

144 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER13-1595-000

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

(Issued August 30, 2013)

1. On May 30, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ Entergy Services, Inc. (Entergy), as agent and on behalf of the Entergy Operating Companies (collectively, Operating Companies),² submitted its seventh annual bandwidth filing under Service Schedule MSS-3 of the Entergy System Agreement, to implement the Commission's directives in Opinion Nos. 480 and 480-A.³ In this order, we accept Entergy's proposed rates for filing and suspend them for a nominal period, to become effective June 1, 2013, as requested, subject to refund. While we establish

¹ 16 U.S.C. § 824e (2006).

² The Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc., Entergy Texas, Inc. (Entergy Texas) and Entergy New Orleans, Inc. (Entergy New Orleans).

³ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (Opinion No. 480), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A), *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).

hearing procedures, we hold those procedures in abeyance pending a further Commission order, as discussed below.

I. Background

2. In Opinion Nos. 480 and 480-A, the Commission found that the Entergy System Agreement no longer produced rough production cost equalization, and ordered modifications designed to maintain roughly equal production costs between the Operating Companies within +/-11 percent of the system-wide average.⁴ The Commission directed that any equalization payments between Operating Companies begin in June 2007, after a full calendar year of data became available,⁵ and specified that “future production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26.”⁶ In its compliance filing implementing these directives, Entergy included the formulas for implementing the rough production cost equalization bandwidth remedy in Service Schedule MSS-3.⁷

3. On May 27, 2007, in Docket No. ER07-956-000, Entergy submitted its first annual bandwidth implementation filing under Service Schedule MSS-3 (the 2007 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2007, subject to refund.⁸ The Commission also established hearing and settlement judge procedures, which produced an initial decision that the Commission affirmed in part and reversed in part in Opinion No. 505.⁹ Entergy submitted a compliance filing in response to Opinion No. 505 on

⁴ Opinion No. 480, 111 FERC ¶ 61,311 at PP 144-145; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 46.

⁵ Opinion No. 480, 111 FERC ¶ 61,311 at P 145; Opinion No. 480-A, 113 FERC ¶ 61,282 at PP 53-55.

⁶ Opinion No. 480, 111 FERC ¶ 61,311 at P 33. Exhibit ETR-28 provides the back-up data for Exhibit ETR-26.

⁷ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006).

⁸ *Entergy Servs., Inc.*, 120 FERC ¶ 61,094 (2007).

⁹ *Entergy Servs., Inc.*, 124 FERC ¶ 63,026 (2008); *aff'd in part and rev'd in part*, Opinion No. 505, 130 FERC ¶ 61,023 (2010).

March 12, 2010. On May 7, 2012, the Commission issued Opinion No. 505-A¹⁰ and also accepted Entergy's Opinion No. 505 compliance filing, subject to a further compliance filing,¹¹ which Entergy submitted on June 6, 2012.

4. On May 30, 2008, in Docket No. ER08-1056-000, Entergy submitted its second annual bandwidth implementation filing based on calendar year 2007 data (the 2008 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2008, subject to refund.¹² The Commission also established hearing and settlement judge procedures. The parties submitted a partial uncontested settlement that the Presiding Judge certified on June 19, 2009.¹³ The Presiding Judge issued an initial decision on the remaining issues on September 9, 2009.¹⁴ On October 7, 2011, the Commission issued Opinion No. 514, which affirmed in part and reversed in part the Presiding Judge's findings, and required a compliance filing.¹⁵

5. On May 29, 2009, in Docket No. ER09-1224-000, Entergy submitted its third annual bandwidth implementation filing based on calendar year 2008 data (the 2009 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2009, subject to refund.¹⁶ The Commission also established hearing and settlement judge procedures. Following a hearing in April 2010, the Presiding Judge issued an initial decision on August 5, 2010.¹⁷ On May 7, 2012, the Commission issued Opinion No. 518, which affirmed the Presiding

¹⁰ *Entergy Servs., Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

¹¹ *Entergy Servs., Inc.*, 139 FERC ¶ 61,104 (2012).

