

143 FERC ¶ 61,120
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. ER07-682-004

ORDER DENYING REHEARING IN PART AND
GRANTING REHEARING IN PART

(Issued May 13, 2013)

1. The Louisiana Public Service Commission and the Council of the City of New Orleans (together, the Joint Parties) seek rehearing of Opinion No. 506,¹ which affirmed the Initial Decision² issued in this proceeding. The Initial Decision determined, among other things, that Entergy Corporation (Entergy) properly included, in the labor ratio that it uses to functionalize general and intangible plant costs (G&I Plant costs)³ and administrative and general expenses (A&G expenses)⁴ to its six Operating Companies.⁵

¹ *Entergy Servs., Inc.*, Opinion No. 506, 130 FERC ¶ 61,026 (2010).

² *Entergy Servs., Inc.*, 123 FERC ¶ 63,020 (2008) (Initial Decision).

³ General Plant consists of property, plant and equipment used for utility purposes which cannot be accounted for elsewhere in the direct plant accounts for production, transmission or distribution. It includes items such as transportation vehicles, communication equipment, the company's central headquarters, and office furniture. Intangible Plant consists of costs associated with the incorporation of the company or various franchising fees.

⁴ A&G expenses are common, indirect administrative and general overhead costs that are not directly assignable to a particular production, transmission or distribution function, such as the salary and benefits of the accountants, human resource specialists, rate analysts and corporate finance experts who provide services to the Operating Companies.

⁵ Entergy's Operating Companies are the following public utilities: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf

(continued...)

production functions, all payroll costs associated with the services that two affiliated service companies, Entergy Operations, Inc. (Entergy Operations) and Entergy Services, Inc. (Entergy Services) (collectively, Service Companies), provide the Operating Companies. As discussed below, we deny in part and grant in part Joint Parties' request for rehearing.

I. Background

2. Both the Initial Decision⁶ and Opinion No. 506⁷ provide detailed background on the procedural history and issues in this proceeding. In brief, on March 30, 2007, pursuant to section 205 of the Federal Power Act,⁸ Entergy Services filed amendments to the Entergy System Agreement (System Agreement) bandwidth formula contained in Service Schedule MSS-3. As relevant here, the amendments proposed to revise Service Schedule MSS-3 to: (1) functionalize net G&I Plant costs and related depreciation and amortization expenses, as well as Account No. 923, Outside Services Employed, expenses, based on labor ratios instead of plant ratios; and (2) include, in the labor ratio that Entergy uses to functionalize G&I Plant costs and A&G expenses to each Operating Company's production function, the payroll costs that Entergy's Service Companies charge to each Operating Company (Service Company labor).⁹ The Commission

States); Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc.; Entergy Texas, Inc.; and Entergy New Orleans, Inc. The six Operating Companies are distinct from Entergy Operations, Inc. and Entergy Services, Inc., which are Entergy's Service Companies.

⁶ Initial Decision, 123 FERC ¶ 63,020 at PP 1-16.

⁷ Opinion No. 506, 130 FERC ¶ 61,026 at PP 2-11.

⁸ 16 U.S.C. § 824d (2006).

⁹ For clarity, this order refers to the Service Companies' labor costs as "Service Company labor," and generically, to similarly situated public utilities, as "affiliate service company labor," rather than as "indirect labor." Likewise, it refers to the Operating Companies' labor costs as "Operating Company labor," and generically, as "operating company labor," rather than as "direct labor." This is a non-substantive change from Opinion No. 506, which followed the parties' pleadings in using the terms "direct labor" and "indirect labor," and in no way alters the Opinion's merits.

accepted and suspended the proposed amendments for a nominal period and made them effective May 30, 2007, subject to refund and to hearing and settlement procedures.¹⁰

3. On June 27, 2008, the Presiding Judge issued an Initial Decision which found that Entergy properly included the Service Company labor in the labor ratio it uses to functionalize G&I Plant costs and A&G expenses to its Operating Companies' production functions.¹¹ In response, the Louisiana Public Service Commission, the City Council of the City of New Orleans, the Mississippi Public Service Commission, Occidental Chemical Corporation and the Louisiana Energy Users Group filed a joint Brief on Exceptions which argued that the Presiding Judge erred in permitting Entergy to: (1) include Service Company labor in the labor ratio, contrary to Commission policy that labor ratios may include only those labor costs which the public utility whose overhead costs are being functionalized incurs; (2) modify the functionalization of Account No. 923, Outside Services Employed, expenses by substituting labor ratios for plant ratios and including Service Company labor; and (3) continue functionalizing Account No. 924, Property Insurance, expenses based on labor ratios that include Service Company labor, rather than on plant ratios. Entergy, the Arkansas Public Service Commission, Union Electric Company and Commission Trial Staff filed Briefs Opposing Exceptions.

4. On January 11, 2010, the Commission issued Opinion No. 506, which, *inter alia*, affirmed the Presiding Judge's determinations that: (1) no Commission precedent addresses whether Entergy may include Service Company labor in the labor ratio it uses to functionalize G&I Plant costs and A&G expenses to Operating Company production; and (2) it is just and reasonable to include Service Company labor in the labor ratio because Entergy's Service Company labor costs bear a rational relationship to the G&I Plant costs and A&G expenses which Entergy functionalizes to Operating Company production.¹² The Commission added that, contrary to the excepting parties' contentions, they had not shown that including Service Company labor in the labor ratio over-allocates G&I Plant costs and A&G expenses to production¹³ or violates cost causation principles.¹⁴ Additionally, the Commission affirmed the Presiding Judge's holding that

¹⁰ *Entergy Servs., Inc.*, 119 FERC ¶ 61,190 (2007).

¹¹ Initial Decision, 123 FERC ¶ 63,020 at P 276.

¹² Opinion No. 506, 130 FERC ¶ 61,026 at PP 89, 97.

¹³ *Id.* P 99.

¹⁴ *Id.* P 97.

the propriety of modifying the functionalization of Account No. 924, Property Insurance, expenses to substitute plant ratios for labor ratios was not an issue before her.¹⁵

II. Request for Rehearing

5. On rehearing, the Joint Parties claim that by including Service Company labor in Entergy's labor ratio, Opinion No. 506 departs from Commission policy and practice, betrays cost causation principles, over-allocates production costs and discriminates in favor of certain Operating Companies at the expense of others.¹⁶ In addition, the Joint Parties claim that the functionalization of Account No. 924, Property Insurance, lies within the scope of the proceeding, was properly before the Presiding Judge and must be modified to substitute plant ratios for labor ratios, as well as to exclude Service Company labor.¹⁷

III. Discussion

6. As discussed below, Entergy's inclusion of Service Company labor in the labor ratios it uses to functionalize G&I Plant costs and A&G expenses to production is an issue of first impression. Upon review of Opinion No. 506, we reaffirm our determinations, and reject the Joint Parties' assertion that functionalizing G&I Plant costs and A&G expenses based on labor ratios that include Service Company labor is unjust, unreasonable, or unduly discriminatory. Accordingly, we deny their request for rehearing of this issue.

7. Upon further review, we grant the Joint Parties' request for rehearing regarding Account No. 924, Property Insurance. When Entergy proposed to change the account's functionalization methodology to include affiliate labor in the labor ratios used to allocate A&G expenses, including property insurance, it opened the door to further methodological adjustment. As a result, the participants properly raised the issue before the Presiding Judge in their Joint Statement of Issues. Further, as discussed below, property insurance, by its very nature, relates solely to plant. For this reason, Commission precedent requires that it be functionalized and allocated based on plant ratios. As a result, we find it unjust and unreasonable for Entergy to use labor ratios for this purpose. Accordingly, we grant rehearing of this issue.

¹⁵ *Id.* P 104.

