As the Initial Decision discusses, the Commission has repeatedly affirmed that errors can be challenged when discovered.²⁰⁹ Trial Staff also notes that the instant proceeding is the first forum in which Trial Staff has had the opportunity to address: (1) Entergy Louisiana's "top-side entries" adjustments to the 2009 general ledger and FERC Form No. 1 for 2009 which applied the 60-year service life to the Waterford 3 sale/leaseback; and (2) Entergy's use of this adjusted 2009 FERC Form No. 1 to calculate the bandwidth payments as set out in the 2010 bandwidth filing, and that, on this basis alone, the Louisiana Commission's collateral estoppel theory should be rejected.²¹⁰ Moreover, Trial Staff argues that it would be a meaningless administrative process for the Commission to expressly permit Trial Staff and the parties to litigate new issues in this annual bandwidth proceeding, but then deny the Presiding Judge's remedy addressing these new issues based on the Louisiana Commission's collateral estoppel theory.²¹¹

140. With regard to the Louisiana Commission's claim that Commission regulations bar retroactive adjustment to an income item, the Arkansas Commission contends that the only regulation that the Louisiana Commission cites for support is General Instruction 7.1A of the USOA and that that regulation excludes from the determination of net income for the current year correction of an error in the financial statements of a prior year. The Arkansas Commission states that the instruction says nothing regarding changes in past years, i.e., correction to annual bandwidth calculations for 2005-2008. Therefore, the Arkansas Commission argues that General Instruction 7.1A is not relevant to or supportive of the Louisiana Commission's claim. Also, the Arkansas Commission argues that the Presiding Judge ordered corrections to FERC Form No. 1s filed by Entergy Louisiana for 2005 through 2008, and that General Instruction 7.1A does not expressly bar corrections to past FERC Form No. 1 filings by a utility.²¹²

141. Entergy contends that the Louisiana Commission mischaracterizes Entergy witness Kenney's testimony in support of the argument that even if Entergy's prior accounting was in error, the USOA precludes recording a corrective change in income statements. Entergy asserts that in the testimony quoted by the Louisiana Commission, Kenney was addressing the recommendation of Trial Staff witness Nicholas, not the

²⁰⁹ Trial Staff Brief Opposing Exceptions at 27 (citing Initial Decision, 148 FERC ¶ 63,015 at PP 216-217).

²¹⁰ Trial Staff Brief Opposing Exceptions at 28.

²¹¹ *Id.*

²¹² Arkansas Commission Brief Opposing Exceptions at 16.

remedy fashioned in the Initial Decision. Entergy contends that the Initial Decision's remedy solves the problem of running afoul of General Instruction 7.1A.²¹³ Similarly, Entergy argues that the Louisiana Commission's reliance on Kenney's statements about materiality is misplaced. Entergy argues that the testimony of Kenney provides no support for the Louisiana Commission's concerns regarding the error remedy fashioned in the Initial Decision.

5. Commission Determination

142. We affirm the Presiding Judge's findings that Entergy's past accounting for the Waterford 3 sale/leaseback amortization constitutes an error, and that this error must be corrected back to 2005. We note that in 1989, Entergy Louisiana's predecessor LP&L entered into an agreement to sell and leaseback a 9.3 percent interest in Waterford 3. However, for accounting purposes, the transaction did not qualify as a sale and leaseback of plant. Accordingly, the 9.3 percent interest in Waterford 3 is accounted for as a financing transaction. Until 2005, Entergy Louisiana or its predecessor used a 40-year estimated service life for Waterford 3.²¹⁴ Contrary to the Louisiana Commission's assertion, however, in 2005, Entergy Louisiana changed the period used to compute the Waterford 3 sale/leaseback amortization expense from 40 years (the estimated service life of Waterford 3 at the time) to the initial 27.5 year term of the Waterford 3 lease. Entergy Louisiana's decision to apply the 27.5 year Waterford 3 lease term for depreciation purposes violated a determination made by the Commission's Chief Accountant in a 1992 audit report.²¹⁵ The Commission's Chief Accountant explained that Waterford 3 should continue to be depreciated over its estimated service life, and that the change in the method of financing should not alter the depreciation rate. The Chief Accountant directed Entergy Louisiana's predecessor to book an accounting entry to correct the amount of amortization recorded for Waterford 3 and modify its related accounting procedures to use the estimated service life of 40 years.²¹⁶

143. In addition, it is undisputed that in 2005 the Louisiana Commission approved depreciation rates for the entire Waterford 3 plant based on an estimated life of 60 years.

²¹³ Entergy Brief Opposing Exceptions at 25-26 (citing Initial Decision, 148 FERC ¶ 63,015 at P 183).

²¹⁴ Ex. No. S-103 at 8-11.

²¹⁵ Ex. No. ESI-109 at 1-16 (*Louisiana Power & Light Co.*, Docket No. FA90-44-000 (January 26 1992) (unpublished letter order)).

²¹⁶ The estimated service life of Waterford 3 was later extended to 60 years.

As the Presiding Judge notes, the components within the bandwidth formula that use the amortization period, the Nuclear Accumulated Provision for Depreciation and Amortization and Nuclear Depreciation and Amortization Expense variables, require the retail-regulator-approved service life to be used. Therefore, for bandwidth purposes, we find that from 2005 on, Entergy was required to amortize the Waterford 3 sale/leaseback using a 60 year service life. Entergy Louisiana therefore made an accounting error in 2005 when it reverted to using the initial 27.5-year lease term to compute the Waterford 3 sale/leaseback amortization expense and continued this error through 2009.

144. We find the Louisiana Commission's arguments as to why Entergy was not required to use a 60-year amortization period from 2005 through 2009 unavailing. The Louisiana Commission argues that the Waterford 3 sale/leaseback should be treated as a capital lease rather than a financing transaction, and that the Commission should therefore amortize the refinanced portion of the Waterford 3 sale/leaseback over the 27.5-year lease life. However, while this transaction involved the sale of property by Entergy Louisiana and a lease of the property back to Entergy Louisiana, this transaction was entered into with a financial institution²¹⁷ and was a financing transaction. In the instant case, the transaction is clearly a financing transaction rather than a capital lease because Entergy Louisiana has retained substantially all of the benefits and risks incident to the ownership of the property as it continues to take the output of 100 percent of the plant, continues to operate 100 percent of the plant and continues to fund and be responsible for 100 percent of the future decommissioning of the plant.

