

143 FERC ¶ 61,116
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. ER11-2161-002

OPINION NO. 526

ORDER AFFIRMING INITIAL DECISION

(Issued May 10, 2013)

1. This case, which is before the Commission on exceptions to an Initial Decision issued February 8, 2012,¹ involves steam production plant depreciation rates (Depreciation Rates) filed by Entergy Services, Inc. (Entergy) on behalf of Entergy Texas, Inc. (Entergy Texas). In this order, the Commission affirms the determinations of the Presiding Administrative Law Judge (Presiding Judge) relating to the justness and reasonableness of Entergy's proposed Depreciation Rates for Entergy Texas.

I. Background and Procedural History

A. Entergy Corporate and Operating Structure

2. Entergy is a public utility holding company consisting of six Operating Companies that provide generation, transmission, and distribution services to wholesale requirements and retail loads in the States of Louisiana, Mississippi, Arkansas and Texas.² While each Operating Company owns or has under contract its own generation, transmission, and distribution assets, the Entergy System is planned and operated as a single integrated electric system, pursuant to the terms of the Entergy System Agreement (System

¹ *Entergy Servs., Inc.*, 138 FERC ¶ 63,010 (2012) (Initial Decision).

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

Agreement).³ Entergy, a subsidiary of Entergy Corporation, provides general executive, management, advisory, administrative, accounting, legal, regulatory and engineering services to the Operating Companies.

3. For more than fifty years, Entergy's system has operated under some form of the System Agreement. The System Agreement, which is a contract among the Operating Companies and Entergy, provides for the joint planning, construction, operation, and maintenance of the generation, transmission, and other facilities of the Operating Companies, and for the sharing of costs and benefits thereof.⁴ The System Agreement is a Commission-approved tariff that provides for the sharing of the cost of reserve capacity on Entergy's system.⁵ Further, it provides the terms and conditions governing the allocation of energy among the Operating Companies and how the allocated energy is to be priced for System Agreement purposes. The fundamental principle of the System Agreement is that all of the Operating Companies' resources are directed by a system dispatcher to meet the aggregated needs of the Operating Companies.⁶

4. There are seven service schedules contained in the System Agreement that provide formulas for sharing costs and benefits. The Depreciation Rates (i.e., for steam production plant only) for Service Schedules MSS-1, MSS-3 and MSS-4 are at issue in this proceeding.⁷ The following overview of Service Schedules MSS-1, MSS-4, and

³ The System Agreement was originally approved by the Commission in 1985. *Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305, *order on reh'g*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985). The version of the System Agreement at issue here was accepted by delegated letter order issued January 11, 2011 in Docket No. ER11-2119-000.

⁴ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 5 (Opinion No. 480), *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 sub nom. La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011).

⁵ Opinion No. 480, 111 FERC ¶ 61,311 at PP 6-7.

⁶ *Id.* P 6.

⁷ Entergy Services, Inc., Transmittal Letter, Docket No. ER11-2161-000, at 4 (November 19, 2010) (Transmittal Letter).

MSS-3 generally describes how depreciation rates are incorporated into the Service Schedules.

1. Service Schedule MSS-1

5. The purpose of Service Schedule MSS-1 (Reserve Equalization) is to “provide the basis for equalizing the capability and ownership cost incidental to such capability among the [Operating] Companies in such a manner that the capability and reserves of each [Operating] Company after equalization shall be equal to its Capability Responsibility.”⁸

6. As described in section 10.03 of Service Schedule MSS-1, if an Operating Company’s capability to serve system load exceeds its Capability Responsibility, then excess generation from Intermediate Generating Units⁹ is allocated among the Operating Companies. An Operating Company (or more than one of the Operating Companies) with excess generation shall receive an equalization payment from the Operating Company (or Companies) that has insufficient generation to serve its load.

7. The monthly billing charge determined in section 10.06 of Service Schedule MSS-1 is based on a cost-of-service that includes Intermediate Generating Units’ production plant and the associated accumulated depreciation in rate base; the cost-of-service includes a depreciation expense component associated with those Intermediate Generating Units. The per-kW units in the denominator of the monthly charge are based on the capacity of all units included as Intermediate Generating Units.

2. Service Schedule MSS-4

8. Section 40.01 of Service Schedule MSS-4 (Unit Power Purchase) states that “the purpose of this Service Schedule is to provide the basis for making a unit power purchase between [Operating] Companies and/or the sale of power purchased by another

⁸ Service Schedule MSS-1, section 10.01. “‘Capability Responsibility’ of a Company shall be the System Capability multiplied by the Responsibility Ratio for that Company.” System Agreement, Article II, Definitions, section 2.19. “‘Responsibility Ratio’ of a Company shall be the ratio obtained by dividing the load responsibility of that company by the System Load Responsibility.” System Agreement, Article II, Definitions, section 2.18.

⁹ Service Schedule MSS-1, section 10.05. Generally stated, the Intermediate Generating Units under Service Schedule MSS-1 are those that serve as reserves to the system and that are gas-fired and oil-fired steam production plant units having an annual average heat rate in the preceding year of at least 10,000 Btu per kilowatt-hour.

[Operating] Company....”¹⁰ Section 40.03 of Service Schedule MSS-4 provides for a Capability Payment from an Operating Company making the purchase from a Designated Generating Unit¹¹ based on a cost-of-service that identifies the investment and expenses in accounts related to that particular Designated Generating Unit, including depreciation expenses and rate base effects of depreciation.

3. Service Schedule MSS-3

9. Service Schedule MSS-3 (Exchange of Electric Energy Among the Companies) includes two rate formulas: (1) the hourly allocation of system energy among the Operating Companies, and (2) a formula to roughly equalize production costs in order to maintain production costs within a specified band among the Operating Companies (bandwidth formula). For Service Schedule MSS-3, depreciation rate issues raised in this proceeding relate only to the second formula-the bandwidth formula.

10. The bandwidth formula was developed in response to a complaint filed in 2001 challenging the production cost allocations among the operating companies. In 2005, the Commission issued Opinion No. 480, upholding the Presiding Judge’s findings that the Operating Companies’ production costs were no longer roughly equal and that the system agreement was therefore no longer just and reasonable, and specifying an appropriate bandwidth remedy.¹²

11. In Opinion Nos. 480 and 480-A, the Commission established a numerical bandwidth of +/-11 percent of the Entergy system average production costs to maintain the rough equalization of production costs among the Operating Companies.¹³ On November 17, 2006, the Commission issued an order accepting Entergy’s proposed amendments to Service Schedule MSS-3 to include a formula (based on the methodology

¹⁰ Service Schedule MSS-4, Section 40.01.

¹¹ Under Service Schedule MSS-4, section 40.02, a Designated Generating Unit is defined as “any generating unit from which the unit power purchase is made under Section 40.01 that is mutually agreed upon by the purchaser and the seller.”

¹² Opinion No. 480, 111 FERC ¶ 61,311 at P 1; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 15.

¹³ Opinion No. 480, 111 FERC ¶ 61,311 at P 144; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 46.

in Exhibit Nos. ETR-26 and ETR-28 as directed in Opinion No. 480) to calculate bandwidth payments and achieve rough equalization of production costs.¹⁴

12. The bandwidth formula described in Service Schedule MSS-3 compares each Operating Company's actual production costs calculated in section 30.12 of Service Schedule MSS-3¹⁵ for the twelve months ending on December 31 of the previous year as reported in the FERC Form No. 1 (Form 1) with certain adjustments, to the allocated system average production costs of each Operating Company calculated in section 30.13 of Service Schedule MSS-3.¹⁶ If there are deviations (referred to as disparities) of more than the bandwidth of +/- 11 percent, then payments to and receipts from other Operating Companies are determined for each Operating Company as a remedy by which to maintain rough equalization of production costs among the Operating Companies.

13. Section 30.12 of Service Schedule MSS-3 includes depreciation and amortization expenses as components of each company's actual production costs. The production rate base component of each Operating Company's actual production costs also reflects the corresponding plant-in-service and accumulated provision for depreciation and amortization used in calculating the return allowance and associated federal and state income taxes in the actual production cost.

B. Entergy's Filing

14. On November 19, 2010, Entergy filed proposed Depreciation Rates¹⁷ on behalf of Entergy Texas pursuant to section 205 of the Federal Power Act (FPA).¹⁸ The Depreciation Rates reflect the reduced rates adopted by the Public Utility Commission of

¹⁴ *La. Pub. Serv. Comm'n v. Entergy Servs.*, 117 FERC ¶ 61,203 (2006).

¹⁵ Service Schedule MSS-3, section 30.12, Actual Production Cost.

¹⁶ Service Schedule MSS-3, section 30.13, Average Production Cost.

¹⁷ Transmittal Letter, Attachment A, contains, among other things, a list of the steam production plants and associated proposed steam production plant depreciation rates. Entergy states that the proposed Depreciation Rates are associated with the following steam generating units: Nelson 6, Sabine, Big Cajun and Lewis Creek. Transmittal Letter at 3.

¹⁸ 16 U.S.C. § 824d (2006).

Texas (Texas Commission) in a settlement resulting from a filing made by Entergy Texas with the Texas Commission.¹⁹

15. On February 2, 2011, the Hearing Order accepted Entergy's revised Depreciation Rates, suspended them for a nominal period, to become effective January 1, 2009, subject to refund, and established hearing and settlement judge procedures.²⁰

C. Testimony

16. Testimony was filed by Entergy witness Brian W. Caldwell (Caldwell); Louisiana Commission witnesses Charles W. King (King) and Lane Kollen (Kollen) and Randy W. Futral (Futral); and Commission Trial Staff witness Kevin Pewterbaugh (Pewterbaugh).

1. Direct and Answering Testimony

17. Entergy presented the direct and answering testimony of Caldwell who supported the proposed Depreciation Rates adopted by the Texas Commission in a state settlement proceeding in Texas Commission Docket No. 34800 and affirmed in a state settlement proceeding in Texas Commission Docket No. 37744 for use in retail rates.²¹ Caldwell's direct and answering testimony included excerpts of studies done in Texas Commission Docket No. 34800 by intervenors Jack Pous (Pous),²² James Selecky (Selecky),²³ and himself,²⁴ as well as testimony by Texas Commission Staff witness Nara Srinivasa (Srinivasa) in Texas Commission Docket No. 37744.²⁵ According to Caldwell, during the course of the proceeding in Texas Commission Docket No. 34800, intervenor witnesses Pous and Selecky presented alternative depreciation recommendations in response to

¹⁹ Transmittal Letter, Attachment B, contains, among other things, the Stipulation and Settlement Agreement to resolve issues in Texas Commission's Docket No. 34800.

²⁰ *Entergy Servs., Inc.*, 134 FERC ¶ 61,079 (2011) (Hearing Order).

²¹ Ex. ESI-1 at 2.

²² Ex. ESI-4.

²³ Ex. ESI-5.

²⁴ Ex. ESI-6.

²⁵ Ex. ESI-9.