¹⁶ Request for Rehearing at 1-3, 16-17, 24-27.

¹⁷ *Id.* at 3.

A. Commission Policy Regarding the Use of Affiliate Labor in Labor Ratios Used to Functionalize G&I Plant Costs and A&G Expenses

1. Rehearing Request

8. The Joint Parties argue that including Service Company labor in Entergy's labor ratio deviates from Commission policy. As they read it, the Commission's policy on allocating G&I Plant costs and A&G expenses that cannot be directly assigned to specific functions requires Entergy to use a labor ratio whose wage and salary data derive solely from the Operating Company in question. The Joint Parties contend that Opinion No. 506 ignored evidence that the accepted meaning of the term "direct labor" excludes affiliate service company labor, as well as Trial Staff testimony that it means "the payroll expenses of employees who work for the Entergy [O]perating [C]ompanies."¹⁸ The Joint Parties assert that Opinion No. 506 incorrectly relied instead on evidence that "some companies" include affiliate service company labor in the labor ratio they use to functionalize G&I Plant costs and A&G expenses.¹⁹

9. The Joint Parties also assert that Opinion No. 506 rejected gas precedent which purportedly requires that labor ratios be based solely on payroll costs incurred directly by the utility.²⁰ According to the Joint Parties, the Commission incorrectly rejected these cases simply because they are gas cases, rather than electric, and because they neither interpret the term "direct labor" nor demonstrate that the utility in question had affiliate service companies similar to the Operating Companies.²¹ The Joint Parties allege, to the contrary, that the Commission ignored the term "direct" in these decisions and failed to offer any rationale or interpretation of "direct labor" that could apply to affiliate costs. In addition, the Joint Parties cite longstanding Supreme Court precedent which holds that cases under the Natural Gas Act²² and Federal Power Act²³ are construed

¹⁸ Request for Rehearing at 5.

¹⁹ *Id.* at 6-7 (noting that Union Electric Company used affiliate labor in its FERC Form No. 1 filings, and that a data response from Entergy shows that Duke Energy also included affiliate labor in its FERC Form No. 1 filings).

²⁰ *Id.* at 7-9 (citing *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at P 289 (2006); *Transcon. Gas Pipe Line Corp., LLC*, 106 FERC ¶ 61,299 (2004); *Panhandle Eastern Pipe Line Company*, 74 FERC ¶ 61,109 (1996); *Kansas-Nebraska Natural Gas Co., Inc.*, Opinion No. 731, 53 F.P.C. 1691, at 1721 (1975)).

²¹ *Id.* at 2, 8-9 (citing Opinion No. 506, 130 FERC ¶ 61,026 at P 89).

²² 15 U.S.C. § 717c (2006).

in pari materia, and therefore require the same result here as in the gas cases on which the Joint Parties rely.²⁴

10. Additionally, the Joint Parties contend that initial decisions in three electric cases²⁵ and two oil cases²⁶ make clear that the labor ratios used to functionalize costs are direct labor ratios. They assert that while these administrative law judge decisions do not bind the Commission, they confirm that the Commission's policy has always been to functionalize costs based on direct labor.

11. Further, the Joint Parties argue that the Commission's accounting rules support using Operating Company labor alone in the labor ratio. According to the Joint Parties, the Commission's accounting rules prescribe how payroll distribution, or labor costs, must be maintained and classified to functions. For example, General Instruction No. 10 of the Uniform System of Accounts provides that labor costs classified by function be the "cost of labor charged direct to the various accounts."²⁷ The Joint Parties claim that the Commission's finding in Opinion No. 506 that "accounting does not control [ratemaking]"²⁸ circumvents General Instruction No. 10 and that to the contrary,

²³ 16 U.S.C. § 824d.

²⁴ Request for Rehearing at 8 (citing *Fed. Power Comm'n. v. Sierra Pac. Power Co.*, 350 U.S. 348, 352-53 (1956)).

²⁵ *Id.* at 9 (citing *Kansas Power & Light Co.*, 7 FERC ¶ 63,003 (1977); *Missouri Power & Light Co.*, 5 FERC ¶ 63,003 (1977); *Boston Edison Co.*, 8 FERC ¶ 63,007, at P 65,120 n.2 (1977)).

²⁶ *Id.* (citing *SFPP, LP.*, 129 FERC ¶ 63,020 (2009), *aff'd in part modified in part*, 134 FERC ¶ 61,121 (2011) ([r]egarding the parties' application of the Massachusetts Formula); *Chevron Products Co.*, 127 FERC ¶ 63,024 (2009)).

²⁷ *Id.* at 10 (citing 18 C.F.R. Part 101 (2012)). General Instruction No. 10, Payroll Distribution, provides that "[u]nderlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available." *Id.*

²⁸ *Id.* (citing Opinion No. 506, 130 FERC ¶ 61,026 at P 89). We note that Joint Parties misquote the Commission as stating that "accounting does not control "rulemaking" rather than "ratemaking."

accounting *matters* here,²⁹ because the Commission in Opinion No. 505³⁰ required Entergy to use FERC Form No. 1 data in its bandwidth calculations.³¹ The Joint Parties also maintain that even if the accounting rules are not binding here, they are evidence of Commission policy because they refer to direct labor without mentioning affiliate labor costs. Therefore, the Joint Parties claim that the term “direct labor,” under the accounting rules, can only be interpreted to exclude Service Company labor.

12. Finally, the Joint Parties note that the Commission’s accounting rules are intended to promote uniformity in functionalizing costs that the Commission uses to set rates. In the Joint Parties’ view, these rules require utilities to exclude affiliate labor from the “Distribution of Salaries and Wages” and “Direct Payroll Distribution” data they report on FERC Form No. 1.³² According to the Joint Parties, however, the Commission nonetheless relied on evidence that certain utilities, such as Duke Energy and Ameren, include affiliate service company labor as well as direct labor in their FERC Form No. 1 filings. The Joint Parties say this practice violates the Commission’s accounting rules, and contend that Opinion No. 506’s apparent endorsement of it will promote uncertainty, encourage the use of inconsistent methods to functionalize costs and render the Commission powerless to prevent unduly discriminatory and unreasonable practices.³³

2. Commission Determination

13. We deny rehearing. As we discuss below, we reject all of the Joint Parties’ claims that Opinion No. 506 bypassed Commission precedent and accounting rules, and ignored record evidence that contravenes Entergy’s proposed bandwidth formula amendments.

14. Commission policy requires the use of general allocators such as labor ratios or plant ratios to functionalize and allocate costs that cannot be directly assigned to a particular function, such as the overhead costs at issue in this proceeding, namely, G&I

²⁹ *Id.*

³⁰ *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010), *aff’d in relevant part*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

³¹ Request for Rehearing at 10 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 173).

³² *Id.* (citing FERC Form No. 1 at 354-355).

³³ *Id.* at 11-13.

Plant costs and A&G expenses.³⁴ The issue in this proceeding, however, is not whether Entergy has departed from this policy. The issue is whether Entergy may reasonably include affiliate labor costs in the labor ratios it uses to functionalize overhead costs that it cannot directly assign to production, in order to accurately reflect the amount of labor attributable to the production function and develop a just and reasonable functionalization and allocation of costs.

15. We reaffirm our finding in Opinion No. 506 that this is a case of first impression. No other case before the Commission has ever raised, and we have never directly ruled upon, the issue of whether a labor ratio used to functionalize G&I Plant costs and A&G expenses should contain only the operating company labor, or may reasonably include affiliate service company labor as well.³⁵ We also reaffirm our finding in Opinion No. 506 that the Commission's accounting rules do not prohibit the use of affiliate service company labor in the labor ratios used to functionalize overhead costs.³⁶ For all of these reasons, contrary to the Joint Parties' claims, there are no controlling Commission policies, precedents or rules from which Opinion No. 506 has departed.