145. The Louisiana Commission correctly states that Entergy Louisiana's FERC Form No. 1s show that the Waterford 3 sale/leaseback has been accounted for as a capital lease since 1994. However, this fact is caused by the function of the FERC Form No. 1 itself. The FERC Form No. 1 provides limited choices under which plant in service may be listed. The FERC Form No. 1, specifically page 200 where the Waterford 3 sale/leaseback is reflected, does not provide companies the opportunity to add or change account titles. As a result, Entergy included the Waterford 3 sale/leaseback in "Property under capital lease" with a footnote.²¹⁸ In all other respects, the refinanced portion of the Waterford 3 facility is identified as a financing in the FERC Form No. 1. Consequently, none of the Louisiana Commission's arguments persuade us that the Presiding Judge's finding that the amortization period for the Waterford 3 sale/leaseback should be 60 years is incorrect.

²¹⁷ The First National Bank of Commerce as Owner Trustee under Trust Agreement No. 1. *See* Ex. No. LC-169.

²¹⁸ Tr. 250 (Kenney).

146. The Louisiana Commission also contends that the Accounting Memorandum demonstrates that Entergy's basis for changing the Waterford 3 amortization period from 27.5 years to 60 years was that the Waterford 3 sale/leaseback contained a bargain purchase option. The Louisiana Commission argues that the Presiding Judge erred in excluding the Accounting Memorandum as inadmissible hearsay. However, we find that the Initial Decision did not exclude the memorandum as inadmissible hearsay. In fact, the memorandum was admitted as Exhibit No. LC-167 and is part of the record of this proceeding. However, regardless of whether the Accounting Memorandum is characterized as hearsay, the fundamental problem with the memorandum is that, as found by the Presiding Judge, the views expressed in it are confused, unintelligible, unreliable, and untrustworthy.²¹⁹ As the Presiding Judge notes, none of Entergy's witnesses vouched for the Accounting Memorandum; the Louisiana Commission did not submit any corroboration of the author's views; and the author was not subpoenaed by the Louisiana Commission to testify about them. Accordingly, we find that the Accounting Memorandum cannot constitute reliable evidence and that the Presiding Judge was correct to find that it lacked probative value.

147. Further, none of the Louisiana Commission's arguments refute the Presiding Judge's fundamental point:

No one disputes that [Entergy Louisiana] was told by both the [Louisiana Commission] in 1989 and FERC in 1992 not to amortize the Waterford 3 Leased Plant as if it were a capital lease. It was to be amortized, those agencies then said, over a 40-year service life in accordance with what was then the term of the NRC license. For ratemaking purposes, [the Louisiana Commission] has required [Entergy Louisiana] since 2005 to amortize the entirety of the Waterford 3 Plant over the projected 60-year term of the NRC license that would result from the extension of that license, and since 2010 FERC has opined that the 60-year state-approved service life is appropriate for its purposes as well.²²⁰

148. As the Presiding Judge stated in the Initial Decision, neither Entergy nor the Louisiana Commission has provided a plausible explanation as to why Entergy Louisiana would ignore the directives of both regulatory bodies and choose to use the 27.5-year term of the capital lease.²²¹ Section 30.12 of Service Schedule MSS-3 specifies that the

²¹⁹ Initial Decision, 148 FERC ¶ 63,015 at P 148.

²²⁰ *Id.* P 163 (internal citations omitted).

²²¹ *Id.* P 187.

Nuclear Depreciation and Amortization Expense variable associated with Nuclear Production Plant in Service must be “approved by Retail Regulators, unless the jurisdiction for determining the depreciation and/or decommission rate is vested in FERC under otherwise applicable law.” The Commission has consistently found that use of the state depreciation rates is required by the bandwidth formula.²²² Accordingly, we find the Presiding Judge was correct to find that Entergy failed to properly account for the amortization period for the Waterford 3 sale/leaseback, and find that his decision is amply supported by the record. No party disputes that the Louisiana Commission in 2005 approved a 60-year service life for the Waterford 3 sale/leaseback and a corresponding depreciation rate. Neither the rate that Entergy Louisiana actually used based on its error, nor the depreciation rate used to calculate depreciation expense in the FERC Form No. 1, nor the term and corresponding depreciation rate of a sale/leaseback arrangement is relevant to the determination of the appropriate rate for the bandwidth formula.

149. As a result of Entergy’s error, bandwidth payments and receipts among the Operating Companies were based on incorrect accounting, and therefore, rough production cost equalization was not maintained among the Operating Companies from partial year 2005, effective as of the beginning of the bandwidth remedy on June 1, 2005, through 2008. As noted by the Presiding Judge, amortization of the Waterford 3 leased plant over the shorter 27.5-year period of the lease term results in an amortization expense that is greater than that which results from use of the 60-year term comprised of the NRC license and its extension. In terms of the bandwidth formula calculation, use of the lease term leads to a higher production cost for Entergy Louisiana than use of the 60-year license period would produce, which leads to a higher bandwidth transfer receipt for Entergy Louisiana.

²²² See, e.g., Opinion No. 505, 130 FERC ¶ 61,023, *order on reh’g*, Opinion No. 505-A, 139 FERC ¶ 61,103 (orders in the first bandwidth proceeding holding that the bandwidth formula mandates the use of retail regulator-approved depreciation rates); Opinion No. 514, 137 FERC ¶ 61,029 at P 49, *order on reh’g*, Opinion No. 514-A, 142 FERC ¶ 61,013 (order on second bandwidth filing holding that depreciation rates approved by retail regulators are required to be reflected in the bandwidth formula); Opinion No. 519, 139 FERC ¶ 61,107 at PP 108, 121, *order on reh’g*, Opinion No. 519-A, 153 FERC ¶ 61,188 at 16 (orders finding that the Louisiana Commission had failed to demonstrate that the bandwidth formula’s requirement to include retail-determined depreciation data in the depreciation components of the bandwidth formula was unjust, unreasonable or unduly discriminatory).