Entergy's proposed change in depreciation rates.²⁶ Caldwell states that, in Texas Commission Docket No. 37744, Srinivasa recommended depreciation rates that were within three percent of those approved by the Texas Commission in Docket No. 34800; as such Caldwell claims that the results of the Srinivasa study in Texas Commission Docket No. 37744 correspond closely with the result of the depreciation rates determined in Texas Commission Docket No. 34800.²⁷

18. Louisiana Commission's King noted that in its direct case, Entergy provided no information concerning the proposed rates other than the rates themselves and statements in Caldwell's testimony that the rates were approved by the Texas Commission.²⁸ King testified that he could accept the service lives Entergy presented in response to discovery requests but he does not know what survivor curves underlie the depreciation rates.²⁹ King also testified that in response to discovery requests, Entergy stated that the negative salvage rate for all generating facilities is assumed to be five percent.³⁰ King maintains that the five percent negative salvage rate is "altogether unacceptable because it has no basis whatever; it is pulled from thin air."³¹

19. Louisiana Commission's Kollen presented direct and answering testimony concluding that the proposed Depreciation Rates for Entergy Texas are not just and reasonable and recommending that they be modified.³² According to Kollen, Entergy's Depreciation Rates must conform to the Commission's Uniform System of Accounts (USoA),³³ and should be Commission-approved rates rather than some blend of retail-

²⁶ Ex. ESI-1 at 7.

²⁷ *Id.* at 5.

²⁸ Ex. LC-1 at 5.

²⁹ *Id.* at 6.

³⁰ *Id.*

³¹ *Id.*

³² Ex. LC-19 at 5.

³³ *Id.* at 6.

approved and Commission-approved rates.³⁴ Kollen also recommended that the Commission include no decommissioning costs.³⁵

20. Trial Staff witness Pewterbaugh provided a general discussion of depreciation followed by an analysis of the appropriate depreciation rates for Entergy Texas's steam generating facilities.³⁶ In his direct and answering testimony, Pewterbaugh testified that he believes the Texas Commission depreciation study is adequate to support the exact rates it has developed, but not adequate to support the retail settlement depreciation rates that Entergy's Caldwell proposes.³⁷ Pewterbaugh believes that the exact rates from the Texas Commission depreciation study in Texas Commission Docket No. 37744 should be adopted in this proceeding. Pewterbaugh agrees with Louisiana Commission's King that the decommissioning costs are unsupported and should not be included in the depreciation rates, but Pewterbaugh believes the negative five percent net salvage factor is a reasonable rate to include for the salvage associated with interim retirements.³⁸

2. Cross-Answering Testimony and Rebuttal Testimony

21. Trial Staff witness Pewterbaugh's cross-answering testimony responded to Louisiana Commission's King, agreeing that decommissioning costs are unsupported for final terminations. While he agrees with King that the decommissioning costs are unsupported and should not be included in the depreciation rate, Pewterbaugh supports a five percent negative salvage factor as a reasonable rate to include for the salvage associated with interim retirements, or retirements that occur before the terminal abandonment of the plant.³⁹

22. Louisiana Commission's King filed cross-answering testimony agreeing with Trial Staff's Pewterbaugh that Entergy's proposed depreciation rates are not supported by a depreciation study and that the Texas Commission rates recommended by Srinivasa in

³⁴ *Id.* at 9.

³⁵ *Id.* at 5.

³⁶ Ex. S-1 at 4-10.

³⁷ *Id.* at 3.

³⁸ Ex. S-4 at 4-9.

³⁹ *Id.* at 3.

Texas Commission Docket No. 37744 are supported.⁴⁰ King disagreed with the use of a net salvage factor of negative five percent, stating that this salvage value is not supported by underlying data or studies.⁴¹

23. Louisiana Commission's Kollen filed cross-answering testimony agreeing with Trial Staff's Pewterbaugh that the Commission should adopt the settlement depreciation rates proposed by Srinivasa in Texas Commission Docket No. 37744, adjusted to remove the unsupported net negative salvage value, in lieu of the Depreciation Rates that Entergy proposed in this proceeding (which come from Texas Commission Docket No. 34800).⁴² Kollen testified that the depreciation rates Srinivasa proposed in Texas Commission Docket No. 37744 are the only ones that are supported by a comprehensive depreciation study as required by the Commission.⁴³ Louisiana Commission's Kollen noted that Entergy's Caldwell confirmed in his deposition that the depreciation rates determined in Texas Commission Docket No. 34800 were not based on a depreciation study,⁴⁴ that Srinivasa completed a depreciation study in Texas Commission Docket No. 37744, and that the difference in the depreciation expenses between the two Texas Commission dockets was within three percent.⁴⁵

24. Louisiana Commission's Kollen testified that Trial Staff's Pewterbaugh and Entergy's Caldwell confirmed in their depositions that there were errors in the Srinivasa depreciation study,⁴⁶ and that the corrected difference in depreciation expense is 16.2 percent, not 2.7 percent.⁴⁷ After being apprised of a transposition error in certain numbers in the Srinivasa study, Entergy's Caldwell admitted that the difference in total plant depreciation expense was actually 16 percent between the two sets of rates and it

⁴⁰ Ex. LC-31 at 3.

⁴¹ *Id.*

⁴² Ex. LC-24 at 2.

⁴³ *Id.*

⁴⁴ *Id.* at 11 (citing Ex. LC-26 at 8-9).

⁴⁵ *Id.* at 12 (citing Ex. LC-26 at 37-38).

⁴⁶ Ex. LC-24 at 9 (citing Ex. LC-26 at 54-55; Ex. LC-25 at 33-37).

⁴⁷ Ex. LC-24 at 12.

appeared that the Srinivasa study did not support his own recommended rates (the Texas Commission Docket No. 34800 settlement rates).⁴⁸

25. Entergy's Caldwell submitted rebuttal testimony to respond to assertions made by Trial Staff's Pewterbaugh and Louisiana Commission's King concerning depreciation and salvage factors. Caldwell's rebuttal testimony included excerpts of studies by Kenneth R. Thompson (Thompson) and John Tortorello (Tortorello),⁴⁹ and John Spanos (Spanos)⁵⁰ to support Entergy's position.⁵¹ Caldwell testified that he does not agree with Trial Staff's Pewterbaugh and Louisiana Commission's King that the as-filed steam production depreciation rates are not supported by a depreciation study.⁵² Caldwell acknowledged that when corrected, there is a discrepancy between those depreciation rates proposed in the Srinivasa study and the as-filed Depreciation Rates, but maintains that the discrepancy does not mean the as-filed Depreciation Rates are now unsupported.⁵³ Entergy's Caldwell testified that the Thompson and Tortorello studies from Texas Commission Docket No. 1903⁵⁴ and the Spanos study in Texas Commission Docket No. 37744⁵⁵ provide support for using a negative five percent terminal salvage value.

D. Initial Decision

26. A hearing was held in October of 2011 that resulted in the Initial Decision. Briefs on exceptions were filed by Entergy, the Arkansas Public Service Commission (Arkansas Commission), and the Louisiana Commission on March 9, 2012. Briefs opposing exceptions were filed by Entergy, Trial Staff, the Arkansas Commission, and the Louisiana Commission on March 29, 2012.

⁴⁸ Tr. 152-157, 167.

⁴⁹ Ex. ESI-15.

⁵⁰ Ex. ESI-17.

⁵¹ Ex. ESI-15; ESI-17.

⁵² Ex. ESI-12 at 7.

⁵³ *Id.* at 7-8.

⁵⁴ *Id.* at 5 (citing Ex. ESI-15).

⁵⁵ *Id.* (citing Ex. ESI-17).

27. The Initial Decision addressed the following issues: (1) whether a comprehensive depreciation study is required; (2) whether the Pous, Selecky, Spanos, Tortorello and Caldwell analyses, taken separately or together, qualify as depreciation studies and support Entergy's proposed depreciation rates; (3) whether the Commission should adopt the rates developed and supported by the Srinivasa study; (4) whether a terminal net salvage value factor is supported; (5) whether an interim net salvage cost is supported; and (6) whether the depreciation expense should be based upon the actual costs listed on the Operating Company's filed Form 1.

28. In the Initial Decision, the Presiding Judge found that (1) a comprehensive depreciation study is required; (2) the Pous, Selecky, Spanos, Tortorello and Caldwell analyses do not qualify as a detailed depreciation study to support Entergy's requested change in depreciation rates; (3) the Srinivasa study is a detailed and comprehensive depreciation study; (4) terminal net salvage is not supported; (5) interim salvage is not supported; and (6) the depreciation expense should not be based upon the Operating Company's filed Form 1.

II. Discussion

29. Having fully evaluated the Initial Decision, the briefs on and opposing exceptions, and the record before us, we affirm the determinations of the Presiding Judge for the reasons set forth below. As an initial matter, however, we first identify certain issues that we do not address in this order, including Issue 6, which concern the depreciation rates for use in Service Schedule MSS-3, because the issues have been fully litigated and decided in a previous proceeding. We also affirm a procedural ruling by the Presiding Judge that the depreciation rates for Entergy Gulf States' River Bend nuclear generation facility are outside the scope of this proceeding.

A. Scope of Instant Proceeding

1. Blended Rate Issue

30. Subsequent to the hearing, Initial Decision, and briefs on and opposing exceptions in this proceeding, the Commission has made a number of clarifications with regard to the bandwidth formula depreciation variables in Service Schedule MSS-3. In particular, the Commission has clarified that, for purposes of the bandwidth remedy in Service Schedule MSS-3, the definitions of the bandwidth formula depreciation variables require the depreciation rates approved by retail regulators to be reflected in the calculation implementing the bandwidth formula.⁵⁶ Accordingly, Entergy need not submit to the

⁵⁶ *La. Pub. Serv. Comm'n v. Entergy Servs.*, Opinion No. 519, 139 FERC ¶ 61,107 at P 13 (2012) (Opinion No. 519).

Commission section 205 filings seeking approval for revised depreciation rates adopted by any of Entergy's retail regulators in the bandwidth formula for Service Schedule MSS-3. Thus, the findings we make in this order with respect to the issues raised on exception involve only Depreciation Rates for Service Schedules MSS-1 and MSS-4.

31. In Opinion No. 519, which was issued two months after the filing of briefs opposing exceptions in the instant proceeding, the Commission affirmed that it has the authority to adopt retail-determined depreciation rates in the jurisdictional bandwidth formula. In distinguishing the Commission's findings in Opinion No. 514⁵⁷ from those in Opinion No. 505, the Commission explained that in Opinion No. 505:

[t]he Commission stated that any changes to the bandwidth formula would require a future FPA section 205 or 206 filing. As the Commission has subsequently clarified, if parties believe that Entergy inputted data from the wrong parts of FERC Form [No.] 1 in its bandwidth formula, or that the data used was incorrectly calculated, such objections are properly raised in an annual bandwidth proceedings. Conversely, if parties believe that the methodology in Service Schedule MSS-3 with respect to depreciation expenses should be changed, they should file a separate section 206 complaint (or, in the case of Entergy, a section 205 filing).⁵⁸

32. Specifically, the Commission affirmed Opinion No. 514's clarification that the definitions of the bandwidth formula depreciation variables require depreciation rates approved by retail regulators to be reflected in calculations implementing the bandwidth formula.⁵⁹ The Commission found that in light of that interpretation of the depreciation variables, it was unnecessary for Entergy to make a section 205 filing in order to seek approval to include revised depreciation rates adopted by any of its retail regulators in the bandwidth formula.⁶⁰ The Commission also clarified that the Commission's policy on changes in depreciation in formula rates established in Order No. 618⁶¹ does not apply to

⁵⁷ *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011), *order denying reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013 (2013).