16. We likewise affirm our determination that none of the cases which Joint Parties say mandate the exclusion of service company labor require us to do so.³⁷ Though the Joint Parties rely on language regarding "direct labor," we find no evidence that the terms "direct" or "direct labor" in these cases refer to operating company costs or expenses, or require the exclusion of expenses incurred by an affiliate. Rather, in the context of functionalizing or allocating labor costs, the terms "direct" and "indirect" distinguish those costs that are directly assigned to a function from those which cannot be directly assigned to a single function and are instead functionalized in proportion to related (e.g., plant or labor) costs that are directly charged to a particular operating function. In the cases the Joint Parties cite, "direct" and "indirect" reflect their typical usage in this

³⁴ *Minnesota Power & Light Co.*, Opinion No. 20, 4 FERC ¶ 61,116, at 61,150-52, *aff'd*, Opinion No. 20-A, 5 FERC ¶ 61,091, at 61,150 (1978) (mandating the use of labor ratios to functionalize G&I Plant costs, and permitting alternate methods only on a showing that labor ratios would be unreasonable in the particular circumstances, not merely that the proposed alternative is also reasonable. Opinion No. 20-A, 5 FERC at 61,150-151).

³⁵ Opinion No. 506, 130 FERC ¶ 61,026 at P 89. *See also* Staff's Brief Opposing Exceptions at 15-18.

³⁶ *Id.* *See also* Staff's Brief Opposing Exceptions at 22-23.

³⁷ *Id.* *See also* Staff's Brief Opposing Exceptions at 15-18.

context, and there is no reason to believe that they are instead being used to differentiate operating company and affiliate labor.³⁸ We find no cases in which “direct labor” or “direct” requires that labor ratios exclude affiliate service company labor, and for this reason, we disagree with the Joint Parties’ claim that the Commission rejected the gas cases on which they rely simply because they were gas cases, rather than electric ones. As we explained in Opinion No. 506 and reaffirm here, regardless of whether the cases are Natural Gas Act or Federal Power Act precedent, none of them require that a labor ratio used to allocate overhead costs exclude affiliate service company labor.³⁹

17. Trial Staff’s expert testimony likewise fails to bolster the Joint Parties’ interpretation of “direct labor.”⁴⁰ Rather, the Trial Staff witnesses’ testimony reflects that, in these experts’ considerable experience, the issue of whether a labor ratio used to functionalize G&I Plant costs and A&G expenses should contain only operating company labor, or whether it is reasonable to include affiliate service company labor as well, has never been directly presented for resolution. For this reason, Trial Staff’s testimony confirms our finding that this is a case of first impression.

³⁸ See, e.g., *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077 at P 290 (“[T]he Commission’s general policy is that direct costs should always be directly assigned and that indirect costs should be allocated by formula. . . . The first argument here is whether all A&G costs are by their nature indirect. Kern River argues it has directly assigned some A&G labor costs where feasible thereby making these direct costs not indirect.”). See also *n.20, Panhandle Eastern Pipe Line Co.*, 74 FERC ¶ 61,109 (1996), involving a pipeline affiliate which performed well connections as the pipeline’s agent. The Commission agreed with the pipeline that labor costs associated with the construction of new well connections would be capitalized and included in gas plant accounts, rather than in the labor allocator. In so doing, the Commission used the term “direct” to refer to whether the labor costs are directly assigned, regardless of whether the costs are associated with operating company or affiliate labor:

The Commission agrees with Panhandle that direct labor costs for new well connections would be capitalized whether the service was performed by [the affiliate] or by Panhandle itself. They would thus be recorded in gas plant accounts, not in direct labor accounts and would not be part of the direct labor allocation factor. They would still be included in the . . . gas plant allocation factor and would affect the four items that are allocated in whole or in part based on gas plant. *Id.* at 61,379.

³⁹ Opinion No. 506, 130 FERC ¶ 61,026 at P 89.

⁴⁰ Request for Rehearing at 5-6.

18. In addition, neither of the two oil cases on which the Joint Parties rely supports their claim that the Commission has a longstanding policy of allocating costs using labor ratios that contain only operating company labor.⁴¹ These cases do not mandate the exclusion of affiliate service company labor from labor ratios used to functionalize costs.

19. Likewise, the electric cases on which the Joint Parties rely⁴² fail to confirm the existence of a Commission policy that excludes affiliate service company labor from the labor ratios used to allocate overheads. These cases neither define the term “direct labor” nor determine whether it would be appropriate to include affiliate service company labor in the allocator. In these cases, the Commission simply upheld the use of labor ratios to functionalize costs and did not reach the issue of whether to exclude affiliate service company labor from the labor ratios.⁴³

20. Moreover, we reject the Joint Parties’ assertion that the term “direct labor” in the Commission’s accounting rules can only be interpreted to require the exclusion of affiliate service company labor from labor ratios used to functionalize overheads. First, as the Commission explained in Opinion No. 506, the Uniform System of Accounts is not dispositive here because accounting does not control ratemaking.⁴⁴ The issue in this proceeding is purely one of ratemaking, namely, whether Service Company labor may be included in the labor ratios used to functionalize overhead costs that cannot be directly assigned to production, in order to accurately reflect the amount of labor attributable to the production function and develop a just and reasonable functionalization and allocation of costs. Entergy’s FERC Form No. 1 accounting methodology, at issue in Opinion No. 505, does not control whether Entergy’s proposed revisions to Service Schedule MSS-3 are just and reasonable.⁴⁵

⁴¹ *SFPP, LP*, 129 FERC ¶ 63,020, *aff’d in part and modified in part*, Opinion No. 511, 134 FERC ¶ 61,121; *Chevron Products Co.*, 127 FERC ¶ 63,024.

⁴² *Kansas Power & Light Co.*, 7 FERC ¶ 63,003; *Missouri Power & Light Co.*, 5 FERC ¶ 63,003; and *Boston Edison Co.*, 8 FERC ¶ 63,007 at PP 65,120 n.2.

⁴³ *See, e.g., Boston Edison Co.*, Opinion No. 53, 8 FERC ¶ 61,077, at 61,282 (1979).

⁴⁴ Opinion No. 506, 130 FERC ¶ 61,026 at P 89 n.151 (citing *Southern Co. Servs., Inc.*, 116 FERC ¶ 61,247, at P 23 (2006)).

⁴⁵ Opinion No. 505 involved a filing to implement the bandwidth formula, where the issues were strictly limited to whether Entergy had accurately applied the formula, including the prescribed Form No. 1 data.

21. Further, we find that the accounting phrases on which the Joint Parties rely do not support their assertion, as the Joint Parties have not shown that “cost of labor charged direct to the various accounts,” as used in 18 C.F.R. Part 101, General Instruction No. 10, and “Direct Payroll Distribution,” as used on page 354 and 355 of the FERC Form No. 1,⁴⁶ define a Commission policy that excludes affiliate service company labor from the labor ratios used to functionalize costs. Moreover, we reject the Joint Parties’ assertions that: (a) Opinion No. 506 determined, contrary to established policy and based solely on evidence regarding the reporting practices of two utilities (AmerenUE and Duke Energy), that Form No. 1 requires utilities to include affiliate labor costs in the Direct Payroll Distribution on FERC Form No. 1 pages 354-355;⁴⁷ and (b) that the Commission should have validated the Form No. 1 reporting practices of two other holding company systems instead (American Electric Power and Southern), which, in their view, correctly exclude affiliate labor from “Direct Payroll Distribution” on FERC Form No. 1 pages 354-355.⁴⁸ Neither claim is correct. As we stated unequivocally in Opinion No. 506, and reaffirm here:

. . . [T]he fact that some other utility operating companies that belong to a holding company system may include affiliated service company labor in the total labor costs reported in their FERC Form No. 1 fails to demonstrate that Commission precedent or policy supports the inclusion of affiliate labor in the calculation of labor ratios. Such an observation does not control the outcome of this proceeding.⁴⁹

22. Likewise, the fact that other holding company systems *exclude* affiliate labor from their Form No. 1 equally fails to demonstrate that Commission precedent or policy supports the exclusion of affiliate labor from the calculation of labor ratios. Nothing in

⁴⁶ Request for Rehearing at 9-10. While page 354 of FERC Form No. 1 does not define the term “Direct Payroll Distribution,” it lists labor costs by function (e.g., transmission, production, distribution) in a manner that indicates the amount of labor costs directly assigned to each function for use in calculating labor allocators. *See, e.g.*, Entergy Texas, Inc., FERC Form No. 1 at p. 354 (April 18, 2011). Contrary to the Joint Parties’ assertions, we cannot view this as evidence that affirmatively requires or prohibits the inclusion of affiliate service company labor in labor ratios.