¹² *Entergy Servs., Inc.*, 124 FERC ¶ 61,101 (2008).

¹³ The Commission accepted the partial uncontested settlement on August 24, 2009. *Entergy Servs., Inc.*, 128 FERC ¶ 61,181 (2009).

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

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

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

¹⁷ *Entergy Servs., Inc.*, 132 FERC ¶ 63,005 (2010).

Judge's findings in part, found that others had been rendered moot, and required a compliance filing.¹⁸

6. On May 27, 2010, in Docket No. ER10-1350-000, Entergy submitted its fourth annual bandwidth implementation filing based on calendar year 2009 data (the 2010 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2010, subject to refund.¹⁹ The Commission also established hearing and settlement judge procedures and, noting the other pending bandwidth-related cases, directed the Presiding Judge not to allow relitigation of issues that are the subject of other proceedings pending before the Commission.²⁰

7. On January 20, 2011, as supplemented on February 7, 2011, Entergy moved to strike testimony filed by the Louisiana Public Service Commission (Louisiana Commission) witnesses in the 2010 bandwidth calculation proceeding in Docket No. ER10-1350-000, on grounds that their testimony relitigated issues already being considered in other proceedings. On January 28, 2011, the Presiding Judge issued an order to show cause why the proceeding should not be stayed, pending the issuance of Commission decisions on the previous bandwidth calculation cases. Following initial and reply briefs, the Presiding Judge issued an order on March 3, 2011 holding the hearing in Docket No. ER10-1350-000 in abeyance until the Commission rules on the issues pending before it in other bandwidth calculation and complaint proceedings.²¹

¹⁸ *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012).

¹⁹ *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 (2010).

²⁰ *Id.* P 26.

²¹ *Entergy Servs., Inc.*, 134 FERC ¶ 63,018 (2011) (Stay Order). On March 21, 2011, the Louisiana Commission filed a motion to permit interlocutory appeal of the Stay Order with the Presiding Judge, which was denied. *Entergy Servs., Inc.*, 134 FERC ¶ 63,025 (2011). On April 7, 2011, the Louisiana Commission filed an appeal to the Commission, arguing that the Stay Order will likely cause future bandwidth filings also to be stayed. On April 13, 2011, the Chairman, acting as Motions Commissioner, declined to refer the interlocutory appeal to the full Commission. *Entergy Servs., Inc.*, Notice of Determination by the Chairman, Docket No. ER10-1350-001 (Apr. 13, 2011).

8. On May 27, 2011, in Docket No. ER11-3658-000, Entergy submitted its fifth annual bandwidth implementation filing based on calendar year 2010 data (the 2011 bandwidth calculation). On July 26, 2011, the Commission accepted the proposed rates for filing and suspended them to become effective on June 1, 2011, subject to refund.²² The Commission also established hearing procedures, but held the hearing in abeyance pending action on the annual updates from prior years in order to prevent the relitigation of issues that are the subject of other proceedings pending before the Commission.²³

9. On May 31, 2012, in Docket No. ER12-1920-000, Entergy submitted its sixth annual bandwidth implementation filing based on calendar year 2011 data (the 2012 bandwidth calculation). On August 6, 2012, the Commission accepted the proposed rates for filing and suspended them to become effective on June 1, 2012, subject to refund. The Commission also established hearing procedures, but again held them in abeyance pending Commission action on Entergy's prior annual updates.²⁴

II. Entergy's Filing

10. On May 30, 2013, Entergy submitted its seventh annual bandwidth implementation filing based on calendar year 2012 data (the 2013 bandwidth calculation). Entergy states that it calculated the payments and receipts under the Service Schedule MSS-3 bandwidth formula using data reported in the Operating Companies' 2012 FERC Form No. 1 or other supporting data as provided for in Service Schedule MSS-3.²⁵ In addition, Entergy states that it calculated the Actual Production Costs of each Operating Company²⁶ and the Average Production Costs of the System²⁷ consistent with the terms and conditions of Service Schedule MSS-3. Entergy next allocated the System Average Production Costs to each Operating Company, and then compared each Operating Company's allocated Average Production Cost to the Operating Company's Actual

²² *Entergy Servs., Inc.*, 136 FERC ¶ 61,057 (2011).