150. We affirm the Presiding Judge's mechanism to remedy this error. As Trial Staff explained, in 2010, when Entergy Louisiana changed the amortization of the Waterford 3 sale/leaseback to the 60-year service life, Entergy Louisiana made two adjustments. First, it reduced the 2009 Waterford 3 sale/leaseback amortization expense provision recorded in Accounts 404 and 111 and adjusted the 2009 regulatory asset entries for the change in the amortization period from 27.5 years to 60 years. Second, it reduced the cumulative amortization of the Waterford 3 sale/leaseback for the years 2005-2008 to reflect the change in amortization from 27.5 years to 60 years with a corresponding change to the regulatory asset account. Although Entergy Louisiana corrected Accounts 111 and 182.3, the income statement accounts (Account 404 and 407.4) were not corrected (on a retroactive basis) for 2005 through 2008 for the years the error occurred. Accordingly, we agree with the Presiding Judge that: (1) Entergy Louisiana must revise and refile its FERC Form No. 1s for 2005 through 2009 in accordance with the findings here; (2) Entergy must revise and refile its Fourth Bandwidth filing in accordance with the refiled test year 2009 FERC Form No. 1 and the findings here; and (3) Entergy must calculate the revised transfer payments and receipts among the Operating Companies for 2005 through 2008, in accordance with the refiled FERC Form No. 1s for those years and the findings here, and to make the appropriate refunds, with interest calculated in accordance with 18 C.F.R. § 35.19a (2015), in order to correct the excess amortization Entergy Louisiana recorded for the Waterford 3 sale/leaseback expense for 2005 through 2008.

151. The Louisiana Commission offers many reasons why the Presiding Judge's remedy should be rejected. First, the Louisiana Commission contends that by requiring Entergy to calculate the revised bandwidth transfer payments and receipts among the Operating Companies for 2005 through 2008, in accordance with the refiled FERC Form No. 1s for those years, there is a conflict with the rule against retroactive ratemaking. We disagree. As the Initial Decision explains, "the rule against retroactive ratemaking only applies to post hoc modification of the formula itself, which alone constitutes the filed rate."²²³ The rule against retroactive ratemaking does not apply to the annual inputs that populate the formula and determine the yearly bandwidth payments and receipts because they are not part of the filed rate. The Commission has repeatedly held that the bandwidth formula, not the inputs thereto, is the lawful filed rate unless it is changed in

²²³ Initial Decision, 148 FERC ¶ 63,015 at P 165 (citing *Pub. Serv. Co. of N.H.*, 6 FERC ¶ 61,299, at 61,710 (1979)).

accordance with the FPA.²²⁴ The Presiding Judge emphasized that none of the determinations in the Initial Decision “change the bandwidth formula itself.”²²⁵ To the contrary, the Initial Decision’s proposed remedy simply requires implementation of the bandwidth formula according to its approved terms. Accordingly, there is no retroactive change to the bandwidth formula rate.

152. Similarly, the Louisiana Commission’s reliance on Opinion No. 519 is unavailing. The Louisiana Commission asserts that in Opinion No. 519, the Commission held that it would not make retroactive changes to past depreciation inputs even if they were found unjust and unreasonable.²²⁶ However, the Louisiana Commission mischaracterizes the Commission’s holding. In the very paragraph of Opinion No. 519 cited by the Louisiana Commission, the Commission plainly stated that it would deny the Louisiana Commission’s request for retroactive relief even if the Louisiana Commission “had shown the existing formula to be unjust and unreasonable.”²²⁷ Because the bandwidth formula is the filed rate, the Commission correctly ruled that the bandwidth formula could not be adjusted retroactively even if the bandwidth formula had been found unjust and unreasonable. This contrasts sharply with the instant situation, wherein the Initial Decision proposes adjustments to bandwidth formula inputs, so that they comply with the requirements of the bandwidth formula, rather than a change to the bandwidth formula itself. Accordingly, the rule against retroactive ratemaking is not indicated.

153. We also disagree with the Louisiana Commission’s contention that adjusting amortization inputs for the Waterford 3 sale/leaseback in the prior bandwidth proceedings constitutes a collateral attack on the Commission’s orders in those proceedings. We find that the Louisiana Commission’s reliance on the collateral attack argument is misplaced because an attack becomes collateral only when an issue has already been litigated and fully addressed in a prior proceeding.²²⁸ Indeed, the Presiding Judge refers to the

²²⁴ See, e.g., Fourth Bandwidth Clarification Order, 145 FERC ¶ 61,049 at P 12; Third Bandwidth Clarification Order, 145 FERC ¶ 61,047 at PP 8, 11; Opinion No. 514-A, 142 FERC ¶ 61,013 at PP 16-17; Opinion No. 505-A, 139 FERC ¶ 61,103 at PP 48, 50.

²²⁵ Initial Decision, 148 FERC ¶ 63,015 at P 37.

²²⁶ Louisiana Commission Brief on Exceptions at 29 (citing Opinion No. 519, 139 FERC ¶ 61,107 at P 26).

²²⁷ Opinion No. 519, 139 FERC ¶ 61,107 at P 26.

²²⁸ See, e.g., *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission System Operator, Inc.*, 137 FERC ¶ 61,076, at P 41 (2011).

Louisiana Commission's collateral attack argument as "strange" and "perplexing," noting that the issue was expressly narrowed in order to distinguish it from issues that were already litigated in the proceeding that spawned Opinion No. 519.²²⁹ In addition, we note that extending the logic of the Louisiana Commission's collateral attack argument, the outcome would be that no accounting issues may be contested where Entergy used the same methodology in any prior bandwidth filing where the Commission has issued a final order. This position is also contrary to the Louisiana Commission's own arguments with respect to contra-securitization ADIT discussed below, in which the Commission accepts bandwidth formula calculations containing Entergy's proposed ADIT amounts without inclusion of corresponding contra-securitization.

154. We disagree with the Louisiana Commission's contention that the Presiding Judge erred because Commission regulations preclude recording a corrective change from prior years in income accounts.²³⁰ In its exceptions, the Louisiana Commission quotes Entergy witness Kenney as stating that "what I believe [General Instruction] 7.1 is saying is that if you find an error that results to a prior year, it should not go through the determination of net income for the current year."²³¹ The key phrase from this sentence is "for the current year." Kenney is stating that recording all the adjustments for past years in a single adjustment as proposed by Trial Staff at the hearing would violate General Instruction 7.1 as this adjustment of prior periods would not be excluded from the accounts included in the determination of the current year's net income. However, the Presiding Judge did not adopt Trial Staff's recommendation. Instead, the Presiding Judge advocates a re-filing of the 2005 through 2008 FERC Form No. 1s reflecting the correct amortization in each year. As the Presiding Judge explains, his proposal avoids running afoul of General Instruction 7.1 because the adjustments would be made in the accounts of each year in which they should have been booked rather than as prior year adjustments to the accounts of a single later year.²³² We agree that having the respective accounts updated through a restatement of each affected Entergy Operating Company's FERC Form No. 1 for each year from 2005 to 2009 corrects the error, which would not be possible by simply making an adjustment to retained earnings, as General Instruction 7.1 proposes.