⁴⁷ Joint Parties Brief Opposing Exceptions at 10-13; Entergy Brief Opposing Exceptions at 29.

⁴⁸ Request for Rehearing at 12.

⁴⁹ Opinion No. 506, 130 FERC ¶ 61,026 at P 89 n.146 (internal citations omitted).

“Direct Payroll Distribution” on FERC Form No. 1 pages 354-355 affirmatively requires or prohibits the inclusion of affiliate service company labor in labor ratios, and the ways in which individual utilities interpret and report data on these pages does not constitute precedent.⁵⁰

23. For all of these reasons, whether it is appropriate to include affiliate service company labor in an operating company’s labor ratio depends on the facts surrounding the operating company’s cost incurrence, e.g., whether the service company affiliates cause the operating companies to incur costs when the affiliates: (a) use operating company property, plant and equipment to perform services for the operating companies; and (b) administer payroll and benefits programs for the operating companies. Based on these principles, we will assess, case-by-case, whether it is reasonable to functionalize operating company overheads and infrastructure, based in part on affiliate service company labor, as we do in the following section of this order. Consequently, we see no merit in the Joint Parties’ concerns that including Service Company labor in the labor ratio will promote uncertainty, inconsistent functionalization methodologies and “discriminatory and unreasonable practices,” and we dismiss those assertions as speculative.

24. Accordingly, we deny the Joint Parties’ request for rehearing of this issue, and reaffirm our conclusions in Opinion No. 506 that no Commission precedent, accounting instructions or policies require that Entergy base its labor ratio exclusively on Operating Company labor, i.e., without any Entergy Operations or Entergy Services labor.

B. Reasonableness of Including Service Company Labor in the Labor Ratios Used to Functionalize G&I Plant Costs and A&G Expenses

1. Request for Rehearing

25. The Joint Parties argue that if the Commission has no precedent or policy regarding the use of affiliate service company labor in the labor ratios that functionalize G&I plant and A&G expenses to operating company production functions, then it must

⁵⁰ Entergy’s Operating Companies report their direct labor costs in FERC Form No. 1 on a schedule entitled “Distribution of Salaries and Wages.” They also report the amount of salaries and wages billed from the Service Companies in a footnote to this schedule. The amounts reported in the footnote are not included in the amounts reported on the face of this schedule, and the schedule’s instructions do not require that these data be reported. Entergy includes the additional information in a footnote to this schedule to provide the Commission and other users of the FERC Form No. 1 the additional data needed to properly implement the bandwidth formula.

adopt a functionalization method that is reasonable and based on cost causation principles. The Joint Parties assert, however, that neither Entergy nor Opinion No. 506 offered any evidence to show that affiliate labor caused the Operating Companies to incur G&I Plant costs and A&G expenses.⁵¹

26. For instance, the Joint Parties maintain that Opinion No. 506 ignored evidence that Entergy Operations already directly assigned overhead costs to the Operating Companies' production functions, and that it incurs no other indirect G&I Plant costs and A&G expenses that it must functionalize to them.⁵²

27. Additionally, the Joint Parties argue that Opinion No. 506 and Entergy provided no analytical basis to include Service Company labor in the ratios used to functionalize overhead costs to Operating Company production. They contend that the only evidence the Commission relied on was a conclusory statement by Entergy's witness Bruce M. Louiselle that it is reasonable to reflect Entergy Services' and Entergy Operations' labor costs, even though he performed no analyses to determine whether the Service Companies' activities caused the Operating Companies to incur the overhead costs.⁵³

28. The Joint Parties further claim that Entergy's own accounting data show that using Entergy Operations labor in the labor ratio over-allocates Operating Company administrative costs to production, betrays cost-causation principles and is therefore "unreasonable and unduly discriminatory."⁵⁴ They contend that the Commission incorrectly found in Opinion No. 506 that all of Entergy Operations' overhead costs should be functionalized to the Operating Companies just because "some Operating Companies' equipment is sometimes used by some of Entergy Operations' employees."⁵⁵ The Joint Parties further argue that Entergy Operations' employees' limited use of

⁵¹ Request for Rehearing at 13-15.

⁵² *Id.* at 13.

⁵³ *Id.* at 14-15. Joint Parties further assert that witness Louiselle's testimony must be rejected as a matter of law because an expert witness cannot rely solely upon his or her own personal judgment to render ultimate conclusions. To be accorded weight, expert opinions must be based on substantial evidence; unsupported and conclusory statements by experts should be disregarded. *Id.* at 15 (citing *Town of Norwood v. FERC*, 80 F.3d 526, 534-35 (D.C. Cir. 1996)).

⁵⁴ *Id.* at 17.

⁵⁵ *Id.* at 16.

Operating Company plant and equipment does not justify the millions of dollars in additional costs that Entergy functionalizes to the Operating Companies by including Service Company labor in the labor ratio.⁵⁶

29. In addition, the Joint Parties argue that the creation of a service company like Entergy Operations allows it to directly assign its costs to production, as Entergy has done, and provides no basis for including additional G&I plant and A&G expenses in the Operating Companies' labor ratios. As an example, the Joint Parties explain that Entergy Operations bills approximately \$583,000 for Entergy Arkansas' A&G accounts, but the labor ratio functionalizes \$33.76 million⁵⁷ to production for Entergy Operations labor. As a result, the Joint Parties argue that since Entergy Operations bills Entergy Arkansas directly, Entergy Operations' labor should not also be included as a factor in functionalizing the other \$33.76 million in A&G expenses.⁵⁸ They further note that while including Entergy Services' labor costs does not substantially change the labor ratios, including Entergy Operations' labor costs does, because Entergy Operations' labor is all production-related. The Joint Parties assert that there is no justification for including Entergy Operations' labor because Entergy Operations, which manages all of Entergy's nuclear operations, is a single-function company, and therefore most of its administrative and overhead costs are billed directly to production functions rather than to indirect accounts.⁵⁹

⁵⁶ For example, the Joint Parties contend that while including Entergy Operations labor in Entergy Arkansas's labor ratio allocates 53.6 percent of Entergy Arkansas's A&G expenses to production, the percentage of A&G expenses billed by Entergy Operations and recorded in Entergy Arkansas's A&G accounts is less than 1 percent of those expenses. *Id.* at 26.

⁵⁷ Although the Joint Parties say that using affiliate labor in the labor ratio functionalizes \$33,763 million of A&G expenses to Entergy Arkansas' production function, we understand them to mean \$33.76 million. Request for Rehearing at 26. For G&I Plant costs, Joint Parties argue that while Entergy Operations bills Entergy Arkansas \$80,000, the labor ratio functionalizes another \$28.1 million of Entergy Arkansas' G&I Plant costs to production. *Id.* at 21.