²³ *Id.* P 21.

²⁴ *Entergy Servs., Inc.*, 140 FERC ¶ 61,111, at P 33 (2012).

²⁵ Service Schedule MSS-3, section 30.12, n.1.

²⁶ Service Schedule MSS-3, section 30.12.

²⁷ Service Schedule MSS-3, section 30.13.

Production Costs to determine the dollar and percentage disparity.²⁸ Based on these calculations, Entergy determined that Entergy Texas will pay Entergy New Orleans \$14.6 million.²⁹

11. Entergy states that it has calculated the payments and receipts under Service Schedule MSS-3 using the same methodology as in the six previous annual bandwidth proceedings. In addition, Entergy notes that while certain formula input issues in the first, second and third annual bandwidth implementation filings await final Commission resolution, and that hearings in the fourth, fifth and sixth annual bandwidth implementation proceedings are being held in abeyance, the instant bandwidth filing reflects all of the Service Schedule MSS-3-related amendments that the Commission has previously accepted or approved.

12. Further, Entergy highlights eight components of the 2013 bandwidth calculation that prior and ongoing bandwidth-related proceedings address, and notes that these issues will be subject to a final Commission determination in the existing dockets. For this reason, should the Commission set the instant filing for hearing and settlement judge procedures, Entergy requests that the Commission hold the proceeding in abeyance pending final determination of the existing bandwidth filings, to ensure that: (1) the Commission does not hear the current bandwidth filing before it hears the prior bandwidth dockets that have been stayed; and (2) the participants do not relitigate issues that are pending in prior bandwidth dockets.

13. The first item that Entergy highlights is its efforts to comply with Opinion No. 505-A's guidance on how to functionalize the Accumulated Deferred Income Taxes (ADIT) associated with production-related net operating loss carryforwards (NOL Carryforwards) attributable to Hurricanes Katrina and Rita.³⁰ As in its 2012 bandwidth filing, Entergy calculated the amount of NOL Carryforwards by using the ratio of Net Utility Operating Expenses to Total Expenses incurred during the period the NOL was recognized. Because Entergy is unclear whether this is the ratio the Commission intended Entergy to use, however, it sought rehearing and clarification on June 26, 2012 in Docket No. ER07-956-004, and awaits Commission action.

²⁸ Service Schedule MSS-3, section 30.11.

²⁹ Entergy Transmittal Letter at 8.

³⁰ Opinion No. 505-A, 139 FERC ¶ 61,103 at PP 54-60.

14. Second, Entergy notes that several proceedings involving bandwidth depreciation calculations are pending before the Commission and that the instant filing's depreciation-related inputs are subject to the outcome of those proceedings. Specifically, on March 31, 2010, the Louisiana Commission filed a section 206 complaint in Docket No. EL10-55-000. The Presiding Judge dismissed the complaint;³¹ the Commission affirmed;³² and the Louisiana Commission's rehearing request is pending before the Commission. In addition, Entergy states that two Commission opinions³³ that address Entergy Arkansas' and Entergy Texas' depreciation rates are currently pending on rehearing, and that Entergy has used the depreciation rates approved by the retail regulators in the 2013 bandwidth formula, consistent with section 30.12 of the bandwidth formula.

15. Third, Entergy's filing in Docket No. ER12-1384-000, *et al.*, which seeks authorization to include under Service Schedule MSS-3 the cancellation costs of an Entergy Louisiana project to repower a generating unit at the Little Gypsy Facility, is now in the exceptions phase, following the Presiding Judge's Initial Decision, issued June 6, 2013.³⁴ According to Entergy, consistent with its filing and with its 2012 bandwidth calculation, the 2013 bandwidth calculation includes the Little Gypsy cancellation costs.