⁵⁸ Opinion No. 519, 139 FERC ¶ 61,107 at P 110 (internal citations omitted).

⁵⁹ *Id.* P 26.

⁶⁰ *Id.*

⁶¹ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,104 (2000).

the bandwidth formula.⁶² The Commission further explained that it was reversing statements to the contrary in Opinion No. 505 and in an order denying interlocutory appeal in the proceeding that resulted in Opinion No. 514.⁶³

33. In the instant proceeding, the Louisiana Commission sought to raise an issue regarding the blended rate issue (i.e., the bandwidth formula's (section 30.12 of Service Schedule MSS-3) use of state-established depreciation rates for retail transactions and Commission-established depreciation rates for wholesale transactions). The Presiding Judge found and ordered that in harmony with the Hearing Order, the blended rate issue litigated in Docket No. EL10-55, the proceeding resulting in Opinion No. 519, would not be re-litigated in this proceeding.⁶⁴ However, the Presiding Judge went on to address an argument raised in the Arkansas Commission's Post-Trial Initial Brief that the blended rate principle discussed by the Commission in Opinion No. 514 is controlling. The Presiding Judge found that the blended rate principle discussed in Opinion No. 514 does not apply to this proceeding.⁶⁵

34. We find that the blended rate issue was litigated in Docket No. EL10-55 and addressed in Opinion No. 519. In Opinion No. 519, the Commission found that section 30.12 of the bandwidth formula contained in Service Schedule MSS-3 of the Entergy System Agreement requires the use of depreciation rates approved by retail regulators and the Louisiana Commission failed to show that the bandwidth formula was unjust, unreasonable, or unduly discriminatory or preferential because it includes retail depreciation rates.⁶⁶ The Commission found that for purposes of Service Schedule MSS-3, the depreciation rates approved by retail regulators are the Commission-approved rates.⁶⁷

⁶² *Id.* (citing *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104 (2000)).

⁶³ *Id.* P 110.

⁶⁴ Initial Decision, 138 FERC ¶ 63,010 at P 9.

⁶⁵ *Id.* P 334.

⁶⁶ Opinion No. 519, 139 FERC ¶ 61,107 at P 112.

⁶⁷ *Id.* P 113.

2. The River Bend Issue

35. At the initial pre-hearing conference on March 30, 2011, the participants raised a concern as to whether River Bend's nuclear depreciation rate was within the scope of the issues in this proceeding. The parties disagreed as to whether the Hearing Order directed a hearing on the nuclear issue. The Presiding Judge held that it did not.⁶⁸ The Louisiana Commission filed a motion for an interlocutory appeal and the Arkansas Commission filed an answer in opposition. The Presiding Judge denied the motion⁶⁹ and the Chairman subsequently determined that he would not refer the interlocutory appeal to the full Commission.⁷⁰

36. We find the Presiding Judge properly excluded issues related to the depreciation rate associated with the River Bend nuclear generating facility, located in Louisiana. The Hearing Order did not set the River Bend depreciation rates for hearing.⁷¹ As Entergy noted in its Brief on Scope of Proceeding, Entergy Texas does not own any nuclear production plant, and there is no request in this proceeding to change the depreciation rate for nuclear production plant.⁷²

37. As Entergy explained in its filing, prior to the end of 2007, Entergy Gulf States, Inc. owned the River Bend nuclear generating facility and a 70 percent share of River Bend was in Entergy Gulf States, Inc.'s retail rate base for regulatory purposes.⁷³ The remaining 30 percent of River Bend was not in retail rate base and the sale of power from that portion was treated as unregulated.⁷⁴ On December 31, 2007, Entergy Gulf States, Inc. underwent a jurisdictional separation to create two separate companies – Entergy Texas, which serves the Texas retail jurisdiction and Entergy Gulf States, which serves

⁶⁸ *Entergy Servs., Inc.*, Order on Scope of Issues Set for Hearing, Docket No. ER11-2161-002 (April 22, 2011).

⁶⁹ *Entergy Services, Inc.*, 135 FERC ¶ 63,008 (2011).

⁷⁰ *Entergy Services, Inc.*, Notice of Determination by the Chairman, Docket No. ER11-2161-002 (May 27, 2011).

⁷¹ Hearing Order, 134 FERC ¶ 61,079.

⁷² Entergy Brief on Scope of Proceeding at 2.

⁷³ Transmittal Letter at 5, 6.

⁷⁴ *Id.* at 6.

the Louisiana retail jurisdictions.⁷⁵ As part of the jurisdictional separation, Entergy stated that there was also a division of resources, which was accomplished through a combination of ownership and power sales agreements between Entergy Texas and Entergy Gulf States.

38. Entergy Gulf States assumed ownership of the 70 percent regulated portion of the River Bend nuclear generating facility after the jurisdictional separation and entered into a Service Schedule MSS-4 power sales agreement to sell the capacity and energy related to a portion (42.5 percent) of the 70 percent regulated portion of the River Bend output to Entergy Texas. Entergy stated that this approach was designed to maintain the status quo of the historical allocation of River Bend between the Louisiana and Texas jurisdictions after the separation was completed.⁷⁶

39. Entergy explained that, on October 5, 2007, in Docket No. ER08-31, Entergy submitted the River Bend Service Schedule MSS-4 agreement for filing.⁷⁷ Entergy stated that, in that filing, Entergy requested Commission approval to adjust some of the inputs to the Service Schedule MSS-4 formula, including depreciation inputs, to reflect decisions made by the Texas Commission.⁷⁸ The Commission accepted the River Bend Service Schedule MSS-4 agreement for filing on December 19, 2007.⁷⁹

40. In its Transmittal Letter, Entergy noted that, in the Texas Commission settlement addressing the proposed Depreciation Rates, the parties also agreed to reduce the nuclear depreciation and decommissioning rates for use in the River Bend Service Schedule MSS-4 agreement effective January 2, 2009.⁸⁰ Entergy stated that it believes that the section 205 filing it made in the Docket No. ER08-31 proceeding satisfies any potential filing obligations relating to the River Bend nuclear generating facility depreciation rate approved by the Texas Commission and included in the Service Schedule MSS-4

⁷⁵ *Id.* at 1, n.1.

⁷⁶ *Id.* at 6.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Entergy Services, Inc.*, (delegated letter order), Docket No. ER08-31-000 (Dec. 19, 2007).

⁸⁰ Transmittal Letter at 5.

agreement between Entergy Gulf States and Entergy Texas.⁸¹ Therefore, Entergy stated that it was not requesting that the Commission authorize the decrease in the River Bend depreciation rate that was approved by the Texas Commission.⁸² Entergy stated that this lower depreciation rate has been used in the River Bend Service Schedule MSS-4 agreement billings from Entergy Gulf States to Entergy Texas since January 1, 2009. Entergy stated that it was simply providing the Commission with additional information concerning the applicable depreciation rate in the River Bend Service Schedule MSS-4 agreement.⁸³

41. We affirm the Presiding Judge's decision to exclude the River Bend depreciation rates from the scope of this proceeding because the Hearing Order did not set the River Bend issue for hearing. Entergy Texas did not seek approval of the depreciation rate associated with the River Bend unit; Entergy Gulf States owns the River Bend unit. Accordingly, the depreciation rate for the River Bend Service Schedule MSS-4 agreement under which Entergy Gulf States sells energy and capacity from the River Bend unit to Entergy Texas is outside the scope of this proceeding.

B. Issue 1: Whether a Comprehensive Depreciation Study is Required.

1. Initial Decision

42. The Presiding Judge found that Entergy has the burden of filing a comprehensive depreciation study to support its proposed Depreciation Rates.⁸⁴ He noted that in Opinion No. 505, the Commission held that “[a] comprehensive depreciation study . . . would be required before currently-applicable nuclear depreciation rates could be recalculated for ratemaking purposes”⁸⁵ The Presiding Judge found that neither Entergy nor the Arkansas Commission provided compelling arguments of why that rule should not apply.⁸⁶

⁸¹ *Id.* at 6-7.

⁸² *Id.* at 7.

⁸³ *Id.*

⁸⁴ Initial Decision, 138 FERC ¶ 63,010 at PP 149-150.

⁸⁵ *Id.* P 149 (citing Opinion No. 505, 130 FERC ¶ 61,023 at n.205 (2010) (Opinion No. 505)).

⁸⁶ *Id.* P 150.

43. The Presiding Judge also found that General Instruction No. 22(A) of the USoA⁸⁷ does not supplant, but should be read in harmony with, the requirements of Opinion No. 505 or the Commission's regulations.⁸⁸ He agreed with the Trial Staff's argument that nothing in General Instruction No. 22 indicates that a study that supports a service life over any reasonable range establishes that the proposed depreciation rates are *ipso facto* just and reasonable.⁸⁹

44. Furthermore, the Presiding Judge found that the mere three percent "close correlation" that was thought to have existed between the Srinivasa depreciation rates and the settlement rates in Texas Commission Docket No. 34800 does not meet the test for whether Entergy's rates meet the requirements of General Instruction No. 22 and Opinion No. 505.⁹⁰ The Presiding Judge found that a reliance on a "range of service lives," resulting from correcting the Srinivasa spreadsheet error and the realization that there is a 16 percent difference between the Srinivasa study depreciation rates and the Texas Commission Docket No. 34800 settlement rates, does not meet the requirement of General Instruction No. 22.⁹¹ Nor does such a range of service lives satisfy 18 C.F.R. § 35.13(h)(10)(iv) or Opinion No. 505 because a range of numbers in and of itself does not constitute a depreciation study.⁹²

45. The Presiding Judge found that since 18 C.F.R. § 35.13(h)(10)(iv) and Opinion No. 505 both require that depreciation rate change applications must include detailed studies, they are to be read in harmony with each other.⁹³ Accordingly, he found that

⁸⁷ General Instruction No. 22(A), (Depreciation Accounting - Method) provides that: "[u]tilities must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property." 18 C.F.R. part 101, General Instruction No. 22(A) (2012).

⁸⁸ Initial Decision, 138 FERC ¶ 63,010 at P 151 (citing 18 C.F.R. § 35.13(h)(10)(iv), which governs cost-of-service Statement AJ- Depreciation and Amortization Expenses).

⁸⁹ *Id.*

⁹⁰ *Id.* P 152.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* P 153.

Entergy has the burden of filing a comprehensive depreciation study to support its proposed rates.⁹⁴

2. Briefs on Exceptions

46. In its Brief on Exceptions, Entergy contends that the Presiding Judge erred in establishing the standard required to support a change in depreciation rates under section 205 of the FPA.⁹⁵ Entergy says that while it does not dispute that a proposal for a change in depreciation rates must be adequately supported, the Presiding Judge erred in specifically incorporating 18 C.F.R. § 35.13(h)(10)(iv) requirements.⁹⁶ According to Entergy, this filing does not include the same cost-of-service statements (e.g., there are 38 separate cost-of-service statements listed in section 35.13(h) of the Commission's regulations)⁹⁷ because this is not a full rate case which requires Period I and Period II statements.⁹⁸ Furthermore, according to Entergy, section 35.13(a)(2)(iii) of the

Commission's regulations⁹⁹ provides that a filing for a rate decrease must contain only the information that is required in section 35.13(b) and section 35.13 (c) while it is section 35.13(h) that requires the cost-of-service statements.¹⁰⁰ Entergy argues that since Entergy Texas is seeking a decrease in its Depreciation Rates, Schedule AJ (or any other cost-of-service statement) is not required in this case.¹⁰¹ Entergy concludes that because no cost-of-service statements are required in this filing, subsections 35.13(h)(10)(iv)(A),(B) of the Commission's regulations should not be deemed applicable and controlling in this case.¹⁰² Entergy believes that section 35.13(h)(10)(iv)

⁹⁴ *Id.*

⁹⁵ Entergy Brief on Exceptions at 5.