²²⁹ Initial Decision, 148 FERC ¶ 63,015 at P 189.

²³⁰ See General Instructions, Instruction 7.1 A, 18 C.F.R. Part 101 (2015).

²³¹ Louisiana Commission Brief on Exceptions at 51 (citing Ex. No. ESI-115 at 16 (Kenney Rebuttal)).

²³² Initial Decision, 148 FERC ¶ 63,015 at P 183.

155. We also disagree with the Louisiana Commission's contention that the use of an incorrect amortization period for the Waterford 3 sale/leaseback had no material effect on prior period financial statements, and therefore the Presiding Judge's prescribed corrective change to prior years is precluded by GAAP guidance. GAAP guidance ASC 250-10-45-27, which the Louisiana Commission cites in support of its claim, concerns how corrective change amounts relate to *estimates* and *trend of earnings* in financial statements. The Commission's concern is not with estimates or trend of earnings, but with rates that are required to be correct. For ratemaking purposes, the Waterford 3 sale/leaseback amortization period inputted into the FERC Form No. 1 flows directly into rates and has a material effect.

156. We deny the Louisiana Commission's argument that the Presiding Judge erred by accepting Entergy's use of a top-side entry. We agree with Trial Staff that the crux of the Louisiana Commission's argument is that Entergy engaged in a change in accounting estimate, which should be recorded on a prospective basis, and therefore the Initial Decision engages in an impermissible retroactive accounting correction.²³³ As noted by the Presiding Judge, the Commission has long held that "accounting does not control ratemaking."²³⁴ Here, we find that Entergy Louisiana's use of a 27.5-year amortization period for Waterford 3 from 2005 on was a mistake. For ratemaking purposes, a retroactive change is needed in order to correct a long-standing accounting mistake. Such a mistake requires a restatement of financial statements for each year the mistake or error occurred.²³⁵

157. In addition, we reject the Louisiana Commission's contention that the Presiding Judge erred by failing to require an adjustment for the fact that the capital lease was not in the bandwidth formula in 2005. To the extent that the 2005 and 2006 bandwidth formula calculations included amortization of the Waterford 3 capital lease, such amortization should be based on the appropriate depreciation rates. We note that the Waterford 3 plant was already in service and depreciation had been initiated and included in the bandwidth formula calculation in 2005. The 1992 FERC Audit Report found that:

There was no change in the estimated service life of the facility as result of the sale/leaseback. Further the above cited definition of depreciation does not indicate that a method of financing should

²³³ Trial Staff Brief Opposing Exceptions at 32-33.

²³⁴ Initial Decision, 148 FERC ¶ 63,015 at P 218 (citing Opinion No. 506, 130 FERC ¶ 61,026 at P 89).

²³⁵ See ASC 250-10-05-4.

alter the depreciation rate. The Commission has consistently held that a utility should accrue depreciation over the service life of the facility.²³⁶

158. Accordingly, the Presiding Judge is correct that “it is appropriate ... to include 2005 partial year data in using the 60-year service life to compute the Waterford 3 Leased Plant amortization amounts for bandwidth purposes.”²³⁷ The Louisiana Commission’s arguments do not persuade us to reconsider the Presiding Judge’s finding.

159. Lastly, the Louisiana Commission argues that the Presiding Judge failed to credit Entergy Louisiana for the higher rate base it would have had in each prior year if its amortization expense were lower, and fails to include the additional interest expense in the bandwidth calculation that would be required to recognize the larger difference between the lease life and the amortization life. Although the Presiding Judge was silent with respect to this contention, we find that in revising the Entergy Companies’ 2005 through 2009 FERC Form No. 1 reports and recalculating the bandwidth formula for each year, the corresponding reduction in accumulated depreciation due to the lower depreciation rate should be reflected.

160. The Louisiana Commission also suggests that the excess amortization that Entergy Louisiana accrues in Account 427 should be reflected in the CM variable of the bandwidth formula. We find that the Presiding Judge was correct to reject the Louisiana Commission’s argument. As the Presiding Judge notes, there is no justification for perpetuating Entergy’s mistake by calling the Waterford 3 Leased Plant Excess Amortization “interest” and billing ratepayers for it.²³⁸ There is simply nothing in the record to demonstrate how Waterford 3 amortization is to be included in the CM variable.

E. Whether Entergy Should be Required to Include an Entry in the Bandwidth Calculation for Contra-Securitization ADIT Related to Storm Restoration Costs

1. Summary of Issue

161. The parties dispute whether Entergy should include contra-securitization ADIT in the bandwidth calculation. Between 2005 and 2008, the Operating Companies incurred

²³⁶ Ex. No. ESI-109 at 10.

²³⁷ Initial Decision, 148 FERC ¶ 63,015 at P 192.

²³⁸ *Id.* P 206.

substantial costs due to damage from Hurricanes Katrina, Gustav, Ike, and Rita. Given the nature of the damages from these storms, the Operating Companies created special purpose entities to assume such costs and receive guaranteed revenue streams from ratepayers to recover certain costs. Essentially, the costs were securitized, and ownership transferred to these special purpose entities. All parties agree that securitized costs (e.g., the securitized assets, the associated accumulated depreciation and depreciation expense, and the related tax effects) should be removed or zeroed out from the bandwidth formula calculation.

162. As noted above, ADIT refers to deferred balances resulting from adoption of the principle of comprehensive interperiod income tax. In general, comprehensive interperiod tax allocation should be followed whenever transactions enter into the determination of pretax accounting income for the period even though some transactions may affect the determination of taxes payable in a different period.²³⁹

163. The Operating Companies had both pre-storm cost casualty losses (casualty losses) and post-storm damage costs (storm damage costs). It was the latter that were securitized. Both types of costs have ADIT implications. A contra-entry is an offset to part of or all of another corresponding entry. Rather than removing a balance from the books, a contra-entry creates the same effect by recording another entry to have that effect on the books.²⁴⁰ Additionally, Entergy has recorded liberalized (accelerated) depreciation.²⁴¹

164. Previous bandwidth proceedings have addressed which ADIT inputs are to be included in the bandwidth calculation. Relevant to this proceeding, the Commission has determined that certain ADIT entries associated with storm damage costs incurred by the Operating Companies as a result of Hurricanes Katrina and Rita in 2005 should be included in bandwidth formula calculations. Accordingly, in the First and Third Bandwidth proceedings, the Commission required the inclusion of ADIT that was recorded in Account 190, Accumulated Deferred Income Taxes, and generated by the net operating loss carry-forwards of certain Operating Companies, and also required the

²³⁹ 18 C.F.R. Part 101, General Instruction 18, Comprehensive Interperiod Income Tax Allocation (2014).