16. Fourth, on November 18, 2011, Entergy filed an uncontested settlement in *La. Pub. Serv. Comm'n v. Entergy Corp., et al.*, Docket No. EL10-65-000, which resolved

³¹ *La. Pub. Serv. Comm'n v. Entergy Corp., et al.*, 134 FERC ¶ 63,016 (2011).

³² *La. Pub. Serv. Comm'n v. Entergy Corp., et al.*, Opinion No. 519, 139 FERC ¶ 61,107 (2012).

³³ See *Entergy Servs., Inc.*, Opinion No. 523, 142 FERC ¶ 61,022 (2013) (regarding Entergy Arkansas' production depreciation rates under Service Schedules MSS-1, MSS-3, and MSS-4 of the Entergy System Agreement); *Entergy Servs., Inc.*, Opinion No. 526, 143 FERC ¶ 61,116 (2013) (regarding Entergy Texas' steam production depreciation rates under Service Schedules MSS-1, MSS-3, and MSS-4 of the Entergy System Agreement).

³⁴ *Entergy Servs., Inc., et al.*, 143 FERC ¶ 63,012 (2013). The Initial Decision, which the Presiding Judge issued shortly after Entergy submitted the instant bandwidth filing, excludes the Little Gypsy cancellation costs from the bandwidth calculation. *Id.* PP 14, 28-33.

the Louisiana Commission's complaint by adjusting the plant ratios in the bandwidth formula for positive and negative salvage. Although the Commission has not yet acted on the settlement, Entergy states that it has incorporated the change in the 2013 bandwidth calculation, subject to the outcome of Docket No. EL10-65-000, as it did in the 2012 bandwidth calculation.

17. Fifth, on January 3, 2013, the Commission accepted Entergy's compliance filing in *Entergy Arkansas, Inc., et al.*, Docket No. ER12-1881-000, *et al.*,³⁵ which removed interruptible load from the allocation of fixed production costs in section 30.13 of the bandwidth formula. Entergy states that both the 2012 and 2013 bandwidth calculations are consistent with the Commission's letter order.

18. Sixth, in Opinion No. 518, the Commission affirmed the Presiding Judge's determination that Entergy should include in the bandwidth calculation Casualty Loss ADIT recorded in Account No. 282, Accumulated Deferred Income Taxes - Other Property.³⁶ On July 6, 2012, Entergy submitted a compliance filing pursuant to the Commission's May 7, 2012 order. Rehearing requests are pending on Opinion No. 518, and the compliance filing is contested. Entergy states that it has reflected Opinion No. 518's directive, as implemented in its compliance filing, in both its 2012 and 2013 bandwidth calculations.

19. Seventh, in Opinion No. 505-A,³⁷ the Commission required Entergy to remove the administrative and general expense associated with Entergy's 30 percent share of River Bend (River Bend) nuclear plant capacity, using the methodology defined in Exhibit Nos. ETR-26 and ETR-28.³⁸ On May 31, 2012, Entergy submitted a proposed tariff revision to comply with this directive, and reflected the revision in its 2012 and 2013 bandwidth calculations. Entergy states that the River Bend compliance filing is pending

³⁵ *Entergy Arkansas, Inc., et al.*, 142 FERC ¶ 61,010 (2013).

³⁶ Opinion No. 518, 139 FERC ¶ 61,105 at P 84, *aff'g Entergy Servs., Inc.*, 132 FERC ¶ 63,005 at P 277.

³⁷ Opinion No. 505-A, 139 FERC ¶ 61,103 at P 72, n.126.

³⁸ "All Rate Base, Revenue and Expense items shall ... include certain regulatory adjustments pursuant to the production cost methodology set forth in Exhibit ETR-26/ETR-28 filed in Docket No. EL01-88-001, including but not limited to: ... (2) the regulated (70%) portion of River Bend for EGS." System Agreement at § 31.12 n.1.

in Docket No. ER12-1888-000, *et al.*, and this issue is subject to the outcome of that proceeding.

