

UNITED STATES OF AMERICA      148 FERC ¶ 63,015  
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

Docket No. ER10-1350-001

INITIAL DECISION

(Issued September 19, 2014)

APPEARANCES

*William Coe, Esq., Mark Strain, Esq., and Kathryn Washington, Esq.*, on behalf of Entergy Services, Inc.

*Glen Ortman, Esq., and Randolph Hightower, Esq.*, on behalf of the Arkansas Public Service Commission.

*Michael Fontham, Esq., and Dana Shelton, Esq.*, on behalf of the Louisiana Public Service Commission.

*Renee Terry, Esq., and Philip Mone, Esq.*, on behalf of the Federal Energy Regulatory Commission Trial Staff.

*STEVEN A. GLAZER*, Presiding Administrative Law Judge

**TABLE OF CONTENTS**

<u>Section</u>	<u>Paragraph Number</u>
TABLE OF ABBREVIATIONS .....	
I. PRELIMINARY STATEMENT .....	1
II. BACKGROUND .....	9
III. PROCEDURAL HISTORY .....	13
IV. THE STANDARD OF DECISION IN THE ANNUAL BANDWIDTH PROCEEDINGS .....	33
V. ISSUES AND DISCUSSION .....	46
A. Issue One: Whether ESI included the proper fuel inventory balance as an input to the bandwidth formula in its bandwidth filing for the 2009 test year? .....	46
1. Positions of the Parties .....	46
2. Discussion and Conclusion .....	59
B. Issue Two: Whether prior FERC approval was required for ESI to reclassify casualty loss ADIT from Account 283 to Account 282, making it eligible as an ADIT input to the bandwidth formula in its bandwidth filing for the 2009 test year? .....	88
1. Positions of the Parties .....	88
2. Discussion and Conclusion .....	97
C. Issue Three: Whether ESI properly accounted for the amortization period for the Waterford 3 sale/leaseback in recording this expense in ELL’s Form No. 1 and in using it in the 2009 test year bandwidth filing? .....	119
1. Positions of the Parties .....	119
2. Discussion and Conclusion .....	140
D. Issue Four: Whether ESI should be required to include an entry in the bandwidth calculation for contra-securitization ADIT related to storm restoration costs? .....	222
1. Positions of the Parties .....	222
2. Discussion and Conclusion .....	233

VI. CONCLUSIONS .....	267
VII. ORDER .....	271

**TABLE OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Definition</b>
1992 FERC Audit Report	FERC Chief Accountant Audit Report on Louisiana Power & Light Company Issued January 16, 1992
2009 FERC Form 1	FERC Form 1 for Calendar Year 2009
Active Parties	Collectively, APSC, LPSC, Entergy, and CNO
ADIT	Accumulated Deferred Income Taxes
APSC	Arkansas Public Service Commission
ASC	Accounting Standards Codification
CNO	Council of the City of New Orleans
Commission or FERC	Federal Energy Regulatory Commission
EAI	Entergy Arkansas, Inc.
EGSL	Entergy Gulf States Louisiana, L.L.C.
ELL	Entergy Louisiana, LLC
EMI	Entergy Mississippi, Inc.

ENO	Entergy New Orleans, Inc.
Entergy or ESI	Entergy Services, Inc.
ETI	Entergy Texas, Inc.
FASB	Financial Accounting Standards Board
FI	Fuel Inventory
First Bandwidth Proceeding	First Annual Bandwidth Proceeding in Docket No. ER07-956
Fourth Bandwidth Proceeding or 2010 Bandwidth Filing	2010 Filing for the Fourth Annual Bandwidth Proceeding for Test Year 2009 in Docket No. ER10-1350
FPA	Federal Power Act
GAAP	Generally Accepted Accounting Principles
LPSC	Louisiana Public Service Commission
MPSC	Mississippi Public Service Commission
NRC	Nuclear Regulatory Commission
Operating Companies	Collectively, EAI, EGSL, ELL, EMI, ENO, and ETI

SEC	Securities and Exchange Commission
Second Bandwidth Proceeding	Second Annual Bandwidth Proceeding in Docket No. ER08-1056
Staff	Commission Trial Staff
System Agreement	Entergy System Agreement
Third Bandwidth Proceeding	Third Annual Bandwidth Proceeding in Docket No. ER09-1224
USofA	Commission Uniform System of Accounts
Waterford 3	Waterford 3 Nuclear Power Plant
Waterford 3 Leased Plant	The 9.3 Percent of the Waterford 3 Nuclear Power Plant Subject to the Sale/Leaseback
Waterford 3 Owned Plant	The 90.7 Percent of the Waterford 3 Nuclear Power Plant Owned by ELL

## I. PRELIMINARY STATEMENT

1. More heat than light has emerged over the decades out of Entergy Corporation's long pursuit of "rough production cost equalization" among the Operating Companies of its electric utility system.<sup>1</sup> The Entergy system, an amalgam of six vertically-integrated utilities spread over four states in the southern United States, is united by the Entergy System Agreement (System Agreement), a tariff that, *inter alia*, allocates production costs among the Operating Companies.<sup>2</sup> One form or another of this agreement has governed the Entergy system since 1951.<sup>3</sup> Its early motivation was to equalize disparities that arose between nuclear and non-nuclear generation investment costs.<sup>4</sup>

---

<sup>1</sup> The Operating Companies are Entergy Arkansas, Inc. (EAI); Entergy Gulf States Louisiana, L.L.C. (EGSL); Entergy Louisiana, LLC (ELL); Entergy Mississippi, Inc. (EMI); Entergy Texas, Inc. (ETI); and Entergy New Orleans, Inc. (ENO). Entergy Services, Inc. (Entergy or ESI) provides services to the Operating Companies. Entergy Corporation is the parent company of ESI and the Operating Companies.