²⁴⁰ Ex. No. ESI-34 at P 10 (Roberts).

²⁴¹ Louisiana Commission Initial Brief at 45-46; Tr. at 240:20-24 (Roberts).

inclusion of ADIT in Account 282, Accumulated Deferred Income Taxes – Other Property, that was generated by casualty losses.²⁴²

2. Initial Decision

165. The Presiding Judge examined the competing descriptions of contra-securitization ADIT in order to determine the proper amount of contra-securitization ADIT that should be included in the bandwidth formula Calculation. With respect to Entergy's contention that contra entries are artificial constructs with no real costs, the Presiding Judge concluded that Entergy had failed to explain why the entries into Accounts 282.475 and 282.476 even exist. The Presiding Judge observes that Entergy fails to explain why such production costs should be included in the bandwidth calculation at the cost of ratepayers.²⁴³

166. The Presiding Judge also examined Trial Staff's and the Louisiana Commission's contention that securitized assets are not artificial assets, but are real, tangible objects. The Presiding Judge found that, despite Entergy's claim that securitized assets have been zeroed out on Entergy's books such that no ADIT generated by them should appear in the bandwidth calculation, Entergy did include ADIT computations on securitized assets from subaccount 282.111 in the bandwidth calculations for Entergy Gulf States Louisiana, Entergy Louisiana, and Entergy Texas.²⁴⁴ Consequently, according to the Presiding Judge, "Entergy's explanation for this contradiction is opaque at best."²⁴⁵

167. The Presiding Judge concluded that the only dispositive criterion for including or excluding an ADIT item from the bandwidth calculation is whether that ADIT item is "generally and properly includable for FERC cost-of-service purposes."²⁴⁶ The Presiding Judge found that Trial Staff and the Louisiana Commission have demonstrated that Entergy's own methodology requires ADIT generated by securitized assets, including the

²⁴² Opinion No. 505, 130 FERC ¶ 61,023 at P 234; Opinion No. 518, 139 FERC ¶ 61,105 at P 88.

²⁴³ Initial Decision, 148 FERC ¶ 63,015 at P 263.

²⁴⁴ *Id.* (citing Tr. at 240:10-242:9 (Roberts); Ex. No. LC-160; Ex. No. LC-161; Ex. No. LC-162).

²⁴⁵ *Id.*

²⁴⁶ *Id.* P 265 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 85; Opinion No. 514, 137 FERC ¶ 61,029 at P 117 n.193; Opinion No. 505, 130 FERC ¶ 61,023 at P 233).

liberalized depreciation ADIT entries, to be zeroed out by contra-entries. Consequently, the Presiding Judge found that ADIT entries for securitized assets are not “generally and properly includable” in the bandwidth formula calculation. The Presiding Judge found that the just and reasonable solution is to offset those liberalized depreciation ADIT inputs from subaccount 282.111 by equal contra inputs that are deducted from the “contra-securitization – Federal” ADIT in Account 282.475 of each Company, and to include that contra-amount in the bandwidth formula calculation.²⁴⁷

168. The Presiding Judge found that not all of the contra-securitization ADIT in Account 282.475 must be moved into the bandwidth formula calculation. Rather, the Presiding Judge found that only enough contra-securitization ADIT to offset the liberalized depreciation ADIT must be transferred into the bandwidth formula calculation for each of the effected Operating Companies. Accordingly, the Presiding Judge found that there was \$8,566,189 of contra-securitization ADIT for Entergy Gulf States Louisiana, \$68,434,702 for Entergy Louisiana, and \$41,624,310 for Entergy Texas that are needed in order to offset their respective liberalized depreciation ADIT amounts in subaccount 282.111 included in the bandwidth calculation. The Presiding Judge found that those amounts should be correspondingly deducted from the contra-securitization ADIT amounts in subaccount 282.475 that are not included in the bandwidth calculation for each Operating Company.²⁴⁸

3. Briefs on Exceptions

169. Entergy states that it does not contest the Initial Decision’s conclusion that the liberalized depreciation ADIT associated with securitized assets is not generally and properly includable for FERC cost-of-service purposes. Entergy argues that, consequently, the associated ADIT associated with securitized assets should be excluded from the bandwidth formula calculation. Entergy states that it disagrees with this section of the Initial Decision only to the limited extent that it suggests that liberalized depreciation ADIT associated with securitized assets should be *included* in the bandwidth formula calculation, only to be offset by an equal amount of contra-securitization ADIT. Entergy argues that the liberalized depreciation ADIT associated with securitized assets is not generally and properly included for FERC cost-of-service purposes. Entergy states that because the bandwidth formula calculation does not include securitized storm restoration assets, both the contra-securitization ADIT and the liberalized depreciation ADIT should be excluded from the bandwidth formula calculation. Entergy contends that the Commission should employ this method, rather than the more complicated

²⁴⁷ *Id.*

²⁴⁸ *Id.* P 266.

procedure of offsetting liberalized depreciation ADIT on securitized assets with an equal amount of contra-securitization ADIT.²⁴⁹

170. Trial Staff argues that the Initial Decision erred in limiting the contra-securitization ADIT to the amount needed to offset the liberalized depreciation ADIT. Trial Staff contends that the full amount of contra-securitization ADIT should be included in the 2010 bandwidth formula calculation. Trial Staff argues that although securitized assets have equal and offsetting entries in the asset accounts, the amount of ADIT associated with each is not equal and offsetting but must still be included in their entirety as bandwidth inputs. Additionally, according to Trial Staff, Entergy excluded the entire contra-securitization ADIT related to capitalized storm restoration costs, which were securitized as an input to the 2010 bandwidth formula calculation but not “zeroed out” by contra-entries.²⁵⁰

171. Trial Staff argues that the Initial Decision’s methodology is flawed because it is based on the incorrect premise that, for purposes of calculating the bandwidth, the reflected amounts of ADIT recorded in subaccount 282.111, Liberalized Depreciation ADIT, and ADIT recorded in subaccount 282.475, Contra-Securitization ADIT, associated with the securitized storm restoration costs should be equal and offsetting amounts. Trial Staff contends that such reasoning incorrectly assumes that subaccounts 282.111 and 282.475 are similar to the contra accounts established for Accounts 101, 108, and 403 due to the securitization of capitalized storm restoration costs, which Entergy properly included in the bandwidth formula calculation. Trial Staff states that, with respect to depreciation of securitized assets in Accounts 403 and 108, there are entries for the depreciation of the securitized assets and there are offsetting equal contra-asset depreciation entries that zero them out. Trial Staff contends that the Presiding Judge erroneously concluded that the contra-securitization ADIT and the liberalized depreciation ADIT should also be “zeroed out” by equal and offsetting amounts.²⁵¹ Trial Staff states that contra-securitization and liberalized depreciation ADIT associated with capitalized storm restoration costs are computed differently.