20. Eighth, on May 13, 2013, in Docket No. ER07-682-004, the Commission granted rehearing in part of Opinion No. 506,³⁹ and required Entergy to functionalize and allocate its Account No. 924, Property Insurance, expense, based on plant ratios rather than on labor ratios.⁴⁰ Entergy states that it reflected this directive in the 2013 bandwidth calculation, and submitted its compliance filing on June 12, 2013, and its compliance refund report on July 12, 2013, in Docket Nos. ER07-682-000 and ER13-1673-000, *et al.*, where they are currently pending. This issue is subject to the outcome of that compliance proceeding.

21. Finally, Entergy notes that because the final outcomes of the numerous proceedings discussed above may change the 2013 bandwidth payments and receipts from those filed in this proceeding, Entergy commits to file a comprehensive updated bandwidth recalculation report and to adjust the bandwidth receipts and payments in the first Entergy Intra-System Bill issued thereafter, as it did on compliance with Opinion No. 505.

III. Notice and Responsive Pleadings

22. Notice of Entergy's filing was published in the Federal Register, 78 Fed. Reg. 34,362-02 (2013), with interventions and protests due on or before June 20, 2013. The Arkansas Public Service Commission filed a notice of intervention. The Council of the City of New Orleans (New Orleans Council) filed a notice of intervention and comments. The Louisiana Commission filed a notice of intervention and a protest. East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. filed a joint motion to intervene. Entergy filed a motion for leave to answer and an answer. The Texas Industrial Energy Consumers (Texas Industrials) filed a motion to intervene out-of-time.

23. The Texas Industrials request that the Commission hold any hearings in this docket in abeyance, to preclude relitigation of issues already pending before the Commission.

³⁹ *Entergy Servs., Inc.*, Opinion No. 506, 130 FERC ¶ 61,026 (2010).

⁴⁰ *Entergy Servs., Inc.*, 143 FERC ¶ 61,120, at P 53 (2013).

24. The New Orleans Council notes that the Little Gypsy cancellation costs which Entergy included in the 2013 bandwidth calculation are being litigated in Docket No. ER12-1384-000, *et al.*, and that the outcome of that proceeding will determine the appropriate treatment of those costs in the 2013 bandwidth calculation. The New Orleans Council further notes that shortly after Entergy filed its 2013 bandwidth calculation, the Presiding Judge found that the Little Gypsy cancellation costs should be excluded from the bandwidth calculation.⁴¹ Based on this development, along with the other numerous dockets Entergy's filing makes clear will affect the treatment of various costs in the bandwidth remedy calculation, the New Orleans Council urges the Commission to set the 2013 bandwidth calculation for hearing, but supports Entergy's request that the Commission hold the hearing in abeyance.

25. The Louisiana Commission states that its protest focuses solely on implementation issues related to what it characterizes as Entergy's non-compliance with the terms of the bandwidth formula or Commission requirements. The Louisiana Commission further states that it reserves "reasonableness" issues pending the outcome of court appeals, and that it adopts and raises all issues it previously raised in Docket Nos. ER07-956-000, *et al.*, ER08-1056-000, *et al.*, ER09-1224-000, *et al.*, ER10-1350-000, *et al.*, ER11-3658-000 and ER12-1920-000, as well as those it raised in complaint dockets related to the bandwidth calculations to the extent they relate to Entergy's instant bandwidth filing.⁴²

26. In addition, the Louisiana Commission opposes holding the instant hearing in abeyance, given: (1) the plethora of litigated issues that the Commission resolved by opinion and rehearing order in the last year; and (2) the issues that the Louisiana Commission seeks to raise here.⁴³ Specifically, the Louisiana Commission challenges Entergy's inclusion in its 2013 bandwidth calculation of 100 percent of the Casualty Loss ADIT recorded in Account No. 282, Accumulated Deferred Income Taxes - Other Property. According to the Louisiana Commission, Opinion No. 518 permits Entergy to recover through the bandwidth formula only those ADIT amounts in Account No. 282

⁴¹ *Entergy Servs., Inc., et al.*, 143 FERC ¶ 63,012, *supra* n.34.