⁵⁸ The Joint Parties also argue that functionalizing Entergy Operations labor to Entergy Gulf States and Entergy Louisiana production likewise over-allocates A&G expenses to those companies. *Id.* at 26-27.

⁵⁹ *Id.* at 19.

30. Further, the Joint Parties contend that Opinion No. 506 approved a functionalization method for Service Schedule MSS-3 that is inconsistent with the functionalization methods that Entergy uses in other System Agreement Service Schedules.⁶⁰ For example, Service Schedule MSS-4⁶¹ directly assigns nuclear A&G to production; Service Schedule MSS-2 functionalizes A&G expenses to transmission using Operating Company labor alone; and Service Schedule MSS-1 uses Operating Company labor alone to functionalize A&G expenses for reserve equalization. According to the Joint Parties, using inconsistent methods in Service Schedules MSS-2 and MSS-3 unjustly and unreasonably over-allocates A&G expenses to the combined wholesale production and transmission functions, just as using Operating Company labor for transmission, and Service Company labor for production, over-allocates costs to the combined production and transmission functions of the Entergy System Agreement Service Schedules. As a result, the Joint Parties claim that because employing inconsistent methods to functionalize A&G expenses allocates a larger dollar amount to production and transmission than either method applied consistently would allocate to the same functions, it is unjust and unreasonable not to use the same method across all service schedules in the tariff.⁶²

31. The Joint Parties additionally argue that Entergy Operations' expenses are readily identifiable and therefore Entergy could have directly assigned them all to production, as Entergy does with other System Agreement Service Schedules. Accordingly, the Joint Parties allege that Entergy chose to include all of Entergy Operations' labor in the labor ratio in order to produce a discriminatory over-allocation to some Operating Companies at the expense of others.⁶³

32. Finally, the Joint Parties assert that by changing the methodology for functionalizing Account No. 923, Outside Services Employed, expenses from plant ratios to labor ratios, and including the Service Company labor in the labor allocator, Entergy has likewise over-allocated costs to production and unduly discriminated in favor of some Operating Companies and against others.⁶⁴ If the Commission accepts Entergy's switch

⁶⁰ *Id.* at 33-35.

⁶¹ According to Joint Parties, Service Schedule MSS-4 provides for a direct assignment of nuclear A&G expenses to production and excludes all Entergy Operations labor from the allocator that functionalizes other A&G to production. *Id.* at 31.

⁶² *Id.* at 31-35.

⁶³ *Id.* at 27.

⁶⁴ *Id.* at 36.

from plant to labor ratios, the Joint Parties recognize that Entergy must first directly assign the costs from Account No. 923 that can be identified with the production function and only then functionalize the costs that cannot be easily identified with production, but reiterate that the functionalized cost should exclude Service Company labor.⁶⁵

2. Commission Determination

33. As in Opinion No. 506, we will clarify the context in which Entergy functionalizes overhead costs before addressing the Joint Parties' concerns. At issue here is a dispute over the methodology that should be used to functionalize two types of indirect overhead costs – G&I Plant costs and A&G expenses – to the production functions of each of Entergy's Operating Companies. These costs constitute less than 10 percent of the total production costs that Entergy incurred in 2006, or \$0.4 billion, compared to the \$6.2 billion of \$6.6 billion in total production costs that Entergy directly assigned, which is the preferred methodology for assigning costs whenever it is possible to identify them with specific functions.⁶⁶ While it is theoretically possible to directly assign this remaining \$0.4 billion in common, indirect costs, as we explained in Opinion No. 506, it would be administratively infeasible to do so because it would take 77,000 hours, or 37 years, to review the 4.6 million line items.⁶⁷ Therefore, Entergy must functionalize them to the Operating Companies' production, based on an allocation ratio. Indeed, this is precisely why the Commission accepts reasonable methods of functionalizing and allocating common, indirect costs, consistent with cost-causation principles. And, as we made clear in Opinion No. 506, longstanding Commission policy requires the use of labor ratios to functionalize G&I Plant costs and A&G expenses.⁶⁸

34. Opinion No. 506 noted that the Joint Parties had failed to demonstrate any reasonable way to directly assign common, indirect costs.⁶⁹ We find that the Joint Parties

⁶⁵ *Id.* at 37.

⁶⁶ Initial Decision, 123 FERC ¶ 63,020 at P 285; Ex. ETR-7 at 2.

⁶⁷ Opinion No. 506, 130 FERC ¶ 61,026 at P 97 n.156.

⁶⁸ *Id.* P 88 (citing, Opinion No. 20, *supra* n.34 (mandating the use of labor ratios to functionalize G&I Plant costs, and permitting alternate methods only on a showing that labor ratios would be unreasonable in the particular circumstances, not merely that the proposed alternative is also reasonable. Opinion No. 20, 5 FERC at 61,150-151)). We again note that no party filed a brief on exceptions with respect to this finding.

⁶⁹ *Id.* P 97 n.156.

on rehearing still have provided no such methodology. Though the Joint Parties contend that Entergy Operations' overhead costs are already directly assigned to production and do not cause the Operating Companies to incur additional G&I Plant costs and A&G expenses,⁷⁰ as discussed below, we find no support for this assertion with respect to Service Schedule MSS-3.⁷¹

35. As noted, the Joint Parties raise two primary issues regarding the reasonableness of including Service Company labor in the labor allocators. First, they maintain that the Service Companies do not cause the Operating Companies to incur overhead costs on their behalf. Second, they assert that Entergy's proposal over-allocates overhead costs functionalized to the production function, and is unduly discriminatory. We disagree with these arguments, as outlined below, and reaffirm our finding in Opinion No. 506 that including Service Company labor in the labor ratios used to functionalize G&I Plant costs and A&G expenses to the Operating Companies' production functions is just and reasonable. Therefore, we deny rehearing.

36. First, we disagree with the Joint Parties' arguments that there is no analytical basis for including Service Company labor in the ratios used to functionalize overhead costs and that Entergy provided no cost causation support for its proposal. We find instead that the Joint Parties' cost causation claim exaggerates the causal relationship that must be shown. We reaffirm that the standard here is, as Entergy's witness Louiselle testified, that the functionalization of common, indirect G&I Plant costs and A&G expenses should bear a reasonable, rational relationship to their cost incurrence.⁷²

⁷⁰ Though the Joint Parties make this same claim with respect to Service Schedule MSS-4, as Opinion No. 506 mentioned and we discuss in greater length below, the determination of rates pursuant to different Service Schedules in the System Agreement involves entirely separate issues, and the fact that other Service Schedules use different methodologies to functionalize and allocate costs does not make Service Schedule MSS-3's methodology unjust and unreasonable. *See* Opinion No. 506, 130 FERC ¶ 61,026 at P 100.

⁷¹ The Joint Parties, for example, cite only a very general statement in Trial Staff witness Sammon's testimony that most of the A&G expenses transferred from the Operating Companies to Entergy Operations "likely could be" directly assigned to nuclear production. Request for Rehearing at 19 (citing Tr. 770).

⁷² Opinion No. 506, 130 FERC ¶ 61,026 at P 97 (citing Entergy Brief Opposing Exceptions at 33). We note that Joint Parties' own witness appeared amenable to a similar standard. *See* Tr. 499:24-501:6, where Louisiana Public Service Commission

(continued...)