⁹⁶ *Id.* at 6.

⁹⁷ 18 C.F.R. § 35.13(h) (2012).

⁹⁸ Entergy Brief on Exceptions at 6.

⁹⁹ 18 C.F.R. § 35.13(a)(2)(iii) (2012).

¹⁰⁰ Entergy Brief on Exceptions at 6.

¹⁰¹ *Id.* at 6-7.

¹⁰² *Id.* at 7.

of the Commission's regulations may be used as guidance for the kind of data that supports a proposed change in depreciation rates under a section 205 filing, but it should not be incorporated as a required element outside of a full rate case.¹⁰³

47. Entergy also maintains that the Initial Decision erroneously applied the standard it required to support a change in depreciation rates pursuant to section 205 of the FPA.¹⁰⁴ According to Entergy, the Presiding Judge imposed additional requirements to support Entergy's proposed steam production Depreciation Rates, namely that the entirety of the depreciation rates must be supported by a single study and that the depreciation study must also include a detailed account-by-account analysis.¹⁰⁵ Entergy argues that these requirements find no support in the Commission's rules or precedent and should be rejected.¹⁰⁶ According to Entergy, to impose such a requirement would make it impossible for depreciation rates to be modified and adopted based on settlement, regardless of whether the settlement occurs at the retail or wholesale level, because depreciation rates modified through settlement would by definition not be entirely supported by a single study. Entergy argues that this would discourage parties from compromise and settlement.¹⁰⁷

48. Entergy also argues that requiring a single depreciation study that supports all the proposed Depreciation Rates does not reflect the current practice, in which the Presiding Judge evaluates competing evidence on contested assumptions and calculations involved in deriving depreciation rates.¹⁰⁸ Entergy points to Issues 3, 4, and 5, where the Presiding Judge weighed the parties' evidence regarding their competing positions on terminal and interim net salvage costs, which are variable components of depreciation rates.¹⁰⁹ According to Entergy, by "requiring that terminal net salvage costs be excluded from the

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 8.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 8-9 (citing Initial Decision, 138 FERC ¶ 63,010 at PP 208-305).

calculation of steam production depreciation rates in this proceeding, there is no longer one single study that supports the depreciation rates adopted by the Presiding Judge.”¹¹⁰

49. Further, Entergy argues that the Initial Decision failed to properly apply its comprehensive study standard to the evidence supporting Entergy’s proposed depreciation rates given the circumstances in this proceeding.¹¹¹ Entergy states that a review of the record in this case demonstrates that Entergy did provide sufficient data to support its proposed Depreciation Rates.

50. According to Entergy, the only variables necessary to calculate depreciation life that require any study or analysis are service life and terminal salvage.¹¹² Entergy maintains that the service life estimates were validated by the Louisiana Commission’s King and by the fact that Trial Staff’s Pewterbaugh did not take issue with any of the service life estimates contained in Entergy’s proposed rates.¹¹³ Terminal salvage is discussed *infra*.

3. Briefs Opposing Exceptions

51. Trial Staff, in its Brief Opposing Exceptions, maintains that the Presiding Judge correctly established the standard required to support a change in depreciation rates pursuant to section 205 of the FPA.¹¹⁴ Trial Staff takes exception to Entergy’s contention that the Presiding Judge erred in specifically incorporating the 18 C.F.R. § 35.13(h)(10)(iv) requirements.¹¹⁵ According to Trial Staff, Entergy mischaracterizes the Presiding Judge’s ruling that “18 C.F.R. § 35.13(h)(10)(iv) and Opinion No. 505 both require that depreciation rate change applications must include detailed studies and they are to be read in harmony with each other.”¹¹⁶ Trial Staff argues that Opinion No. 505

¹¹⁰ *Id.* at 9 (citing Initial Decision, 138 FERC ¶ 63,010 at PP 270-283, in which the Presiding Judge concluded that the Srinivasa depreciation study, less the dismantlement costs, should be adopted in this proceeding).

¹¹¹ *Id.* at 11.

¹¹² *Id.* at 12.

¹¹³ *Id.* at 13 (citing Ex. LC-1 at 3, 6; Ex. S-1 at 12).

¹¹⁴ Trial Staff Brief Opposing Exceptions at 4.

¹¹⁵ *Id.* at 5.

¹¹⁶ *Id.* at 6 (citing Initial Decision, 138 FERC ¶ 63,010 at P 153).

requires Entergy to make a section 205 filing if it “desires to change its depreciation rates reflected on its books and include such depreciation rate changes in its bandwidth calculation” and also requires a “comprehensive depreciation study.”¹¹⁷

52. Trial Staff maintains that in the filing that resulted in Opinion No. 505, Entergy relied on the cost-of-service rate filing rules in section 35.13 of the Commission’s regulations to argue that a detailed study is required to support a change in depreciation rates.¹¹⁸ Furthermore, according to Trial Staff, Entergy’s contention ignores the purpose of the information required under section 35.13(h) because the information and data requirements under this section are minimum filing requirements necessary to enable the Commission to accept a rate change proposal outright or accept it subject to refund and establishing hearing procedures.¹¹⁹ In addition, Trial Staff argues that Entergy’s reliance on the fact that its filing in this case proposed a rate decrease is misplaced because Opinion No. 505 specifically refers to a change in depreciation rates, not an increase in depreciation rates.¹²⁰ Trial Staff therefore concludes that the focus of the inquiry here is whether Entergy’s filing is supported by a comprehensive depreciation study of the kind that is required by Opinion No. 505.¹²¹

53. The Louisiana Commission takes exception to Entergy’s arguments, which it says provide no factual or legal basis for adopting a new “hodgepodge” rule in which any combination of inadequate information could combine to fulfill the Commission’s depreciation requirements.¹²² The Louisiana Commission maintains that Entergy is seeking to avoid the Commission’s requirement that a utility present a “comprehensive depreciation study” and is asserting that 18 C.F.R. § 35.13(h)(10)(iv) should not be used as a basis for determining the utility’s burden of proof.¹²³ The Louisiana Commission maintains that the Commission’s regulations and precedents require that a utility proposal

¹¹⁷ *Id.*

¹¹⁸ *Id.* (citing Initial Decision, 138 FERC ¶ 63,010 at P 130).

¹¹⁹ *Id.* at 7.

¹²⁰ *Id.* at 8-9.

¹²¹ *Id.* at 9.

¹²² Louisiana Brief Opposing Exceptions at 9.

¹²³ *Id.* at 10.

to change depreciation rates be based on a comprehensive study.¹²⁴ It states that every witness in this proceeding, except for Entergy's Caldwell, recognized that the Commission requires a comprehensive depreciation study to support a change in rates.¹²⁵ The Louisiana Commission points to Opinion No. 505, where the Louisiana Commission says the Commission made clear that these requirements apply specifically to Entergy and to the bandwidth calculation.¹²⁶ The Louisiana Commission asserted that to change depreciation rates for the bandwidth calculation, the Commission requires Entergy to make an FPA section 205 filing and provide a comprehensive, detailed depreciation study, not one that adjusts only service lives.¹²⁷

54. The Louisiana Commission states that Entergy criticizes the Initial Decision for requiring that the utility provide a study that incorporates economic and engineering service life estimates into plant data on an account-by-account basis.¹²⁸ It maintains that the basic assumptions need to be applied to specific plant original cost and depreciation reserve data with the resulting rates and expense developed on an account-by-account basis.¹²⁹

55. The Louisiana Commission also takes exception to Entergy's argument that the requirements of section 35.13(h)(10)(iv) of the Commission's regulations do not apply when Entergy proposes to change its depreciation rates to be used in formula rates.¹³⁰ According to the Louisiana Commission, Entergy previously relied on this regulation in objecting to a depreciation rate change ordered by an Administrative Law Judge in Docket No. ER07-956.¹³¹ The Louisiana Commission notes that Entergy appealed that requirement to the Commission and argued, contrary to its position here, that if

¹²⁴ *Id.* (citing 18 C.F.R. § 35.13(h)(10)(iv)).

¹²⁵ *Id.*

¹²⁶ *Id.* at 11.

¹²⁷ *Id.* at 12 (citing *Entergy Servs., Inc.*, 130 FERC ¶ 61,170, at P 22 and n.32 (2010)).

¹²⁸ *Id.* at 13 (citing Initial Decision, 138 FERC ¶ 63,010 at PP 201-202).

¹²⁹ *Id.* at 14.

¹³⁰ *Id.* at 15.

¹³¹ *Id.* (citing *Entergy Servs., Inc.*, 124 FERC ¶ 63,026 (2008)).

depreciation rates are changed, a full study should be ordered, as opposed to a simplified study.¹³² The Louisiana Commission maintains that Entergy provides no explanation for its change in position or authority in support of it.¹³³ According to the Louisiana Commission, the purpose of this proceeding is to change the depreciation rate for the bandwidth formula and other formula rates and thus there is no justification for applying a full depreciation study requirement in a bandwidth filing and not here.¹³⁴

4. Commission Determination

56. We affirm the Presiding Judge that Entergy has the burden of filing a comprehensive depreciation study to support its proposed Depreciation Rates. As the Presiding Judge noted, case law supports the proposition that the burden is on the filing party to fully explain the basis for cost estimates.¹³⁵

57. The filing requirements for depreciation rates and decommissioning are not unlike the filing requirement for other components of the cost-of-service. The Commission prescribes the filing of certain information in section 35.13 of the Commission's regulations and utilities have some leeway in presenting the information and how it is provided. In this regard, depreciation rates and decommissioning expenses often involve complex studies that can be voluminous and certain portions of those studies may be more appropriately provided as workpapers. Generally, the cost support requirements should allow the Commission and parties to reasonably be able to review and analyze the underlying assumptions and input data provided in the filing, which indicates the bases upon which the depreciation rates were established.¹³⁶ The studies in support of depreciation rates and decommissioning expenses should be of sufficient detail to support the utility's case in chief.

¹³² *Id.* at 16 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 143).

¹³³ *Id.* at 17.

¹³⁴ *Id.*

¹³⁵ Initial Decision, 138 FERC ¶ 63,010 at P 144 (citing two rate increase filing cases: *NEPCO Municipal Rate Comm. v. FERC*, 668 F.2d 1327, 1339 (D.C. Cir. 1981) (“[a] utility must present a full explanation of the bases for test year cost estimates, establishing the validity and accuracy of each...”); *Village of Chatham v. FERC*, 662 F.2d 23, 27 (D.C. Cir. 1981) (“[i]t is the petitioning company that ... must ‘establish the validity and accuracy for each of (its) cost estimates’.”)).

¹³⁶ 18 C.F.R. § 35.13(h)(10)(iv).