172. Trial Staff states that “[l]iberalized depreciation ADIT is the difference in the income tax and book depreciation expenses for the capitalized storm restoration costs times the effective income tax rate, which results in the ADIT recorded in subaccount

²⁴⁹ Entergy Brief on Exceptions at 14-16.

²⁵⁰ Trial Staff Brief on Exceptions at 11-12

²⁵¹ *Id.* at 13-15 (citing Initial Decision, 148 FERC ¶ 63,015 at P 265).

282.111,”²⁵² which has a credit balance. Trial Staff explains that, by contrast, contra-securitization ADIT recorded in subaccounts 282.475 and 282.476 is computed on the net of the “contra-asset” recorded in each Operating Company’s Account 101 and the accumulated provision for depreciation – contra recorded in Account 108 times the applicable effective federal and state income tax rates. Trial Staff explains that “[l]iberalized [d]epreciation ADIT is based on the difference in the income tax depreciation and book depreciation expense times the effective income tax rate while [c]ontra [s]ecuritization ADIT is based on the net contra plant book balance times the effective tax rate.”²⁵³

173. Trial Staff also contends that, for each Operating Company, the amounts for liberalized depreciation ADIT and contra-securitization ADIT are not the same or equal or offsetting, such that they do not “zero out.”²⁵⁴ Trial Staff also contends that the Initial Decision’s offset methodology erroneously excludes subaccount 282.476, Contra Securitization State, from the bandwidth formula calculation. Trial Staff contends that it is appropriate that the entirety of the contra-securitization ADIT balances recorded in subaccounts 282.475 and 282.476 be included in the bandwidth formula calculation, as well as the liberalized depreciation entries for securitized assets in Account 282.111. Trial Staff reasons that since the underlying costs which gave rise to the contra-securitization ADIT were included as inputs to the bandwidth formula calculations, so should the contra-securitization ADIT. Trial Staff argues that such inclusion is necessary in order to comply with Section 30.12 of Service Schedule MSS-3, which requires that the bandwidth formula input for ADIT be computed as amounts recorded in FERC Accounts 190, 281, and 282, as reduced by amounts not generally and properly includable for FERC cost of service purposes. Trial Staff concludes that the contra-securitization ADIT balances have a direct relationship to the 2010 bandwidth formula inputs for the contra-Account 101, contra-Account 108, and contra-Account 403.²⁵⁵

174. The Louisiana Commission also argues that the Initial Decision improperly limits the entries for contra-securitization ADIT in the bandwidth calculation, contrary to its inclusion of all other contra-securitization entries. The Louisiana Commission notes that both casualty loss ADIT and contra-securitization ADIT come from storm damages and finds it unfair that the bandwidth formula would include only the former. The Louisiana

²⁵² *Id.* at 15.

²⁵³ *Id.* at 16.

²⁵⁴ *Id.* at 17 (citing Ex. No. ESI-103 at 102).

²⁵⁵ *Id.* at 18.

Commission notes that in Order No. 518 the Commission dismissed the argument that, if casualty loss ADIT is included in the bandwidth formula calculation then so too should contra-securitization ADIT, on the basis that the Louisiana Commission had not explained how contra-securitization ADIT arises or why it is generally and properly includable for FERC cost-of-service purposes.²⁵⁶ The Louisiana Commission argues that, in this case, Entergy witness Roberts explained that casualty loss ADIT relates to a tax calculation, which simply determines the diminution of the tax basis of assets.²⁵⁷ The Louisiana Commission argues that casualty loss ADIT reduces the rate base because it provides cost-free capital for the utility, although there are no expenses or book losses associated with that loss that enter the bandwidth formula calculation. This is also the case for contra-securitization ADIT, according to the Louisiana Commission.

175. The Louisiana Commission states that, with respect to ADIT, Entergy takes accelerated depreciation for tax purposes on the positive entry in the plant account and includes that amount in the Account 282 balance for liberalized depreciation.²⁵⁸ The Louisiana Commission states that Entergy includes the entire balance of liberalized depreciation ADIT from subaccount 282.111 in the bandwidth formula calculation, making no adjustment to remove the entry associated with the securitized plant.²⁵⁹ The Louisiana Commission argues that Entergy also calculates contra-securitization ADIT on the contra-entries to the plant, but it does not include that entry in the bandwidth formula calculation.²⁶⁰

176. The Louisiana Commission notes that the Initial Decision limited the contra-securitization ADIT in the bandwidth formula calculation to the amount of liberalized depreciation ADIT, determining that neither liberalized depreciation ADIT nor contra-securitization ADIT should be included because the assets were securitized.²⁶¹ The Louisiana Commission states that the Presiding Judge did not explain why the benefit of ADIT related to plant that was financed entirely by ratepayers should not be included in

²⁵⁶ Louisiana Commission Brief on Exceptions at 69-71 (citing, Opinion No. 518, 139 FERC ¶ 61,105, at PP 89, 91 (2012)).

²⁵⁷ *Id.* (citing Tr. at 229-230).

²⁵⁸ *Id.* at 72 (citing Tr. at 233 (Roberts)).

²⁵⁹ *Id.* (citing Tr. at 160 (Peters)).

²⁶⁰ *Id.* at 72-73 (citing Tr. at 235 (Roberts); Tr. at 160-161 (Peters)).

²⁶¹ *Id.* (citing Initial Decision, 148 FERC ¶ 63,015 at P 265).

the bandwidth calculation. According to the Louisiana Commission, Entergy's exclusion of the contra-securitization ADIT from the bandwidth formula calculation violates the test of whether the ADIT is "includable for FERC cost of service purposes."²⁶² The Louisiana Commission contends that Entergy includes the positive asset for securitized plant and the associated ADIT, and it includes the contra asset for securitized plant, but it excludes the associated ADIT, creating an unjust asymmetrical approach.