37. We find that Entergy cannot reasonably be expected to proffer a direct, mathematical relationship between Service Company labor costs and Operating Company overhead costs because of the administrative inefficiency reasons discussed above.⁷³ However, the record contains substantial evidence demonstrating that the Service Companies cause the Operating Companies to incur overhead costs: (1) Entergy Services employees in charge of regulatory affairs at Entergy Louisiana and Entergy Gulf States use the Operating Companies' G&I Plant; (2) Service Company employees performing work at an Operating Company location use the Operating Companies' G&I Plant of that Operating Company⁷⁴ and (3) the computer equipment at Entergy's nuclear power plants is recorded as general plant on the specific Operating Companies' books; the software that runs on the computers is recorded as the specific Operating Companies' intangible plant; and Entergy Services and Entergy Operations employees use both the computers and the software.⁷⁵ In other words, Service Company employees use Operating Company G&I Plant and in so doing, cause the Operating Companies to incur costs while performing services for them.

38. Likewise, the record shows that Entergy's Service Companies cause the Operating Companies to incur A&G expenses when the Service Companies perform essential services for them. For example, as Entergy witness Bunting testified, Entergy Services' employees administer the payroll and benefits programs for all Entergy companies, including Entergy Services and Entergy Operations.⁷⁶ The Entergy Services employees provide these programs to all employees, across all functions in Entergy's organization, and charge their costs in doing so to the Operating Companies' A&G accounts, under specific project codes, because the costs are not, by definition, directly assignable to a specific function.⁷⁷ This evidence additionally refutes the Joint Parties' assertions that the Commission relied on a single statement of Entergy witness Louiselle to find that

witness Stephen J. Baron conceded that it would be appropriate to functionalize overhead costs based on a hypothetical example that established "a rational relationship between labor and the cost of that building."

⁷³ See discussion *supra* P 31.

⁷⁴ Entergy Brief Opposing Exceptions at 35 (citing Ex. ETR-7 at 29).

⁷⁵ Opinion No. 506, 130 FERC ¶ 61,026 at P 97.

⁷⁶ Ex. ETR-6 at 16-7.

⁷⁷ Entergy Brief Opposing Exceptions at 36 (citing Ex. ETR-6 at 13-15).

Entergy Service Company labor caused the Operating Companies to incur G&I Plant costs and A&G expenses, and that Entergy failed to support the contention.⁷⁸

39. As a fallback from their position that *no* Service Company overhead should be functionalized to the Operating Companies, the Joint Parties further argue that *not all* of Entergy Operations' overhead should be functionalized to the Operating Companies because Entergy Operations employees do not use all of the Operating Companies' equipment all of the time, and their limited use of the Operating Companies' equipment does not justify the functionalization of millions of dollars in additional costs. However, contrary to this assertion, as the Commission explained in Opinion No. 506 and we again detailed immediately above, the evidence demonstrates that when Entergy Services and Entergy Operations employees perform work for the Operating Companies, they use Operating Company G&I.⁷⁹ Moreover, as noted above, Entergy Services and Entergy Operations use project codes to assign costs to the A&G accounts of the Operating Companies. For example, Entergy Services employees administer the payroll and benefit programs for all Entergy Company employees, including the Service Companies.⁸⁰ Based on this evidence, a labor ratio that includes Entergy Service Company labor bears a rational relationship to the G&I Plant costs and A&G expenses that Entergy functionalizes to its Operating Companies' production functions.⁸¹ Although the Joint Parties attempt to minimize this finding by stating that "some Operating Companies' equipment is sometimes used by some Entergy Operations employees," they have provided nothing that refutes our determination or explains why a labor ratio that includes Service Company labor is not reasonable when Entergy's Service Companies cause its Operating Companies to incur G&I Plant costs and A&G expenses.

40. We also reject the Joint Parties' assertions that Entergy Operations already directly assigns its overhead costs to Operating Company production; that it therefore does not cause the Operating Companies to incur additional G&I Plant costs and A&G expenses; and as a result, Entergy's attempt to functionalize G&I plant costs and A&G expenses to them violates cost causation principles.⁸² We reiterate that the Joint Parties have not shown that Entergy Operations directly assigns any overhead costs under

⁷⁸ Request for Rehearing at 2, 14-15.

⁷⁹ Opinion No. 506, 130 FERC ¶ 61,026 at P 97.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Request for Rehearing at 13.

Service Schedule MSS-3. We also note the Joint Parties' claim that the only reason to include Entergy Operations labor in the labor ratio would be that if Entergy Operations had not been created, its employees would still be with the Operating Companies and their costs would be directly assigned. The Joint Parties contend, however, that the transfer of administrative employees and costs to Entergy Operations allowed these costs to be booked directly to production accounts. To the contrary, this assertion ignores evidence that administrative employees, such as officers of the Operating Companies, were not transferred to Entergy Operations. According to Entergy, only the operating employees and "no portion of the General Office was transferred to EOI [Entergy Operations]." ⁸³

41. Indeed, not only does the evidence show that the Service Companies cause the Operating Companies to incur overhead costs, it also makes clear that of the total payroll costs recorded on the Operating Companies' books in 2006, 36 percent reflect Entergy Operating Company employees, 34 percent reflect Entergy Services employees, and 30 percent reflect Entergy Operations employees. ⁸⁴ In other words, operations housed within Entergy's two Service Companies comprise nearly two-thirds of the Operating Companies' total labor costs. Under the circumstances, we find that it is not rational, reasonable or logical to functionalize 100 percent of the common, indirect costs but use only 36 percent of the labor costs to do so, as the Joint Parties seek. The reasonable labor ratio with which to functionalize 100 percent of the Operating Companies' overhead costs is one that includes Service Company labor. The Initial Decision correctly found that including the Entergy Services' and Entergy Operations' labor costs in the labor ratio accurately reflects the level of labor actually performed for the Operating Companies, and that excluding those costs would functionalize a disproportionate level of Operating Company overhead to non-production functions and remove 99.9 percent of Entergy's nuclear production overheads from MSS-3 recovery. ⁸⁵

⁸³ Entergy Brief Opposing Exceptions at 49.

⁸⁴ Ex. ETR-1 at 21.

⁸⁵ Of the 2,040 employees working at the Operating Companies' nuclear power plants only two are direct employees of the Operating Companies themselves. Thus, approximately 99.9 percent of the employees operating the Operating Companies' nuclear facilities are actually Entergy Services' and Entergy Operations' employees. Opinion No. 506, 130 FERC ¶ 61,026 at P 98. As Trial Staff points out, if Entergy Services and Entergy Operations had not been created and the employees were the employees of the Operating Companies, their labor costs would have been direct costs of the Operating Companies. Trial Staff Brief Opposing Exceptions at 24-25.

42. The Joint Parties' second major claim is that Entergy's proposed labor ratio over-allocates overhead costs to the production function. However, we find that to exclude Entergy Operations' labor costs from the labor ratio means that virtually no overhead costs would be functionalized to the nuclear portion of the production function. Indeed, if the Service Companies were never created, the work they now perform would be carried out by the Operating Companies themselves. As Trial Staff explained, the current arrangement simply reflects that over time, Entergy has transferred certain jobs from the Operating Companies to the Service Companies for purposes of efficiency and coordination, not that it has eliminated them. As a result, excluding Entergy Services and Entergy Operations labor from the labor ratio would significantly understate the costs functionalized to production, solely due to corporate restructuring, and exalt form over substance to defeat the economies of scale that Entergy's holding company system was designed to achieve. A labor ratio that does not account for nuclear plant employee labor or payroll and benefits cannot accurately represent Entergy's labor costs and will significantly under-allocate G&I Plant costs and A&G expenses to the production function.⁸⁶ This, in turn, will understate overall production costs and distort the bandwidth remedy, which relies upon accurate calculations of the relative levels of Operating Company production costs.