58. Entergy, Trial Staff, and Louisiana Commission present various arguments about what support is required for depreciation rates in a section 205 filing, largely in the context of the bandwidth formula. The arguments, for example, encompass (1) the requirements of depreciation accounting in the Commission's USoA; (2) rate filing requirements in section 35.13 of the Commission's regulations, including fewer filing requirements for rate decreases; (3) whether there should be a single depreciation study supporting all the depreciation rates, including whether terminal and interim net salvage costs should be included in that study; and (4) whether a study should incorporate engineering and economic service life estimates into plant data on an account-by-account basis. Most of these arguments revolve around language in Opinion No. 505, which reads:

We note that if Entergy desires to change its depreciation rates reflected on its books and include such depreciation rate changes in its bandwidth calculation, it must make a section 205 filing. A comprehensive depreciation study, not just the reflection of a longer nuclear facility license, would be required before currently-effective applicable nuclear depreciation rates could be recalculated for ratemaking purposes.¹³⁷

59. We find that Entergy's reliance on section 35.13(a)(2)(iii) for the proposition that it need only submit the information required in sections 35.13(b) and (c) is misplaced. Although in some instances the information in sections 35.13(b) and (c) may satisfy the burden of proof, section 35.13(a)(2)(iii) nevertheless only establishes minimum filing requirements in the circumstances stated therein. However, if the burden of proof is not met, more information may be required.

60. We note that the Commission's selection of the term "comprehensive depreciation study" which appears for the first time in footnote 205 of Opinion No. 505 has caused confusion. We read this language, and the term "comprehensive depreciation study," to refer to using the principles and analyses generally used in developing depreciation rates, and to convey that more than only the license life is required to establish the justness and reasonableness of the nuclear depreciation rate. If Entergy desires to increase or decrease the depreciation rates reflected on its books and includes such depreciation rate changes in a section 205 filing, a comprehensive depreciation study is required; i.e., consistent with the Commission's regulations a more detailed study is required to support a change in depreciation rates.

¹³⁷ Opinion No. 505, 130 FERC ¶ 61,023 at n.205.

C. Issue 2: Whether the Pous, Selecky, Spanos, Tortorello and Caldwell Analyses, Taken Separately or Together, Qualify as Depreciation Studies and Support Entergy's Proposed Depreciation Rates.

1. Initial Decision

61. In considering the Pous, Selecky, Spanos, Tortorello, and Caldwell analyses, the Presiding Judge found that taken separately or combined, these analyses do not qualify as detailed comprehensive depreciation studies to support Entergy's requested change in depreciation rates.¹³⁸ The Presiding Judge stated that Entergy relied on the Srinivasa study in its initial filing and pre-filed testimony to support the proposed Depreciation Rates. However, in the course of the proceeding, Entergy changed its reliance on the Srinivasa study to reliance on a range of studies argument.¹³⁹ The Presiding Judge noted that a number of studies contributed to the settlement at the Texas Commission which formed the basis of the depreciation rates filed here. However, the Presiding Judge found that the Texas Commission's approval of depreciation rates as part of a settlement does not obviate the need for a comprehensive supporting depreciation study.¹⁴⁰

62. The Presiding Judge discussed the merits of certain of the studies presented in this proceeding to support Entergy's change in depreciation rates. Among other things, he discussed errors in the Srinivasa study included in Ex. ESI-9;¹⁴¹ differences between the Srinivasa study and Entergy witness Caldwell's direct testimony;¹⁴² and differing opinions among the parties as to whether the Pous and Selecky service studies qualify as depreciation studies, in particular whether the Srinivasa, Pous, or Selecky projects met the requirements of General Instruction No. 22.¹⁴³ General Instruction No. 22(A) requires that utilities must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.¹⁴⁴ General Instruction No. 22(B) requires that estimated useful service lives of

¹³⁸ Initial Decision, 138 FERC ¶ 63,010 at P 207.

¹³⁹ *Id.* P 182.

¹⁴⁰ *Id.* P 183.

¹⁴¹ *Id.* P 187.

¹⁴² *Id.*

¹⁴³ *Id.* P 190.

¹⁴⁴ 18 C.F.R. part 101, General Instruction No. 22(A) (2012).

depreciable property must be supported by engineering, economic, or other depreciation studies.¹⁴⁵

63. The Presiding Judge discussed errors in the Pous study and its failure to reflect the jurisdictional separation of Entergy Gulf States, Inc. between Louisiana and Texas.¹⁴⁶ He reviewed Caldwell's testimony regarding the Pous analysis and found that Caldwell did not specify that he had personal knowledge to base his opinion on the Pous study. Therefore, the Presiding Judge afforded no probative value to Caldwell's opinion of whether the Pous or Selecky analyses qualify as depreciation studies.¹⁴⁷ The Presiding Judge gave the Tortorello study no weight because it is over 30 years old and stale; it analyzed salvage values only for lignite plants; and it was not the basis for the negative five percent salvage value factor.¹⁴⁸

64. The Presiding Judge found that none of these analyses constituted a systematic and rational study necessary to support the proposed Depreciation Rates.¹⁴⁹ Specifically, the Presiding Judge agreed with Trial Staff's argument that neither Pous, Selecky, nor Spanos did an account-by-account analysis necessary for a systematic and rational study. Further, the Presiding Judge found that the analyses and opinions submitted by Entergy did not meet the requirements of 18 C.F.R. § 35.13(h)(10)(iv). The Presiding Judge found that the estimated useful service lives of the subject depreciable property were not supported by engineering, economic or other depreciation studies and therefore, the proposed rates did not meet General Instruction No. 22(B) of 18 C.F.R. part 101.¹⁵⁰ The Presiding Judge concluded that Entergy did not meet its burden of demonstrating that it used a method of depreciation that allocated in a systematic and rational manner the service value of the subject depreciable property over the service life of the property.

¹⁴⁵ 18 C.F.R. part 101, General Instruction No. 22 (B) (2012).

¹⁴⁶ Initial Decision, 138 FERC ¶ 63,010 at P 192.

¹⁴⁷ *Id.* P 196.

¹⁴⁸ *Id.* P 200.

¹⁴⁹ *Id.* P 202.

¹⁵⁰ *Id.* P 203.

2. Briefs on Exceptions

65. According to Entergy, not only did the Presiding Judge err in inappropriately including section 35.13(h)(10)(iv) requirements as a element of a comprehensive depreciation study, but the Presiding Judge also imposed additional requirements.¹⁵¹ Entergy claims the Presiding Judge found that the entirety of the depreciation rates must be supported by a single study and that he apparently determined that the depreciation study must also include a detailed account-by-account analysis.¹⁵²

66. Entergy argues that the requirement that depreciation rates be supported in their entirety by one single study finds no support in the Commission's rules or precedent and should be rejected.¹⁵³ Likewise, according to Entergy, the requirement that the depreciation study supporting the proposed Depreciation Rates include a detailed account-by-account analysis finds no support in the Commission's rules or precedent.¹⁵⁴ Furthermore, Entergy claims that a review of the record in this case demonstrates that Entergy did provide sufficient data to support Entergy Texas's proposed Depreciation Rates.¹⁵⁵

67. Entergy argues that the Pous analysis in Ex. ESI-4 is based on industry trends, economic factors, company-specific data, and contemporary rate cases to support the revised service lives for Entergy Texas's coal and gas-fired production facilities.¹⁵⁶ Therefore, Entergy argues that the Pous study includes a detailed and comprehensive analysis of service lives and adequately supports the service life assumptions in the depreciation rates.¹⁵⁷ Entergy states that the proposed Depreciation Rates are further supported by comparison to the other studies at issue in this proceeding, including the Selecky study presented in Ex. ESI-5 and the Srinivasa study presented in Ex. ESI-9.

¹⁵¹ Entergy Brief on Exceptions at 8.

¹⁵² *Id.* (citing Initial Decision, 138 FERC ¶ 63,010 at PP 183, 201-202, 205, 234-235).

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 9.

¹⁵⁵ *Id.* at 11.

¹⁵⁶ *Id.* at 12.

¹⁵⁷ *Id.* at 12-13.

Entergy states that the evidence shows that each study appropriately relied on company documentation to develop service life assumptions and those studies established that there is a range of service life assumptions that are supported by the various analyses. Entergy states that Caldwell demonstrated that the service life assumptions underlying the proposed Depreciation Rates fall within that range, are consistent with General Instruction No. 22 and are just and reasonable.¹⁵⁸

3. Briefs Opposing Exceptions

68. Trial Staff takes exception to Entergy's claim that the requirement that depreciation rates be supported in their entirety by one single study finds no support in the Commission's rules or precedent and should be rejected.¹⁵⁹ Trial Staff argues that Entergy takes the Presiding Judge's reference to a comprehensive supporting depreciation study (or a single study as characterized by Entergy) out of context.¹⁶⁰ The paragraph upon which Entergy bases its exception is as follows:¹⁶¹

The [Texas Commission's] approval of depreciation rates as part of a settlement does not obviate the need for a comprehensive supporting depreciation study. [Louisiana Commission] witness Mr. King testified credibly that while a number of studies contributed to the settlement in [Texas Commission Docket No.] 34800, there was no one study that supports the specific depreciation rates that [Entergy Texas] is proposing herein. [Louisiana Commission] witness Kollen echoed Mr. King's testimony in that he stated that the depreciation rates proposed by Entergy were the result of a settlement. The [Louisiana Commission] agreed with [Trial] Staff witness Mr. Pewterbaugh that Entergy's proposed rates should

not be adopted because they are not supported by a comprehensive depreciation study.

69. Trial Staff points out that at the time Entergy filed its direct testimony, Entergy's Caldwell appeared to rely upon the Texas Commission staff study prepared by Srinivasa

¹⁵⁸ *Id.* at 14-15.

¹⁵⁹ Staff Brief Opposing Exceptions at 11.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 12 (citing Initial Decision, 138 FERC ¶ 63,010 at P 183).

in Texas Commission Docket No. 37744, the most recent proceeding.¹⁶² Trial Staff notes that Entergy's Caldwell indicated that the results of the Srinivasa study correspond closely with the result of the application of the depreciation rates determined in Texas Commission Docket No. 34800.¹⁶³ In other words, according to Trial Staff, in Entergy's view, the Texas Commission Docket No. 34800 settlement depreciation rates were acceptable because the rates developed by an actual depreciation study differed by only three percent from Entergy Texas's proposed depreciation rates in this proceeding. However, Trial Staff notes that, after correction for an error, the record shows that the rates supported by the Srinivasa study are actually 16 percent different from the proposed depreciation rates and, thus, are clearly not close enough.¹⁶⁴

70. Trial Staff states that the record shows that Entergy shifted its position over the course of this proceeding from reliance on one study (i.e., the Srinivasa study) to a range of studies argument.¹⁶⁵ Trial Staff notes that Entergy submitted this section 205 filing in order to permit its revised steam production depreciation rates adopted by the Texas Commission to also be used in Entergy's Commission-jurisdictional formula rates that incorporate Entergy Texas's expense related to steam production plant.¹⁶⁶ Trial Staff further notes that the revised depreciation rates were adopted by the Texas Commission through a settlement in its most recent proceeding (Texas Commission Docket No. 37744) and are also the same rates that were agreed to in a settlement in the prior Texas Commission Docket No. 34800 case. Trial Staff adds that the rates agreed to in Texas Commission Docket No. 34800 simply reflected adjustments to the depreciation rates established in an earlier Texas Commission proceeding (Texas Commission Docket No. 16705) where the depreciation rates were based on 1995 data.

