

139 FERC ¶ 61,106
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.	Docket Nos.	ER11-2131-000
		ER11-2131-001
		ER11-2132-000
		ER11-2132-001
		ER11-2133-000
		ER11-2133-001
		ER11-2134-000
		ER11-2134-001
		ER11-2135-000
		ER11-2135-001
		ER11-2136-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued May 7, 2012)

1. On November 16, 2010, as amended on December 7, 2010, Entergy Services, Inc. (Entergy)¹ submitted a compliance filing on behalf of six Entergy Operating Companies (Operating Companies),² pursuant to Opinion No. 509,³ that sets forth revisions to the

¹ The generation and bulk transmission systems of all the Operating Companies are collectively referred to as the Entergy System.

² The six Operating Companies involved in this proceeding are: Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, Inc. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc., Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Texas, Inc. (Entergy Texas). Entergy Gulf States Louisiana and Entergy Texas were created in 2007 following the split of Entergy Gulf States, Inc. (Entergy Gulf States) into two separate, vertically-integrated Operating Companies.

³ *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 509, 132 FERC ¶ 61,253 (2010).

bandwidth formula to include costs associated with the Spindletop Regulatory Asset. Entergy requests that its tariff sheets be made effective as of March 31, 2008, which is the effective date established in Opinion No. 509. In this order, we accept Entergy's compliance filing to be effective March 31, 2008, as requested, as discussed below.

I. Background

2. On July 2, 2008, the Commission issued an order setting a complaint filed by the Louisiana Public Service Commission (Louisiana Commission) for hearing and settlement judge procedures.⁴ The Louisiana Commission alleged in its complaint that there were errors in the methodology used by Entergy to calculate production costs among the Operating Companies for purposes of implementing the bandwidth remedy for maintaining rough production cost equalization on the Entergy System (System), as required by Opinion Nos. 480 and 480-A.⁵ Among the issues set for hearing was the Louisiana Commission's contention that the methodology of Exhibits ETR-26 and ETR-28 erroneously fails to recognize the Spindletop Regulatory Asset costs in the production cost comparison.⁶ The Spindletop Regulatory Asset costs subsequently became the sole issue set for hearing. The resulting Initial Decision held that Entergy had properly excluded the Spindletop Regulatory Asset costs from the bandwidth remedy.⁷

3. In Opinion No. 509, the Commission reversed the Initial Decision, finding that the Spindletop Regulatory Asset costs should be included in the annual bandwidth remedy calculations, and established an effective date of March 31, 2008. In that order, the Commission noted that its decision in large part was determined by Opinion No. 505's⁸ finding that the annual amortization expense of the Spindletop Regulatory Asset should be included in Account 501 (Fuel), an account expressly included in the bandwidth

⁴ *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 124 FERC ¶ 61,010 (2008) (July Order). The July Order also established a refund effective date of March 31, 2008. *Id.* at P 24.

⁵ *Louisiana 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*, *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

⁶ July Order, 124 FERC ¶ 61,010 at P 16.

⁷ *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 127 FERC ¶ 63,021 (2009) (Initial Decision).

⁸ *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at PP 261-63 (2010) (issued subsequent to the Initial Decision).

formula.⁹ The Commission stated that in addition to including the amortization costs of the Spindletop Regulatory Asset in the bandwidth formula, Entergy must include the Spindletop Regulatory Asset in the rate base component of the bandwidth formula. The Commission directed Entergy to submit a compliance filing within 30 days of the date of Opinion No. 509 to reflect the inclusion of the Spindletop Regulatory Asset costs in the rate base component of the bandwidth formula, effective March 31, 2008.¹⁰

II. Entergy's Compliance Filing

4. On November 16, 2010, as amended on December 7, 2010,¹¹ Entergy filed a compliance filing pursuant to Opinion No. 509, including a transmittal letter, identical tariff sheet revisions for each of the six Operating Companies that add the Spindletop Regulatory Assets costs in the bandwidth remedy formula, and associated work papers.¹² In its filing, Entergy states that there are two components related to the Spindletop Regulatory Asset: (1) the variable cost component, which is the annual amount amortized to expense Account 501 (Fuel); and (2) the production cost component that represents the annual return on the unamortized balance of the asset.

5. Entergy notes that the Commission directed in Opinion No. 505 that the variable cost component of the Spindletop Regulatory Asset must be amortized to Account No. 501, which is already included in the filed Service Schedule MSS-3 bandwidth formula. Entergy states that no formula change is required for this component and that an adjustment will be made in the final recalculation of all the previous bandwidth filings starting with calendar year 2006. Entergy states that it will include \$1,610,000 in the Entergy Gulf States Louisiana production cost calculation as the annual amount for this component for calendar year 2006.