177. The Louisiana Commission also notes that all the contra-securitization ADIT relates to costs that are amortized to a FERC Form No. 1 account, reflecting that ratepayers are paying for the costs directly. Consequently, the Louisiana Commission contends that there is no just and reasonable reason to deny ratepayers the benefit related to those expenditures.²⁶³

4. Briefs Opposing Exceptions

178. The Arkansas Commission agrees with the Presiding Judge that: (1) securitization of extraordinary storm restoration constitutes a financing tool employed by the Operating Companies and not a capital lease; and (2) as a consequence of the sale of such securitized storm cost losses to a third party, the associated cost and tax effects are not includable in the cost of service for Commission purposes.²⁶⁴ The Arkansas Commission notes that, in a decision reviewing the Commission's orders in the Third Bandwidth proceeding, the Fifth Circuit disagreed with the Louisiana Commission's position that casualty loss ADIT should not be included in Account 282, although the Louisiana Commission seems to have abandoned that line of argument.²⁶⁵ Additionally, according to the Arkansas Commission, the Fifth Circuit found that securitized costs are not included in the cost of service.²⁶⁶ According to the Arkansas Commission, this opinion is consistent with the Initial Decision's determination to zero out liberalized depreciation ADIT amounts associated with securitized assets, because it is not generally includable for FERC cost of service purposes. Additionally, the Arkansas Commission argues that

²⁶² *Id.* (citing Ex. No. ESI-107 at 53).

²⁶³ *Id.*

²⁶⁴ Arkansas Commission Brief Opposing Exceptions at 27 (citing Initial Decision, 148 FERC ¶ 63,015 at PP 245-246).

²⁶⁵ *Id.* at 28 (citing *La. Pub. Serv. Comm'n v. FERC*, 771 F.3d 903, 914 (5th Cir. 2014) (*Louisiana PSC III*)).

²⁶⁶ *Id.* (citing *La. PSC III*, 771 F.3d 903, n.12).

Entergy's requested alternate treatment to exclude all liberalized depreciation ADIT associated with securitized assets is consistent with the Fifth Circuit's opinion. The Arkansas Commission also agrees with the Initial Decision's finding that exclusion of all contra-securitization ADIT from the bandwidth formula calculation has been the *status quo* practice for the past three bandwidth filings. Consequently, according to the Arkansas Commission, the Louisiana Commission and Trial Staff bear the burden of proving that Entergy's continued exclusion of contra-securitization ADIT from the bandwidth calculation is no longer just and reasonable.²⁶⁷

179. The Arkansas Commission contends that the Louisiana Commission and Trial Staff's recommendation to input all contra-securitization ADIT amounts in the formula rate bandwidth calculation, including amounts in excess of liberalized depreciation securitization ADIT amounts, will negate the end-result of zeroing out amounts of securitization ADIT from Operating Company rate base. The Arkansas Commission states that such excess contra-securitization ADIT will be impermissibly included in rate base for bandwidth calculation purposes, increasing Entergy Arkansas bandwidth payments. The Arkansas Commission contends that this result would be inconsistent with the Fifth Circuit's ruling. The Arkansas Commission also contends that Entergy's proposal of eliminating all securitization normal and contra ADIT amounts complies with the Fifth Circuit's opinion, unlike the Louisiana Commission and Trial Staff's recommended inclusion of all contra-securitization ADIT amounts.²⁶⁸

180. Entergy disagrees with Trial Staff's argument that contra-securitization ADIT should be included in the bandwidth formula calculation since the underlying inputs that give rise to it were included as well. Entergy states that the costs that give rise to contra-securitization ADIT are the securitized assets that were zeroed out of the bandwidth formula calculation.²⁶⁹

181. Entergy also disagrees with the Louisiana Commission's assertion that including casualty loss ADIT in the bandwidth formula calculation without contra-securitization ADIT is unjust and unreasonable. Entergy contends that this argument is not supported by evidence. It asserts that the casualty loss ADIT caused by storm damage is associated with damage to the investment on the Operating Companies' books at the time of the storm, which the Commission has previously ruled is properly included in the bandwidth formula calculation. By contrast, according to Entergy, contra-securitization ADIT is

²⁶⁷ *Id.* at 29.

²⁶⁸ *Id.* at 31.

²⁶⁹ Entergy Brief Opposing Exceptions at 34.

associated with restoration costs that were incurred after the storm and financed with the proceeds of securitization. Entergy states that, through the use of contra-accounting, the value of these assets is netted to zero for purposes of the calculation of actual production costs. Thus, casualty loss ADIT does not need to be offset with the entirety of contra-securitization ADIT because the nature of the underlying costs is different.²⁷⁰

182. Trial Staff argues that casualty loss ADIT in Account 282 is eligible as an input to the bandwidth formula calculation. Trial Staff argues against Entergy's proposal to remove from the bandwidth formula calculation liberalized depreciation ADIT associated with securitized assets, contending that the bandwidth formula does not afford Entergy the flexibility to make such an exclusion. Specifically, according to Trial Staff, Section 30.12 of Service Schedule MSS-3 requires that the bandwidth input for ADIT be computed as amounts recorded in FERC Accounts 190, 281, and 282 as reduced by amounts not generally and properly includable for FERC cost of service purposes.²⁷¹

183. The Louisiana Commission contends that Entergy's proposal to exclude all contra-securitization ADIT and liberalized depreciation from the bandwidth formula calculation should be rejected because it is not just and reasonable and would violate commission precedent. The Louisiana Commission observes that the Fifth Circuit upheld the Commission's decision to include casualty loss ADIT in the bandwidth formula.

184. The Louisiana Commission states that the Fifth Circuit found that since casualty loss ADIT is storm-related, it is properly included for Commission cost-of-service purposes.²⁷² The Louisiana Commission contends that the contra-securitization ADIT fits the Commission's requirements, as summarized by the Fifth Circuit, for inclusion in the bandwidth formula calculation because it is storm-related and the expenses related to securitized plant are included in bandwidth-eligible accounts, along with contra entries.²⁷³ Additionally, according to the Louisiana Commission, liberalized depreciation ADIT for the securitized plant has always been included in the bandwidth calculation.²⁷⁴

²⁷⁰ *Id.* at 35.

²⁷¹ Trial Staff Brief Opposing Exceptions at 38-39 (citing Entergy Brief on Exceptions at 16).

²⁷² Louisiana Commission Brief Opposing Exceptions at 17-18 (citing *Louisiana Commission PSC III*, 771 F.3d 903, 915).