71. According to Trial Staff, the Presiding Judge correctly found that an account-by-account analysis is necessary given the facts and circumstances in this proceeding.¹⁶⁷ Trial Staff agrees with the Presiding Judge's finding that the failure to use a systematic and rational study has revealed not a three percent spread, but a 16 percent spread

¹⁶² *Id.* at 14.

¹⁶³ *Id.* (citing Ex. ESI-1 at 5).

¹⁶⁴ *Id.* (citing Initial Decision, 138 FERC ¶ 63,010 at PP 188-189).

¹⁶⁵ *Id.* at 13 (citing Initial Decision, 138 FERC ¶ 63,010 at P 182).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 15.

between the Srinivasa study and the settlement rates in Texas Commission Docket No. 34800.

72. The Louisiana Commission argues that what it calls the “Entergy hodgepodge” does not provide an adequate basis for approving new depreciation rates.¹⁶⁸ According to the Louisiana Commission, the rates proposed by Entergy are based on an amalgam of data sources mixed together in a settlement applicable to a predecessor company and they do not have adequate support because Entergy did not provide a witness with knowledge of how the estimates were developed.

4. Commission Determination

73. We affirm the Presiding Judge’s conclusion that the Pous, Selecky, Spanos, Tortorello and Caldwell analyses, either separately or combined, do not qualify as detailed comprehensive depreciation studies necessary to support Entergy’s requested change in depreciation rates.¹⁶⁹

74. During the hearing, the studies presented by Entergy were shown to have errors. The discovery of an error in the Srinivasa study caused Entergy witness Caldwell to disavow the study during the course of the hearing and rely on a range of studies argument that embraced the studies of Pous, Selecky, Spanos, Tortorello and Caldwell.¹⁷⁰

75. Although the principal issue of this proceeding is the justness and reasonableness of Entergy Texas’s proposed Depreciation Rates, our findings on this issue depend upon the validity of the depreciation studies used to support those rates. As noted above, the studies were presented in two Texas Commission proceedings. Texas Commission Docket No. 34800 was initiated by Entergy Gulf States, Inc. in 2007, prior to the jurisdictional separation that split Entergy Gulf States, Inc. into Entergy Gulf States Louisiana and Entergy Texas, and Texas Commission Docket No. 37744 was initiated by Entergy Texas in 2009, subsequent to the jurisdictional separation. Both retail rate cases resulted in settlements at the Texas Commission.

76. In this proceeding, studies and analyses were presented by Texas Commission staff members Pous and Selecky from Texas Commission Docket No. 34800, and Srinivasa from Texas Commission Docket No. 37744. A study from 1978 presented by Texas

¹⁶⁸ Louisiana Commission Brief on Exceptions at 19.

¹⁶⁹ Initial Decision, 138 FERC ¶ 63,010 at P 207.

¹⁷⁰ See Initial Decision, 138 FERC ¶ 63,010 at P 122.

Commission staff member Tortorello was also considered in this proceeding. Also considered was a study by Spanos, an independent consultant. However, as addressed later in Issue 3, the Srinivasa study has been demonstrated to be the best among the studies presented.

77. At the outset, we agree with the Presiding Judge's conclusion that the Texas Commission's approval of depreciation rates as part of a settlement does not obviate the need for a comprehensive supporting study.¹⁷¹ The depreciation rates must be supported by engineering, economic or other depreciation studies in conformance with Commission regulations.¹⁷² We nevertheless agree with Entergy, and disagree with Trial Staff, that there is no requirement that depreciation rates be supported in their entirety by one single study. While the Presiding Judge stated that the rates need to be supported by a comprehensive depreciation study, his consideration of the various studies, separately and together, demonstrated that he was not imposing an additional requirement of one study to support rates. Rather, the Presiding Judge was reasonably applying a concept that a range of studies must be thorough enough to meet the Commission's requirements specified in General Instruction No. 22.

78. We disagree with Entergy that the Presiding Judge imposed a requirement that depreciation studies must include a detailed account-by-account analysis. While the Presiding Judge found that the Pous, Selecky, and Spanos depreciation studies were flawed for lack of an account-by-account analysis, he confined his finding to the studies themselves: "For purposes of this case, their work was neither systematic nor rational."¹⁷³ The Presiding Judge did, however, find an account-by-account analysis helpful to ascertain differences between what the studies were supporting and the rates Entergy was proposing: "[A] systematic and rational study, done on an account-by-account basis, would have revealed five accounts whose depreciation rates vary by more than 100 percent between the Srinivasa study and Entergy's proposed rates."¹⁷⁴ As discussed above, the requirements for depreciation studies are contained in General Instruction No. 22. To the extent studies meet the requirements set forth in General Instruction No. 22, and meet the systematic and rational standard, those studies will be deemed acceptable, however that determination is done on a case-by-case basis.

¹⁷¹ *Id.* P 203.

¹⁷² *Id.*

¹⁷³ *Id.* P 202.

¹⁷⁴ *Id.*

79. We agree with the Presiding Judge that these studies, either combined or alone, fall short of the Commission's requirements set forth in 18 C.F.R. § 35.13(h)(10)(iv) regarding the appropriate support for filing changes in depreciation expenses in Commission jurisdictional rate schedules or tariffs. For example, Entergy's proposed Depreciation Rates were based on a Texas retail case that took place prior to the jurisdictional separation of Entergy Gulf States, Inc. The Srinivasa study was completed after the jurisdictional separation of Entergy Gulf States, Inc. took place to create Entergy Texas. As further detailed below, that study would be favored over a range of studies that are generally outdated and contain omissions. The studies also fall short of the Commission's requirements set forth in General Instruction No. 22(A) and (B): that utilities must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property, and that estimates of useful service lives of depreciable property must be supported by engineering, economic, or other depreciation studies.

80. Entergy argues that the Pous study includes a detailed and comprehensive analysis of service lives and adequately supports the service life assumptions in the proposed Depreciation Rates.¹⁷⁵ However, as pointed out by the Presiding Judge, the Pous and Selecky analyses only changed the estimated useful service lives of various generating units.¹⁷⁶ We agree with the Presiding Judge that this does not satisfy the Commission's requirement of a comprehensive depreciation study. Further, we disagree with Entergy that the range of studies are comparable to the other studies at issue in this proceeding.

D. Issue 3: Whether the Commission Should Adopt the Rates Developed and Supported by the Srinivasa Study.

1. Initial Decision

81. The Presiding Judge stated that in light of his finding that Entergy did not meet its burden on its range of studies argument, the issue is whether any other studies filed in this case establish just and reasonable depreciation rates.¹⁷⁷ He noted that Entergy maintains that the Srinivasa and Spanos studies submitted in Texas Commission Docket

¹⁷⁵ Entergy Brief on Exceptions at 12-13.

¹⁷⁶ Initial Decision, 138 FERC ¶ 61,010 at P 204.

¹⁷⁷ *Id.* P 209.

No. 37744 do not preclude reliance on the Pous analysis submitted in Texas Commission Docket No. 34800.¹⁷⁸

82. The Presiding Judge concluded that the Srinivasa study is a detailed and comprehensive depreciation study and that it meets the requirements of USoA General Instruction No. 22 (A) and (B), 18 C.F.R. § 35.13 (h)(10)(iv) and Opinion No. 505.¹⁷⁹ He found the Srinivasa analysis to be the only study supported by a comprehensive depreciation study.¹⁸⁰ According to the Presiding Judge, the Srinivasa study addressed each account in a systematic and rational manner, and none of the participants in the hearing disputed this. Furthermore, the Presiding Judge found that Entergy's Integrated Resource Plan was created about 18 months after Pous' testimony and after the 2007 jurisdictional breakup of the former Entergy Gulf States, Inc. into Entergy Texas and Entergy Gulf States. The Presiding Judge also found that Srinivasa relied on Entergy's Integrated Resource Plan, rather than "opaque settlement agreements" to determine the appropriate service lives.¹⁸¹ The Presiding Judge also found that Srinivasa relied on the most current, accurate data, and achieves the results on an account-by-account basis. His method of depreciation allocated in a systematic and rational manner the service value of the depreciable property over the service life of the property.

83. The Presiding Judge noted that the Srinivasa study recommended Depreciation Rates for Entergy Texas's production plant that produce a depreciation expense that is \$5.3 million less than the expense proposed by Entergy Texas in this proceeding.¹⁸² The Srinivasa study's recommended Depreciation Rates for gas and oil-fired units were \$2.171 million less than Entergy Texas's proposed rates in this proceeding.¹⁸³

84. The Presiding Judge found that in using the post-jurisdictional breakup data, Srinivasa used the most recent plant balances and that the data pertained specifically to the Texas plants under the ownership of Entergy Texas. The Presiding Judge did "not find that the Srinivasa transposition error for Accounts 311 and 312 of Sabine Units 2

¹⁷⁸ *Id.* P 211.

¹⁷⁹ *Id.* P 238.

¹⁸⁰ *Id.* P 234.

¹⁸¹ *Id.*

¹⁸² *Id.* P 236.

¹⁸³ *Id.*

through 5 to be fatal” because “[t]hat error was identified by the parties, addressed, and corrected; it does not affect the substance of his study.”¹⁸⁴

2. Briefs on Exceptions

85. Entergy takes exception to the Presiding Judge’s decision, arguing that its proposed Depreciation Rates are supported by the Pous analysis.¹⁸⁵ According to Entergy, while the proposed Depreciation Rates were the result of a settlement in Texas Commission Docket No. 34800, what changed from the prior depreciation study in Texas Commission Docket No. 16705 was an updated analysis of service lives based on the Pous analysis. Furthermore, according to Entergy, it has met the requirements of General Instruction No. 22 of the USoA and no witness took a position that the Pous study did not meet the requirements of General Instruction No. 22(B) regarding the service lives of Entergy Texas’s steam generating assets.

3. Briefs Opposing Exceptions

86. Trial Staff disagrees with Entergy’s reasoning because the record shows that the Pous analysis is not a comprehensive, detailed depreciation study.¹⁸⁶ According to Trial Staff, the study was submitted in April 2008 in Texas Commission Docket No. 34800 and the analysis addresses the filing made on September 26, 2007, prior to the jurisdictional separation of Entergy Gulf States, Inc. According to Trial Staff, Entergy Gulf States, Inc. did not propose a change to the Entergy Texas retail depreciation rates determined in the earlier proceeding in Texas Commission Docket No. 16705 and Pous pointed out that those depreciation rates were based on calendar year 1995.¹⁸⁷ In contrast, Trial Staff asserts that the Srinivasa study uses more current data. According to Trial Staff, the Srinivasa study represents the most comprehensive depreciation study performed since the 1996 study (based on a 1995 test year) used in Texas Commission Docket No. 16705.

87. The Louisiana Commission disagrees with Entergy and maintains that Entergy’s “mishmash of party positions from prior Texas retail cases” is not a substitute for a comprehensive depreciation study.¹⁸⁸ According to the Louisiana Commission, Entergy

¹⁸⁴ *Id.* P 237.

¹⁸⁵ Entergy Brief on Exceptions at 12-13.