6. Entergy states that the annual amortization amount for this component for calendar years 2007 through 2009 (bandwidth calculation filed in Docket Nos. ER08-1056, ER09-1224, and ER10-1350, respectively) is \$1,610,000 but that this will be included in the production cost calculation of Entergy Gulf States Louisiana. The formula input for calendar years 2006-2009 is listed in the work papers attached by Entergy.

⁹ Opinion No. 509, 132 FERC ¶ 61,253 at P 34. The Commission, however, stated that whether the Spindletop Regulatory Asset amortization costs should be included in the bandwidth formula calculation would be determined in Docket No. EL08-51-002.

¹⁰ Opinion No. 509, 132 FERC ¶ 61,253 at P 41.

¹¹ Entergy states that, in the course of electronically submitting its compliance filing, it inadvertently used the wrong filing code; on December 7, 2010, it re-filed to correct the error.

¹² Entergy Compliance Filing at 3.

7. Entergy states that the second component represents the return on the unamortized balance of the Spindletop Regulatory Asset. Entergy explains that because this cost component is a fixed cost and not properly included in Account 501, a revision to the Bandwidth Formula is required. Entergy proposes to add a new formula input (RSRA) to the Fixed Production Expense cost component (FPX). Entergy defined RSRA as: “Return on the Spindletop Regulatory Asset as billed by [Entergy Texas] to [Entergy Gulf States Louisiana].” Entergy explains that because the effective date of this formula change as established by the Commission is March 31, 2008, the cost will be reflected in the final recalculation beginning with calendar year 2007 filed in Docket No. ER08-1056. Entergy states that the annual amounts that will be included in the Entergy Gulf States Louisiana production cost calculation are as follows:

Calendar year 2007: \$2,871,764 (Docket No. ER08-1056)

Calendar year 2008: \$2,758,716 (Docket No. ER09-1224)

Calendar year 2009: \$2,601,508 (Docket No. ER10-1350).

8. Entergy states that the revisions to the bandwidth formula ordered by the Commission will result in changes to the bandwidth formula payments and receipts for calendar years 2006, 2007, 2008, and 2009.¹³ Entergy states that at the time it files a comprehensive bandwidth recalculation report showing the updated payment/receipt amounts at the conclusion of the proceeding in each of the above-listed dockets, it will include the Spindletop Regulatory Asset costs described in its filing.¹⁴ Moreover, Entergy states that it will include such adjustments in the first Entergy Intra-System Bill issued following the filing of each of the comprehensive bandwidth recalculation reports.

9. Entergy requests an effective date of March 31, 2008 for the revised System Agreement tariff sheets, as required by Opinion No. 509.

III. Notice of Filing and Responsive Pleadings

10. Notice of Entergy’s compliance filing and its corrected filing were published in the *Federal Register*, 75 Fed. Reg. 74,030, and 75 Fed. Reg. 79,367 (2010), with comments, protests, and interventions due on or before December 28, 2010. On December 27, 2010, the Louisiana Commission filed a protest. On January 11, 2011, Entergy filed an answer to the Louisiana Commission’s protest.

¹³ *Id.*

¹⁴ *Id.* at 4.

11. In its protest, the Louisiana Commission contends that the compliance filing is inadequate because of an issue that is before the Commission for resolution in the Initial Decision issued in Docket No. ER09-1224-001¹⁵ pertaining to the third annual bandwidth filing. The Louisiana Commission states that the amortization of the Spindletop Regulatory Asset is currently included in Entergy Gulf States Louisiana's Account 501, pursuant to Opinion Nos. 505 and 509. As a result, the Louisiana Commission argues, Entergy's compliance attempt currently allows for inclusion of the Spindletop Regulatory Asset in the rate base component of the bandwidth formula and allows a return on the balance as ordered in Opinion No. 509. However, the Louisiana Commission states, the Presiding Judge in Docket No. ER09-1224-001 found that the balance of the Spindletop Regulatory Asset should be expensed as of 2008 pursuant to a stipulation between the Louisiana Commission and Entergy Gulf States Louisiana.¹⁶ The Louisiana Commission argues that if the Initial Decision in Docket No. ER09-1224-001 is upheld and Entergy decides or is required to write off the Spindletop Regulatory Asset, then Entergy Services' compliance filing will not comport with the decision of Opinion No. 509, which requires Entergy to include the Spindletop Regulatory Asset in the rate base component of the bandwidth formula to ensure a return on the Spindletop Regulatory Asset.