²⁷³ *Id.* at 19 (citing Tr. at 337-38 (Kenney); Tr. at 159-60 (Peters)).

²⁷⁴ *Id.* (citing Tr. at 160 (Peters)).

The Louisiana Commission also notes that the Commission approved, as “fair and reasonable and “in the public interest,” a settlement that provided for the inclusion of variables to include “the transmission expense amounts included in the spreadsheets.”²⁷⁵

185. The Louisiana Commission states that ratepayers bear the costs of securitized plant, as do customers under Entergy’s Open Access Transmission Tariff. It concludes that Entergy’s exception should be denied and all contra-securitization ADIT should be included in the bandwidth formula calculation.²⁷⁶

5. Commission Determination

186. We affirm the Presiding Judge’s determination that contra-securitization ADIT should be included in the bandwidth formula calculation. However, we reject the Presiding Judge’s determination that the contra-securitization ADIT should be limited to liberalized depreciation. Therefore, we find that Entergy should include all contra-securitization ADIT in the bandwidth calculation. As an initial matter, no party contends that ADIT associated with casualty losses should be excluded from or zeroed out in the bandwidth formula calculation. Further, no party argues that ADIT associated with securitized amounts should remain in or not be zeroed out in the bandwidth formula calculation. However, parties disagree as to the nature of the contra-securitization ADIT. Entergy contends that not all contra-securitization ADIT should be included in the bandwidth formula calculation, as evidenced by the disparity between the amount of contra-securitization ADIT and the amount of liberalized depreciation. Trial Staff and the Louisiana Commission disagree, contending that all such amounts should be included in the bandwidth formula calculation.

187. The Presiding Judge found that contra-securitization equal to the amount of liberalized depreciation in the books of the Operating Companies for securitized assets should be included in the bandwidth formula calculation. The Presiding Judge stated that all ADIT associated with securitized assets is liberalized depreciation ADIT, finding that only the liberalized depreciation associated with securitized assets should be zeroed out with corresponding amounts of contra-securitization ADIT. Trial Staff and the Louisiana Commission disagree, arguing that all the contra-securitization ADIT should be included. Such arguments indicate that liberalized depreciation ADIT is only a part of the ADIT associated with securitized assets. The Louisiana Commission defines liberalized depreciation as an ADIT account specifically designed to account for accelerated

²⁷⁵ *Id.* at 19-20 (citing *Entergy Servs., Inc.*, 133 FERC ¶ 61,189, at PP 17-99 (2010)).

²⁷⁶ *Id.* at 20.

depreciation for securitized plant.²⁷⁷ Entergy has not sufficiently defined its use of the term liberalized depreciation although Entergy witness Peters states that liberalized depreciation is a sub-account of Account 282.²⁷⁸

188. Similar to accelerated depreciation, liberalized depreciation is a method of depreciation which creates different amounts for tax and book purposes.²⁷⁹ Accelerated depreciation is a component of Account 282, which reflects all differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income. Liberalized depreciation, which Entergy does not sufficiently define in this filing, may or may not be associated with the securitized assets for which there is ADIT, as evidence by the much larger total amount of liberalized depreciation in subaccounts 282.111 and 282.116 than contra-securitization in subaccounts 282.475 and 282.276.²⁸⁰ Further, as Trial Staff points out, the amount of liberalized depreciation associated with securitized assets is not necessarily the entirety of the ADIT associated with securitized assets.²⁸¹ Consequently, liberalized depreciation is irrelevant to determining the appropriate amount of contra-securitization to include in the bandwidth formula calculation in order to zero out the securitized ADIT. We thus disagree with the Presiding Judge's conclusion that the bandwidth formula calculation should contain contra-securitization ADIT equal to the amount of liberalized depreciation for securitized assets.

189. By contrast, Entergy Workpapers 4.1.4, 4.2.4, 4.3.3, 4.4.3, 4.6.3, and 4.8.1 show the components of Account 282, including, where it is present, all contra-securitization ADIT, for each Operating Company. No party contests the accuracy of these Workpapers or that these amounts correspond to ADIT associated with contra-securitized assets. We therefore find that contra-securitization ADIT in these workpapers should be included in the bandwidth formula calculation to remove all the contra-securitization ADIT balances associated with securitized assets, as argued for by Trial Staff and the Louisiana Commission. Accordingly, we direct Entergy, in a compliance filing due within 60 days of the date of this order, to submit revised 2009 bandwidth formula

²⁷⁷ Louisiana Commission Initial Brief at 45-46; Tr. at 240:20-24 (Roberts).

²⁷⁸ Tr. at 151:11-13.

²⁷⁹ 18 C.F.R. Part 35.13(17(i) (2015).

²⁸⁰ Entergy Workpapers Nos. 4.2.4, 4.3.3, 4.4.3, and 4.6.3.

²⁸¹ Trial Staff Brief on Exceptions at 15-16.

calculations that include the amounts of contra-secritized ADIT for each Operating Company shown on Entergy Workpapers 4.1.4, 4.2.4, 4.3.3, 4.4.3, 4.6.3, and 4.8.1.

190. Entergy contends that the inclusion of contra-secritization ADIT beyond the amount equal to the liberalized depreciation is inappropriate because “the costs that gave rise to the Contra-Secritization ADIT are the secritized assets that were zeroed out from the bandwidth calculation.”²⁸² However, without removing the underlying secritization ADIT, which Entergy proposes to do now but had not done in the Fourth Bandwidth filing, such zeroing out can only occur through inclusion of all corresponding contra-secritization ADIT.

191. Trial Staff opposes Energy’s proposed exclusion of liberalized depreciation ADIT and the corresponding contra-secritization ADIT from the bandwidth formula calculation. Trial Staff argues that such inclusion is necessary in order to comply with section 30.12 of Service Schedule MSS-3, which requires that the bandwidth formula input for ADIT be computed as amounts recorded in FERC Accounts 190, 281, and 282, as reduced by amounts not generally and properly includable for FERC cost-of-service purposes. We agree that removing secritized assets from ADIT accounts would cause those accounts to be incongruous with other elements of the formula for which secritized assets are zeroed out with contra-secritization. To consistently apply Entergy’s proposal would require comprehensively removing all secritized elements and corresponding contra-secritization from the bandwidth formula calculation, which is beyond the scope of this proceeding.

²⁸² Entergy Brief Opposing Exceptions at 34.

The Commission orders:

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

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

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.