¹⁸⁶ Trial Staff Brief Opposing Exceptions at 20.

¹⁸⁷ *Id.* at 21 (citing Ex. ESI-4 at 8).

¹⁸⁸ Louisiana Commission Brief on Exceptions at 30.

initially agreed that its proposed depreciation rates had to be supported by a comprehensive study and it relied on the Srinivasa study as indirect support for its proposed rates until a mistake was found.¹⁸⁹ According to the Louisiana Commission, Entergy asserts it put forth the Pous analysis, but there is no Pous analysis.¹⁹⁰ Rather, according to the Louisiana Commission, Entergy provided testimony from Pous that contained three paragraphs of general observations about gas and oil-fired generators,¹⁹¹ and that Pous used a benchmark 50-year life span for some units and longer lives for others, without disclosing any basis. The Louisiana Commission points out that this general testimony does not compare to Entergy's own more recent Integrated Resource Plan, relied on by Srinivasa.

4. Commission Determination

88. We affirm the Presiding Judge's conclusion that the depreciation rates recommended by the Srinivasa study should be adopted in this proceeding. The Srinivasa study contained errors with regard to reporting depreciation for the Sabine Station Units 2 through 5.¹⁹² When corrected, the Srinivasa study's recommended depreciation expense for Entergy Texas's production plant are \$2.171 million less than the expense produced using Entergy Texas's proposed Depreciation Rates.

89. As previously discussed, changes to depreciation rates must be supported by a detailed study. The study should detail the underlying cost inputs for depreciation rates and the decommissioning expense used to calculate the depreciation expense, including calculations to reflect the proper service lives for certain plants. The study should provide support by each account and considers plant additions and retirements, as well as other factors into its calculations.

90. We believe the use of the more current Srinivasa study is appropriate since the study was prepared reflecting the valuation of assets after the Entergy Gulf States, Inc. separation. The Srinivasa study was the most current of the range of studies presented having been conducted after the formation of Entergy Texas in 2009. As the Presiding Judge noted, in using the post-jurisdictional breakup data, Srinivasa used the most recent plant balances, and the data pertained specifically to the plants under the ownership of

¹⁸⁹ *Id.* at 26.

¹⁹⁰ *Id.* at 29.

¹⁹¹ *Id.* (citing Ex. ESI-4 at 19-20).

¹⁹² Initial Decision, 138 FERC ¶ 63,010 at P 187.

Entergy Texas.¹⁹³ The Srinivasa study also relies on Entergy's Integrated Resource Plan to determine the appropriate service lives, as well as historical data concerning service life by each account, which was developed after the creation of Entergy Texas.¹⁹⁴

91. As discussed in Issue 2, the Presiding Judge rejected the range of studies that were out-of-date and stale, among other things. We also find that in the context of General Instruction No. 22, it would be irrational to use studies that were completed prior to the jurisdictional separation, if a more recent study existed.

92. For these reasons, we find that the Presiding Judge correctly found Srinivasa's approach to be the most rational approach. We affirm the Presiding Judge's conclusion that the Srinivasa study is a detailed and comprehensive depreciation study, and that it meets the requirements of USoA General Instruction No. 22. We also agree that the transposition errors in Accounts 311 and 312 of Sabine Units 2 through 5 do not affect the underlying validity of the study. Accordingly, the Commission adopts the rates supported by the Srinivasa study for use in this proceeding. The Srinivasa study fully addresses all of the plant assets in question; none of the parties claim that it did not. We direct Entergy to make refunds with interest in accordance with section 35.19(a) of the Commission's regulations¹⁹⁵ within 30 days of the date of the final order, and to submit a refund report within 30 days thereafter. These refunds should reflect any over-recovery to the extent that the filed rates reflect an increase in depreciation rates in excess of the depreciation rates reflected in the Srinivasa study.

E. Issue 4: Whether a Terminal Net Salvage Value Factor is Supported.

1. Initial Decision

93. The Presiding Judge found that Entergy has not supported its proposed salvage factor with any study but rather relies upon a factor that was derived over the course of time from various retail settlements.¹⁹⁶ Accordingly, the Presiding Judge held that the dismantlement costs should not be adopted.¹⁹⁷

¹⁹³ *Id.* P 237.

¹⁹⁴ *Id.* P 234.

¹⁹⁵ 18 C.F.R. § 35.19(a) (2012).

¹⁹⁶ Initial Decision, 138 FERC ¶ 63,010 at P 281. The Presiding Judge provided several definitions of terminal net salvage. One definition is the cost of removing a plant after its retirement less the salvage value of equipment salvaged from the site. Definition

94. According to the Presiding Judge, at the hearing it was determined that the settlement rates from Texas Commission Docket No. 34800 incorporate a dismantlement allowance of negative five percent for terminal net salvage.¹⁹⁸ He noted that Entergy's Caldwell testified that the Texas Commission has been steadfast in using a negative five percent terminal net salvage value for gas and oil units.¹⁹⁹ He also noted that Entergy's Caldwell testified that he knows of no Commission precedent that accepted a terminal salvage allowance of any amount without a study.²⁰⁰ The Presiding Judge pointed out that Entergy admitted that there is no study or underlying cost estimate available in support of this proposed rate.²⁰¹

95. The Presiding Judge noted that the Neches generating station, a multi-unit gas and oil plant, is the only unit actually retired and dismantled by Entergy Gulf States, Inc., and it occurred sometime between 2000 and 2003.²⁰² The only other actual retirement cost example for an Entergy unit in recent decades was the Jim Hill generating station in Arkansas in the 1990s.²⁰³

96. The Presiding Judge found that the dismantlement of the Neches unit was not representative of the facilities that are at issue in this proceeding.²⁰⁴ The Presiding Judge found that the following portion of Caldwell's testimony was uncontroverted, credible

No. 19 of the USoA defines net salvage value as the salvage value of property retired less the cost of removal. USoA Definition No. 19 (Net Salvage Value). Definition No. 10 of the USoA defines the cost of removal as the cost of demolishing, dismantling, tearing down or otherwise removing electric plant. USoA Definition No. 10 (Cost of Removal).

¹⁹⁷ Initial Decision, 138 FERC ¶ 63,010 at P 283.

¹⁹⁸ *Id.* P 271 (citing Tr. at 171, 174).

¹⁹⁹ *Id.* P 273 (citing Tr. at 208).

²⁰⁰ *Id.* (citing Tr. at 190-191).

²⁰¹ *Id.*

²⁰² *Id.* P 274 (citing Tr. at 191).

²⁰³ *Id.* (citing Tr. at 191-192).

²⁰⁴ *Id.* P 276.

and persuasive: the units were substantially removed; one of the units exploded; a number of the components of the units had been removed and used elsewhere; and it was a relatively small generating station. The other units are larger, more modern, and more complex than the Neches station.²⁰⁵ Therefore, the Presiding Judge found that to include these costs in the depreciation rates would be unjust and unreasonable and thus they should not be included in the dismantlement costs.²⁰⁶

97. The Presiding Judge noted that Entergy's Caldwell also opined that the only comparable generating station would be Lewis Creek.²⁰⁷ At that plant, the Texas Commission staff calculated a negative 35 percent salvage factor for Lewis Creek.²⁰⁸ According to the Presiding Judge, the negative 35 percent factor, when thrown into Entergy's range of studies generates a range of salvage values wildly swinging from a positive five percent to a negative 35 percent.²⁰⁹ The Presiding Judge stated that this wide variance underscores the conclusion that such figures were pulled out of thin air and cannot credibly be relied upon. The Presiding Judge declined to use the figure as the testimony offered in support of that plant was limited and not developed.²¹⁰

98. The Presiding Judge noted that Trial Staff's Pewterbaugh testified that Entergy's negative five percent terminal net salvage factor is not appropriate because it is not supported by a site specific study.²¹¹ However, the Presiding Judge also noted that Pewterbaugh conceded that to his knowledge the Commission has not ruled one way or the other on whether it requires a site-specific study to support dismantlement costs for electric production plant.²¹² Accordingly, the Presiding Judge found that because it has

²⁰⁵ *Id.* (citing Tr. at 208-209).

²⁰⁶ *Id.* P 276.

²⁰⁷ *Id.* P 277 (citing Tr. at 208-209).

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* P 278 (citing Ex. S-4 at 6; Tr. at 251).

²¹² *Id.* (citing Tr. 248).

not been established that it is Commission practice, a site-specific study is not necessary to support decommissioning costs in this case.²¹³

99. The Presiding Judge found that Entergy has not established the validity and accuracy of each of its cost estimates.²¹⁴ He found that a state commission's historical use of a negative five percent salvage value, without any supporting study, does not in and of itself establish just and reasonable rates.²¹⁵

2. Briefs on Exceptions

100. Entergy, in its Brief on Exceptions, claims the Presiding Judge erroneously determined that Entergy failed to provide sufficient support for the terminal net salvage factor included in the proposed Depreciation Rates.²¹⁶ Entergy says the Presiding Judge correctly found that a site-specific study is not required to support decommissioning cost but that he erred in determining that the negative five percent terminal net salvage factor proposed in this case is not an acceptable minimum level.

101. According to Entergy, terminal net salvage refers to salvage costs incurred after a plant has been taken out of service and interim net salvage refers to salvage costs incurred when component parts of a plant are retired while the plant is still in service.²¹⁷ Entergy maintains that the derivation of the proposed Depreciation Rates excludes interim net salvage costs but includes terminal net salvage costs through application of a negative five percent terminal net salvage factor.

102. Entergy maintains a negative five percent terminal net salvage factor should be adopted in this proceeding because both the Louisiana Commission and Trial Staff agreed that in virtually all cases, the costs of dismantlement exceed the value of salvaged equipment, resulting in a cost to the utility.²¹⁸ Entergy maintains that Louisiana Commission's King and Trial Staff's Pewterbaugh also agreed that Commission

²¹³ *Id.*

²¹⁴ *Id.* P 280.

²¹⁵ *Id.*

²¹⁶ Entergy Brief on Exceptions at 17.

²¹⁷ *Id.* at 17-18.

²¹⁸ *Id.* at 18 (citing Ex. LC-1 at 7; Tr. at 247).

regulations and policy allow for inclusion of terminal net salvage costs in the calculation of depreciation rates and that if terminal net salvage costs are not included in current depreciation rates, those costs will impose a greater burden on future customers, thereby causing intergenerational inequity.²¹⁹

103. Entergy maintains that the Texas Commission has a long history of using negative five percent as an acceptable minimum amount for terminal net salvage costs. Entergy argues that the negative five percent figure has been found to be an acceptable minimum level of dismantlement costs based on the record evidence that: (1) Trial Staff's Pewterbaugh and Louisiana Commission's King agree that terminal net salvage costs will be incurred and will be net negative; (2) in Texas Commission Docket No. 37744, Entergy presented the Spanos study which proposed terminal net salvage factors ranging from negative five percent to negative 32 percent for steam production plant; (3) in Texas Commission Docket No. 34800, the Selecky study analyzed the value of the existing production power sites to conclude that a negative five percent terminal net salvage factor is reasonable; (4) Entergy's Caldwell testified that labor and equipment costs associated with dismantlement can be expected to escalate over time; and (5) Louisiana Commission's King's analysis of a partial dismantlement of Entergy's Neches plant (the only Entergy plant for which any dismantlement data is available) derived terminal surcharge factors very close to negative five percent for gas and oil units.