12. The Louisiana Commission contends that, accordingly, the bandwidth formula should be amended to allow a return on the Spindletop Regulatory Asset even if it is not included in Account 501. The Louisiana Commission proposes that the new formula input proposed in the compliance filing, which is defined as the "[r]eturn on the Spindletop Regulatory Asset as billed by [Entergy Texas] to [Entergy Gulf States Louisiana]" should be amended to also include the "amortization of the Spindletop Regulatory Asset as billed by [Entergy Texas] to [Entergy Gulf States Louisiana], to the extent the amortization is not included in [Entergy Gulf States Louisiana's] Account 501." According to the Louisiana Commission, its proposal is intended to provide to ratepayers the results of Opinion No. 509 in the event the Initial Decision in Docket No. ER09-1224-001 is upheld, but leave the results of Opinion No. 509 in place if there ultimately is no write-off of the Account 501 amounts.

13. Entergy answers that the Louisiana Commission's protest is without merit and is outside the scope of this proceeding.¹⁷ Entergy argues that the Louisiana Commission cannot raise issues in other dockets via the guise of a protest to Entergy's compliance

¹⁵ *Entergy Services, Inc.*, 132 FERC ¶ 63,005 (2010).

¹⁶ Louisiana Commission Protest at 2-3 (citing *Entergy Services, Inc.*, 132 FERC ¶ 63,005 at P 235).

¹⁷ Entergy Answer at 1.

filing.¹⁸ In addition, Entergy states that Entergy, Trial Staff, and the Louisiana Commission all have asserted in Docket No. ER09-1224-001 that the Initial Decision's findings regarding the Spindletop Regulatory Asset issues are moot as a result of Opinion No. 509 and that an Entergy request for a Commission finding to that effect is pending before the Commission in Docket No. ER09-1224-001. Entergy states that the Louisiana Commission fails to recognize that the Initial Decision in Docket No. ER09-1224 remains a pending matter at the Commission and does not reflect a final Commission decision.¹⁹

14. On April 19, 2011, Commission staff issued a letter requesting that Entergy clarify its compliance proposal. On April 27, 2011, Entergy responded stating that it did not propose in its compliance filing to include Spindletop Regulatory Asset costs reflecting calendar year 2006 data in the 2007 bandwidth remedy calculation. Entergy states that it recognizes that the Commission established an effective date of March 31, 2008 in Opinion No. 509 and that Entergy intends to comply with that effective date.

IV. Discussion

A. Procedural Matters

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer to the protest because it has assisted us in our decision-making process.

B. Commission Determination

16. We find that Entergy's filing complies with the directives of Opinion No. 509. As explained by Entergy, there are two components related to the Spindletop Regulatory Asset: (1) the annual amount amortized to expense Account No. 501 (Fuel); and (2) the annual return on the unamortized balance of the asset. With regard to the first component, we find that Entergy has appropriately determined that this results in including costs in Entergy Gulf States Louisiana's variable production costs of \$1,610,000 for calendar years 2007, 2008, and 2009. With regard to the second component, we find that Entergy's revision to Service Schedule MSS-3 complies with the directives of Opinion No. 509. This revision will allow the return on the unamortized balance of the Spindletop Regulatory Asset to be included in the bandwidth calculation starting with the calendar year 2007. Because the effective date established by the Commission is March 31, 2008, the remedy adopted in Opinion No. 509 is appropriately reflected in the final bandwidth recalculations beginning with calendar year 2007.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 5.

17. Lastly, we find that the issues raised in the Louisiana Commission's protest are beyond the scope of Opinion No. 509's limited directive that required Entergy to submit a compliance filing "to reflect the inclusion of the Spindletop Regulatory Asset in the rate base component of the bandwidth formula, effective March 31, 2008."²⁰ When the Commission reviews a compliance filing, it must determine "whether the changes proposed comply with the Commission's previously stated directives."²¹ Therefore, our consideration of this compliance filing is limited in scope to reviewing whether Entergy has made the proposed tariff revisions directed by Opinion No. 509. As discussed above, we find that Entergy's compliance filing complies with Opinion No. 509. The Louisiana Commission's concerns relate to inclusion of the amortization of the Spindletop Regulatory Asset in the bandwidth formula based on findings in the Initial Decision in Docket No. ER09-1224-001, not inclusion of the return on the unamortized balance of the Spindletop Regulatory Asset, which is the sole issue addressed by the compliance directive of Opinion No. 509.

The Commission orders:

Entergy's revised tariff sheets are hereby accepted to be effective as of March 31, 2008, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ Opinion No. 509, 132 FERC ¶ 61,253 at P 31.

²¹ *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,021, at P 13 (2009) (citing *New York Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,042 (2009)). *See also Delmarva Power & Light Co.*, 62 FERC ¶ 61,321, at 63,120 (1993) ("We have explained in numerous orders that we will not consider arguments raised in a compliance proceeding that are not responsive to the narrow issue of the filing utility's compliance with the explicit directives of the Commission in an earlier order.")