43. We find that the Joint Parties have repeated, but not supported, their claim that including Service Company labor in the labor ratio used to functionalize G&I Plant costs and A&G expenses to Operating Company production over-allocates costs. We found this argument unavailing in Opinion No. 506 and it remains so.⁸⁷ As stated earlier, the issue before the Presiding Judge in this proceeding was whether 36 percent of the total labor costs incurred by the Operating Companies should be used to functionalize 100 percent of Operating Company G&I Plant costs and A&G expenses, or whether the remaining 64 percent of the labor costs that the Service Companies bill to the Operating Companies should also be included in calculating the labor ratio to functionalize 100 percent of the Operating Companies' G&I Plant costs and A&G expenses. Adopting the Joint Parties' position and excluding Entergy Services' and Entergy Operations' labor costs from the labor ratios would mean that virtually no indirect costs associated with nuclear production or with payroll and benefits programs would be functionalized properly.

44. The Joint Parties further contend that while Entergy Operations bills the Operating Companies for only small amounts of overhead, Entergy's efforts to capture those costs

⁸⁶ Trial Staff Brief Opposing Exceptions at 25.

⁸⁷ Opinion No. 506, 130 FERC ¶ 61,026 at P 99.

in a labor ratio vastly over-allocates production costs in relation to actual billings.⁸⁸ This is clearly inaccurate, given record evidence that Entergy Operations billed its three nuclear Operating Companies alone more than \$60 million in A&G costs in 2006.⁸⁹ In any event, what matters here is that regardless of how much or how little the Service Companies bill the Operating Companies in overhead costs, the total G&I Plant costs and A&G expenses --- i.e., those which Entergy directly assigns to production *and* those which it functionalizes to production --- must accurately reflect the total labor costs that the Operating Companies incur in providing production-related services, for purposes of calculating whether any payments are due under the bandwidth remedy. As we explained in Opinion No. 506 and again here, to the extent these costs are common and indirect, and cannot be directly assigned to production, the most rational and reasonable means of reflecting them is to functionalize them based on labor ratios, to avoid the inherent inefficiency of reviewing the 4.6 million line items, over the 77,000 hours, or 37 years, that it would take to directly assign them. In Opinion No. 506, we found a strong causal relationship between the Service Company labor which Entergy included in the labor ratio, and the services that Entergy's Service Companies provided to the Operating Companies.⁹⁰ On this basis, we determined, and now reaffirm, that by including in its labor ratios the costs which the Operating Companies incur when Service Companies provide production-related services to the Operating Companies, Entergy properly functionalizes G&I Plant costs and A&G expenses to Operating Company production for bandwidth payment and receipt purposes.⁹¹

45. Regarding the Joint Parties' continued claim that the functionalization methodology in Service Schedule MSS-3 is inconsistent with the methodology used in other System Agreement Service Schedules, we again remind them that the fact that other Service Schedules use different methodologies to functionalize and allocate costs does not make Service Schedule MSS-3's methodology unjust and unreasonable.⁹² Each Service Schedule is designed for a separate and distinct service on Entergy's system, and each has a cost allocation methodology that we found just and reasonable for the service

⁸⁸ Request for Rehearing at 19-20.

⁸⁹ Entergy Brief Opposing Exceptions at 43 n.134 (citing Ex. LC-36).

⁹⁰ Opinion No. 506, 130 FERC ¶ 61,026 at PP 97-99.

⁹¹ *Id.* P 98.

⁹² *Id.* P 100.

being provided.⁹³ If the Joint Parties have concerns with the rates for services under other Service Schedules, they can raise them in a more appropriate proceeding.

46. The Joint Parties additionally contend that Entergy chose to include Entergy Operations labor in the labor ratio in order to produce a discriminatory over-allocation of indirect G&I Plant costs and A&G expenses to some Operating Companies at the expense of others.⁹⁴ We reject this argument that the inclusion of Service Company labor distorts the allocation of costs among Entergy Operating Companies, particularly with respect to calculation of the bandwidth remedy. To put the Joint Parties' arguments in context, we note that any change to the methodology underlying the bandwidth formula calculations affects the resulting rates for each Operating Company. The significance of Entergy's proposal to include Service Company labor costs is that it changes the calculation of each Operating Company's actual production costs --- increasing them for some, decreasing them for others --- and inevitably altering the balance of payments and receipts among the Operating Companies. Notably, at least for 2006, as a result of this change to the labor allocator, Entergy Arkansas made lower bandwidth payments to the Louisiana Operating Companies. As the Presiding Judge noted, the Commission has held on a number of occasions that the fact that a rate change might increase rates or have an adverse financial impact on some customers but not others does not make the change unjust, unreasonable, or unduly discriminatory.⁹⁵ Moreover, we note that the bandwidth formula is fluid, not static, and triggers changes in payments and receipts that vary from year to year. Accordingly, we reject the Joint Parties' discrimination claims and reaffirm our conclusion in Opinion No. 506 that including Service Company labor in the labor ratio used to functionalize overhead costs to the production function is just and reasonable.

47. We also deny the Joint Parties' request for rehearing with respect to Account No. 923, Outside Services Employed. Account No. 923 includes the fees and expenses of professional non-utility employee consultants who provide general services that are not directly assignable to a particular function, are labor-related, and, like the other common, indirect G&I Plant costs and A&G expenses at issue here, have been functionalized to

⁹³ *Id.*

⁹⁴ Request for Rehearing at 17-10, 24.

⁹⁵ See Opinion No. 506, 130 FERC ¶ 61,026 at P 48 (citing Initial Decision, 123 FERC ¶ 63,020 at P 287, which cited, in turn, *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,067, at n.23 (2008); *New Dominion Electric Coop.*, 118 FERC ¶ 63,024, at P 24 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,323, at P 12 (2006)).

production using a labor ratio that includes Service Company labor. While the Joint Parties here again claim that Entergy's affiliate-augmented labor ratio over-allocates overhead costs to some, but not all, Operating Company production functions and discriminates in favor of some and against others, their argument mirrors the one we have addressed and rejected throughout this order, and for all of the same reasons, we reject it again here.

C. Functionalization of Account No. 924, Property Insurance

1. Request for Rehearing

48. The Joint Parties contend that Opinion No. 506 erred two ways in approving Entergy's functionalization of Account No. 924, Property Insurance, expense. First, the Joint Parties contend that the Opinion improperly permits Entergy to continue functionalizing Account No. 924, Property Insurance, expense based on labor ratios, rather than modifying the methodology to use plant ratios instead, as Commission policy requires. Second, the Joint Parties claim that Opinion No. 506 also incorrectly allows Entergy to augment its labor ratios with Service Company labor.⁹⁶ According to the Joint Parties, the Commission reached this result by incorrectly holding that Entergy's method of functionalizing Account No. 924 expenses was not before the Presiding Judge for decision, because Entergy's bandwidth filing did not propose to change the existing functionalization of Account No. 924 expenses, which is based on labor ratios.

49. To the contrary, the Joint Parties claim that Issue No. 5 on the "Joint Statement of Issues," filed on March 7, 2008 --- "[I]s [Entergy Services]'s proposal to functionalize all A&G based solely on labor ratios just and reasonable?" --- brought the question squarely before the Presiding Judge because Account No. 924 is, in fact, an A&G account. In addition, the Joint Parties argue that Entergy proposed to change its Account No. 924 functionalization methodology by including Service Company labor in the labor ratio. They argue that because Entergy proposed to change the labor ratio to include Service Company-augmented labor, which the Joint Parties allege deviates from Commission policy, the Commission should have rejected the Service Company labor and substituted a plant ratio at the same time.⁹⁷

⁹⁶ Request for Rehearing at 36-38.

⁹⁷ *Id.* (emphasis added).