104. Entergy concludes that, in sum, all witnesses agree that net negative terminal salvage costs will be incurred, that it is appropriate to include such costs in depreciation rates, and that the evidence supports a negative five percent as a minimum level.²²⁰

3. Briefs Opposing Exceptions

105. In its Brief Opposing Exceptions, Trial Staff states that Entergy mischaracterizes Trial Staff witness Pewterbaugh's testimony regarding terminal net salvage costs.²²¹ Trial Staff states that he did not specifically agree that terminal net salvage costs will be incurred and will be negative. Rather, Trial Staff states that, in his cross-examination, Pewterbaugh indicated that it is reasonable to assume that Entergy Texas will incur dismantlement costs for electric plant at some future point in time, and that, with respect to that assumption, he would agree that it is likely that such terminal net salvage costs

²¹⁹ *Id.* (citing Tr. at 235, 247-248).

²²⁰ *Id.* at 20.

²²¹ Staff Brief Opposing Exceptions at 27.

would be negative.²²² Further, Trial Staff states that the occurrence of final abandonment costs is by no means certain. Given the magnitude of final abandonment costs, and this uncertainty, Trial Staff's Pewterbaugh determined that Entergy Texas should have submitted a site-specific study to justify the claimed amount.²²³ Trial Staff also states that Pewterbaugh made clear that if Entergy Texas chooses to include terminal net salvage costs in the calculation of Entergy Texas's depreciation rates, it should file a detailed decommissioning study to support these costs in another rate case.²²⁴ Thus, contrary to Entergy's assertion, Trial Staff states that Pewterbaugh did not agree with any certainty that terminal net salvage costs will be incurred and will be net negative.

106. Trial Staff disagrees with Entergy's contention that the Spanos study supports proposed terminal net salvage factors ranging from negative five percent to negative 32 percent for steam production plant.²²⁵ Trial Staff asserts that Entergy neither placed the Spanos study into evidence nor otherwise relied upon it in the instant proceeding.²²⁶

107. Trial Staff also disagrees with Entergy, arguing that the fact that Selecky concluded that a negative five percent terminal net salvage factor is reasonable is not persuasive.²²⁷ Trial Staff notes that a witness for another intervenor in that same proceeding (Pous) recommended a ten percent terminal net salvage factor.²²⁸ Trial Staff also disagrees with Entergy that Caldwell's testimony is sufficient.²²⁹ Trial Staff maintains that Caldwell's testimony does not take the place of a site-specific study. And last, with respect to King's analysis, Trial Staff notes that the analysis dealt with gas and oil units and is not representative of the facilities that are at issue in this proceeding.

²²² *Id.* (citing Tr. 246-247).

²²³ *Id.* at 27-28.

²²⁴ *Id.* at 28.

²²⁵ *Id.*

²²⁶ *Id.* (citing Tr. 85).

²²⁷ *Id.*

²²⁸ *Id.* (citing Ex. ESI-4 at 30).

²²⁹ *Id.* at 29.

108. The Louisiana Commission, in its Brief Opposing Exceptions, maintains the one aspect of the Srinivasa study that was not supported with analysis was the net terminal salvage allowance he incorporated into the depreciation rates.²³⁰ According to the Louisiana Commission, a citation to the policy of the Texas Commission is the only basis for the negative five percent allowance in Entergy's proposal. The Louisiana Commission maintained that the Commission's filing requirement regulations require support for all of the components underlying a depreciation rate and that Entergy should have supported the negative five percent salvage allowance estimate with a study.

4. Commission Determination

109. We affirm the Presiding Judge's finding that Entergy failed to support the negative five percent salvage allowance factor with any study and improperly relies upon the salvage allowance factor being derived from various retail settlements.²³¹ The proposed salvage value factor allowance is not supported by an underlying depreciation study or cost support of this proposed rate.²³² Furthermore, we agree with the Presiding Judge that Entergy has not established the validity and accuracy of each of its cost estimates,²³³ and that a state commission's historical use of a negative five percent salvage value, without any supporting study, does not in and of itself, establish just and reasonable rates.

110. We agree with the Presiding Judge about the Spanos study, which generated a range of salvage values that ranges from positive five percent to negative 32 percent. We find that this wide variance underscores the Presiding Judge's conclusion that such figures were "pulled out of thin air and cannot credibly be relied upon."²³⁴

111. We also agree with the Presiding Judge that the record does not reflect that Entergy placed much, if any, reliance on the Selecky study, which analyzed the value of the existing production power sites to conclude that a negative five percent terminal net salvage value is reasonable.²³⁵ And although the dismantlement of the Neches plant

²³⁰ Louisiana Commission Brief on Exceptions at 30.

²³¹ Initial Decision, 138 FERC ¶ 63,010 at P 281.

²³² *Id.* P 283.

²³³ *Id.* P 280.

²³⁴ *Id.* P 277.

²³⁵ *Id.* P 205.

derived terminal surcharge factors very close to negative five percent, we agree with the Presiding Judge that that process was not representative of the facilities that are at issue in this proceeding.²³⁶

112. At the hearing, it was determined that the settlement rates from Texas Commission Docket No. 34800 incorporated a dismantlement allowance of negative five percent for terminal net salvage,²³⁷ and the Texas Commission has used a negative five percent terminal net salvage value for gas and oil units, as part of the Texas Commission's depreciation policy to include a negative five percent terminal salvage allowance in all depreciation retail rate filings. The Commission must evaluate, on its own, whether the proposed depreciation rates are just and reasonable. Based on our own review of the depreciation rates, the Commission finds the proposed dismantlement allowance is not adequately supported. Depreciation studies and cost estimates used in state level proceedings can be used to support proposed wholesale depreciation rates; however, in accordance with Order No. 631, it is incumbent upon the utility to provide sufficient detail to support depreciation rates, cost of removal, and salvage estimate included in rates.²³⁸

113. We agree with Trial Staff's reasoning that it is reasonable to assume that Entergy Texas will incur electrical plant dismantlement costs at some future point in time and that it is likely that such terminal net salvage costs would be negative. While Spanos, Selecky, and Pous proposed steam production plant terminal net salvage factors ranging from negative five percent to negative 32 percent, Selecky concluded that a negative five percent terminal net salvage factor is reasonable and that Mr. Pous concluded that a ten percent terminal net salvage factor is reasonable. These studies failed to demonstrate individually or collectively that the proposed dismantlement costs and salvage allowance factor is "systematic" and "rational," and consistent with costs typically seen in the electric industry.

²³⁶ *Id.* P 276.

²³⁷ *Id.* P 271 (citing Tr. at 171, 174).

²³⁸ *Accounting, Financing Reporting, and Rate Filing Requirements for Asset Retirement Obligations*, Order No. 631, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,142, *reh'g denied*, Order No. 631-A, 104 FERC ¶ 61,183 (2003).

F. Issue 5: Whether an Interim Net Salvage Factor is Supported.

1. Initial Decision

114. The Presiding Judge noted that Entergy's proposed Depreciation Rates do not include interim net salvage costs, and as such there is no consideration of survivor curves or interim retirements.²³⁹ The Presiding Judge found that Trial Staff's recommendation for an interim net salvage factor does not comport with depreciation principles and is not supported by an underlying study or empirical evidence in the record.

115. The Presiding Judge noted that according to Trial Staff's Pewterbaugh, the Commission recognizes interim retirements²⁴⁰ in a depreciation calculation and, where appropriate, allows a company to claim costs associated with them.²⁴¹ Pewterbaugh also testified that "[t]he [Texas Commission] does not allow for interim retirements in the depreciation rate calculations for steam generating plants; however, this does not mean that interim retirements, and the attendant salvage, do not occur."²⁴² The Presiding Judge noted that Trial Staff's Pewterbaugh testified that the difference between a negative five percent final terminal abandonment factor and a negative five percent interim retirement factor presents a conceptual difference rather than a monetary difference, but does not affect the depreciation rate itself. The Presiding Judge found Pewterbaugh's testimony to be incongruent and not persuasive.²⁴³

116. Reviewing the evidence, the Presiding Judge stated that Entergy averred that the proposed Depreciation Rates do not include interim net salvage costs,²⁴⁴ and that Pewterbaugh did not conduct or present a study to support the negative five percent

²³⁹ Initial Decision, 138 FERC ¶ 63,010 at P 284.

²⁴⁰ The USoA includes in the steam plant accounts items such as structures, boiler plant equipment and various other power plant equipment; if one of those items is retired while the steam generating plant continues to operate, then an interim retirement has occurred and the costs associated with that item's removal are interim retirement costs.

²⁴¹ Initial Decision, 138 FERC ¶ 63,010 at P 295.

²⁴² *Id.* (citing Ex. S-4 at 7).

²⁴³ *Id.* P 302.

²⁴⁴ *Id.* P 284.

salvage factor for interim retirements,²⁴⁵ and Trial Staff's recommendation for an interim net salvage factor lacked support and did not comport with depreciation principles.²⁴⁶ Pewterbaugh had testified that the Srinivasa study did not have a study or other empirical basis to support Trial Staff's argument for the negative five percent interim net salvage factor, that no analysis was ever performed in Texas for Entergy Texas or Entergy Gulf States, Inc., and that there is no interim retirement in the depreciation rates approved in the settlement in Texas Commission Docket No. 34800 or Texas Commission Docket No. 37744.²⁴⁷

117. The Presiding Judge noted that the Louisiana Commission argued that Trial Staff Pewterbaugh's recommendation is flawed because there are no interim retirements included in the depreciation rates to which to apply the salvage factor.²⁴⁸ The Presiding Judge agreed with the Louisiana Commission that since there was no study and no empirical evidence in the record to support a negative five percent salvage factor for interim retirements, Trial Staff witness Pewterbaugh's recommendation that a negative salvage factor of five percent should be allowed is insufficient to support a Commission finding.²⁴⁹

2. Briefs on Exceptions

118. No Briefs on Exceptions were filed on the interim net salvage issue.

3. Briefs Opposing Exceptions

119. No Briefs Opposing Exceptions were filed on the interim net salvage issue.

4. Commission Determination

120. As discussed above, we affirm the Presiding Judge's finding that the Srinivasa Depreciation Rate study, less the dismantlement costs, should be adopted. Furthermore, Trial Staff failed to conduct or present a study to support the negative five percent

²⁴⁵ *Id.* P 303 (citing Tr. at 253-254).

²⁴⁶ *Id.*

²⁴⁷ *Id.* P 300 (citing Tr. at 261).

²⁴⁸ *Id.* P 291.

²⁴⁹ *Id.* P 290.

salvage factor for interim retirements or the reasonableness of an interim net salvage factor. As such there is nothing for the Commission to consider regarding the interim salvage rates. We therefore agree with the Presiding Judge that there is no basis on this record to include interim net salvage costs. We therefore agree with the Presiding Judge that there is no basis on this record to include interim net salvage costs.

The Commission orders:

(A) We affirm the Initial Decision in this proceeding and find the revisions to Depreciation Rates as adopted by the Presiding Judge are just and reasonable.

(B) Entergy is directed to make refunds in accordance with 18 C.F.R. § 35.19(a) (2012), within 30 days of the date of the final order, and to submit a refund report within 30 days thereafter, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.