⁴² Louisiana Commission Protest at 2.

⁴³ *Id.* at 3. The Louisiana Commission cites the Commission's issuance of Opinion No. 505-A, Opinion No. 514, Opinion No. 518, Opinion No. 519, Opinion No. 523 and Opinion No. 526, as well as its rehearing orders in Docket Nos. ER07-682-004, EL07-52-001 and ER12-1384-002, *et al.*

that are properly included in cost-of-service.⁴⁴ The Louisiana Commission contends that to the contrary, Entergy has included in the bandwidth calculation *all* of Account No. 282's Casualty Loss ADIT, which the Louisiana Commission contends is largely comprised of distribution-related ADIT that is neither subject to the Commission's jurisdiction nor includable in cost of service.⁴⁵

27. Further, the Louisiana Commission asserts that Entergy incorrectly excluded Waterford 3 Sale-Leaseback ADIT from the bandwidth calculation. The Louisiana Commission acknowledges that it litigated this issue in Docket No. ER07-956-001, but contends that the Commission's rationale for excluding the Waterford 3 ADIT in Opinion Nos. 514 and 514-A⁴⁶ conflicts with that of Opinion Nos. 505 and 505-A,⁴⁷ which hold that all Net Operating Loss ADIT related to expenses that are properly included in cost-of-service are likewise properly included in the bandwidth calculation. The Louisiana Commission believes this purported "conflict" reflects a change in the applicable legal standard, under which the Commission should now include the Sale-Leaseback in the bandwidth calculation.⁴⁸

28. Entergy's answer notes that the Louisiana Commission's Casualty Loss ADIT and Waterford 3 ADIT issues are already pending before the Commission in the 2012 bandwidth case in Docket No. ER12-1920-000 and the 2009 bandwidth compliance filing in Docket No. ER09-1224-001, where the Louisiana Commission framed the issues using language that is identical to its protest here. In addition, Entergy states that it agrees with the New Orleans Council that the Little Gypsy cancellation cost issue is subject to the outcome of Docket No. ER12-1384-000, *et al.* For these reasons, Entergy argues that the Commission should dismiss the Louisiana Commission's protest and find that the 2013 bandwidth calculation is subject to the outcome of all pending bandwidth-related

⁴⁴ Louisiana Commission Protest at 5 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 88).

⁴⁵ Louisiana Commission Protest at 4-7.

⁴⁶ Opinion No. 514, 137 FERC ¶ 61,029 at PP 117-120; *Entergy Servs., Inc.*, Opinion No. 514-A, 142 FERC ¶ 61,013, at PP 23-27 (2013).

⁴⁷ Opinion No. 505, 130 FERC ¶ 61,023 at PP 133-236; *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103 at PP 58-60.

⁴⁸ Louisiana Commission Protest at 8-9.

proceedings, or hold the current proceeding in abeyance until all previous bandwidth issues are resolved.⁴⁹

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), we will grant the Texas Industrials' late-filed motion to intervene, given their interest in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Entergy's answer because it provides information that has assisted our decision-making process.

B. Hearing Procedures

30. Entergy's proposed rates raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing we order below. While we establish hearing procedures on those issues, in order to prevent relitigation of issues that are the subject of other proceedings before the Commission, including those raised by the Louisiana Commission and the New Orleans Council here, we will hold those procedures in abeyance pending a further Commission order.

31. Our preliminary analysis indicates that Entergy's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's proposed rates for filing, suspend them for a nominal period, and make them effective June 1, 2013,⁵⁰ as requested, subject to refund and to the outcome of the

⁴⁹ Entergy Answer at 4-5, 8-9.

⁵⁰ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203, at P 10 (2006). See also *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

pending bandwidth-related proceedings. We will set these matters for a trial-type evidentiary hearing, but will hold the hearing in abeyance pending further Commission order.

The Commission orders:

(A) Entergy's proposed rates are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2013, as requested, subject to refund and to the outcome of the pending bandwidth-related proceedings.

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

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.