2. Commission Determination

50. On further reflection, we grant the Joint Parties' request for rehearing of this issue. Entergy's filing in this docket proposed to change the method of functionalizing all A&G expenses, including Account No. 924 expenses, to use a labor ratio that includes Service Company labor in the labor ratio. By doing so, Entergy put Account No. 924's functionalization methodology in issue and opened the door to further methodological changes. For this reason, the Joint Statement of Issues properly included: (a) whether Entergy's proposal to functionalize Account 923 based on labor ratios is just and reasonable; and (b) whether Entergy's proposal to functionalize *all* A&G based *solely* on labor ratios is just and reasonable.⁹⁸ Read together, it is clear that the latter issue covers both the functionalization of A&G expenses other than those in Account No. 923 *and* using ratios other than labor, because "*all* A&G" means A&G accounts besides Account No. 923, and "*based solely* on labor ratios" questions whether other ratios, i.e., plant ratios, might be more appropriate. Accordingly, the Joint Parties are correct that they placed the propriety of Entergy's method of functionalizing Account No. 924 expenses squarely before the Presiding Judge.

51. The continued use of labor ratios for allocating Account No. 924, Property Insurance, is an integral part of Entergy's overall proposal to change the allocators for all A&G accounts, including Account No. 924, to use a labor ratio that includes affiliate labor. Entergy's proposal increases the amount of A&G expenses allocated to the production cost-of-service in the bandwidth formula, in order to cure an under-allocation occurring absent the inclusion of affiliate labor in the labor ratio. To ensure that Entergy's proposed increase does not over-allocate A&G expenses to production, we must, necessarily, evaluate the appropriateness of the allocator for each A&G account, including whether continued use of labor for allocating Account No. 924 expenses is appropriate. Commission and court precedent support the principle that an unchanged component of a rate is subject to reevaluation along with a proposed rate increase if the unchanged component is integral to the justness and reasonableness of the proposed increase. As a result, it is Entergy's burden to prove, under section 205, the justness and reasonableness of using a labor allocator to functionalize Account No. 924, Property Insurance, expense to the production function.⁹⁹ On reconsideration of the record before us, we find that it has not done so.

⁹⁸ Initial Decision, 123 FERC ¶ 63,020 at P 328.

⁹⁹ See, e.g., *New Dominion Energy Cooperative*, 122 FERC ¶ 61,174, at PP 65-68 (2008), citing *Tennessee Gas Pipeline Co.*, 25 FERC ¶ 61,020, at 61,108 (1983), *reh'g*

(continued...)

52. The Joint Parties are correct that Commission policy and precedent favor the functionalization of Account No. 924 expenses based on plant ratios. As long ago as 1982, the Commission recognized that because property insurance covers plant, not employees, it is a plant-related expense, rather than a labor-related expense, and should be functionalized and allocated based on plant ratios.¹⁰⁰ And while the Commission permitted Entergy to functionalize its Account No. 924 expenses based on labor ratios when no party contested Entergy's proposal to do so on compliance with Opinion Nos. 480 and 480-A, the Commission stated that any changes to the Opinion Nos. 480 and 480-A methodology must be made in a separate section 205 or section 206 filing.¹⁰¹ Entergy's instant filing is a section 205 case that would permit such a change, and, as noted, Entergy opened the door to further modification of the method for allocating Account No. 924 expenses when it proposed in this docket to include service company labor as a new component of the labor ratio used to allocate Account No. 924 expenses.¹⁰² The addition of service company labor exposed the underlying labor ratio

denied on this issue, 26 FERC ¶ 61,109, at 61,263-64 (1984), and *Northwest Pipeline Corp.*, 87 FERC ¶ 61,266 (1999).

¹⁰⁰ *Southern California Edison Co.*, Opinion No. 145, 20 FERC ¶ 61,301, at 61,586 (1982), *summarily aff'g*, 17 FERC ¶ 63,026 at 65,069 (1981); *Kansas City Power & Light Co.*, 22 FERC ¶ 61,262 (1983), *summarily aff'g*, 21 FERC ¶ 63,003 (1982).

¹⁰¹ *Louisiana Pub. Serv. Comm. v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203, at P 69 (2006).

¹⁰² We note that Entergy attempted to defend its use of labor ratios to functionalize Account No. 924 expense on grounds that the Arkansas Public Service Commission and Trial Staff supported the use of labor ratios to functionalize A&G expense "with certain exceptions." Entergy Initial Brief at 43; Entergy Reply Brief at 23. As the record shows, however, those "exceptions" flatly contradict Entergy's claim with respect to Account No. 924. While Trial Staff believed the Commission's Opinion No. 480 and 480-A compliance directives did not permit a change in Account No. 924's functionalization methodology from labor ratios to plant ratios in this particular docket, Trial Staff explicitly stated that Commission policy and precedent would otherwise require that Account No. 924 be functionalized based on plant ratios, because property insurance, by its nature, is for plant, not employees. Ex. S-1 at 26 (Sammon); Trial Staff Initial Brief at 43-44; Trial Staff Brief Opposing Exceptions at 36-37. Likewise, Arkansas Public Service Commission witness Tibbetts testified that if asked to functionalize Account No. 924 "in isolation and independent of the circumstances here," he would "not necessarily use labor ratios, as there is not a cost causation link between labor ratios and incurrence of these costs." Ex. AC-1 at 14; Arkansas Initial Brief at 49.

methodology to scrutiny which it cannot survive, given the plant-related nature of property insurance, and Commission policy and precedent requiring that it be functionalized and allocated based on plant ratios.

53. For all of these reasons, we find that Entergy's use of labor ratios to functionalize its Account No. 924 expense is unjust and unreasonable, and therefore grant the Joint Parties' request for rehearing on this issue. Accordingly, we reverse the Presiding Judge's and our own prior ruling on this issue, require Entergy to functionalize and allocate its Account No. 924, Property Insurance, expense based solely on plant ratios, and submit a compliance filing which reflects this change.

54. We recently explained, in an order involving the Entergy System Agreement, that whether refunds are appropriate depends on whether the case involves a change in allocation or rate design, in which case relief is typically prospective only, or whether it involves an over-recovery of costs, in which case the Commission typically orders refunds.¹⁰³ If use of Entergy's modified labor ratios, instead of plant ratios, to functionalize Account No. 924 expenses resulted in a higher level of production costs included in the bandwidth formula for the Operating Companies, the difference represents an over-recovery for which Entergy should accordingly make refunds in accordance with the Commission's regulations.¹⁰⁴ We order Entergy to make a compliance filing to present its calculations regarding the existence of an over-recovery and any refunds that are due.

¹⁰³ *Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corp.*, 142 FERC ¶ 61,211, at P 74 (2013).

¹⁰⁴ We note that refunds would only attach to any increase in production costs of the Operating Companies proposed in this proceeding. *See* 16 U.S.C. § 824d(e) (2006) (allowing the Commission to order public utilities "to refund, with interest . . . such portion of such increased rates or charges as by its decision shall be found not justified"); *Allegheny Generating Co.*, 74 FERC ¶ 61,180, at 61,631 & n.4 (1996) ("section 205 of the FPA, 16 U.S.C. § 824d (1994), does not grant the Commission the authority to order refunds where the proposed rate is a decrease from the pre-existing rate," citing *Toledo Edison Co.*, 67 FERC ¶ 61,234, at 61,730 (1994)); *see also Duke Power Co.*, 51 FERC ¶ 61,348, at 62,128 & n.13 (1990); *Wisconsin Electric Power Co.*, 37 FERC ¶ 61,301, at 61,895-96 & n.9 (1986).

The Commission orders:

(A) The Commission denies in part and grants in part the Joint Parties' request for rehearing, as discussed in the body of this order.

(B) Entergy is hereby directed to make a compliance filing to refunctionalize Account No. 924 expense based on plant ratios since May 30, 2007, within 30 days of the date of issuance of this order.

(C) Entergy is hereby directed, if refunds are warranted, to make refunds within 30 days of the date of issuance of this order and to file a refund report within 60 days of the date of issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.