<sup>2</sup> Ex. ESI-107 (System Agreement). EAI withdrew from the System Agreement effective December 18, 2013. EMI is authorized to withdraw from the System Agreement on November 7, 2015. *See Entergy Servs., Inc.*, 129 FERC ¶ 61,143 (2009), *reh'g denied*, 134 FERC ¶ 61,075 (2011), *aff'd sub nom. Council of New Orleans v. FERC*, 692 F.3d 172 (D.C. Cir. 2012), *cert. denied sub nom. La. Pub. Serv. Comm'n v. FERC*, 133 S. Ct. 2382 (2013). This Fourth Bandwidth Proceeding affects all Operating Companies because the time period in question preceded the withdrawals.

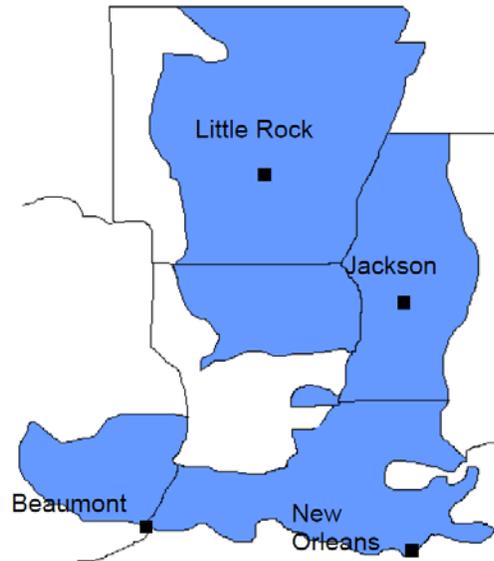
<sup>3</sup> *See Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305 (1985).

<sup>4</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 7, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part, La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008). Opinion No. 480 states:

[T]he Entergy system is highly integrated and that generation facilities are planned, constructed and operated for the benefit of the whole system... [W]hile production costs among the system's non-nuclear units were roughly equal and the cost of fuel for the nuclear units was approximately the same, great disparities in installed nuclear investment costs disrupted the rough equalization of production costs that had existed on the system and thereby produced undue discrimination.

Opinion No. 480, 111 FERC ¶ 61,311 at P 7 (footnotes omitted).

2. The vast impact of the System Agreement is captured by the enormity of the service territory covering parts of Arkansas, Louisiana, Mississippi, and Texas that is depicted on the cover page of the System Agreement, shown here:<sup>5</sup>



3. Service Schedule MSS-3 of the System Agreement governs the rough equalization of production costs among the Operating Companies by means of a formula that produces a zero-sum result.<sup>6</sup> The formula strives to keep the Operating Companies' respective yearly costs of producing electricity within a band of 11 percent above or below the average annual production costs of the Operating Companies as a whole, and implements this objective by allocating transfer payments among them. Annual bandwidth calculations were initiated in 2006<sup>7</sup> and have been recomputed every year since 2007 by a Federal Energy Regulatory Commission (Commission or FERC) filing on the part of Entergy every May pursuant to section 205 of the Federal Power Act (FPA).<sup>8</sup> The instant proceeding is the fourth such annual filing (Fourth Bandwidth Proceeding or 2010 Bandwidth Filing), to fix the transfer payments that were due to the Operating Companies in 2010 based on their cost experiences during calendar year 2009.

---

<sup>5</sup> Ex. ESI-107 at 1.

<sup>6</sup> *Id.* at 52-58 (System Agreement, section 30.12).

<sup>7</sup> Opinion No. 480, 111 FERC ¶ 61,311; Opinion. No. 480-A, 113 FERC ¶ 61,282.

<sup>8</sup> 16 U.S.C. § 824d (2012).

4. The strategies that have evolved from this annual zero-sum contest impel each participant, particularly the state public utility commissions, to vie for the *highest* possible production cost for the Operating Company in the state whose ratepayers it favors. Doing so thereby achieves the largest transfer receipt or smallest transfer payment for that Operating Company out of the bandwidth formula calculation.

5. Of course, this motivation turns the usual ratepayer incentive favoring reductions in a utility's production costs on its head. If the ratepayers of each state bore the production cost of their own Operating Company alone—if, say, the ratepayers of Louisiana bore all of the calculated production costs of ELL themselves instead of passing part of it on to the ratepayers of Arkansas, Mississippi, or Texas—they would *never* allow ELL to operate as inefficiently as the bandwidth cross-subsidy allows it to do. What is more, where a particular issue involves the inclusion of a cost that is not presently in the bandwidth calculation at all, like for example contra-securitization ADIT costs, the perverse incentive of individual states to incorporate that cost into the calculation in order to make ratepayers in neighboring states pay for it raises rates for all ratepayers when viewed as a collective whole. The upward see-saw cost-creep of this compulsion resembles what a crab ascending a ladder would look like.

6. “A question is complex,” writes Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit, “when it is difficult by virtue of involving complicated interconnections or interactions—in other words when it is a question about a system rather than a monad.”<sup>9</sup> The Entergy bandwidth system amply fulfills this definition of a complex question, and the Commission has grappled with its complexities on numerous prior occasions.<sup>10</sup> The Commission's order initiating this case (Hearing Initiation Order) directed that issues that have already been litigated in other Entergy bandwidth cases not be re-litigated here.<sup>11</sup> As many such matters were going forward as this case came to me, I directed this case to be held in abeyance until the Commission had the opportunity to resolve several of them.<sup>12</sup> By now, the Commission has done so sufficiently enough to render this proceeding ripe at last for adjudication.

---

<sup>9</sup> Richard A. Posner, *Reflections on Judging* 54-55 (2013).

<sup>10</sup> See Ex. ESI-105 (listing of bandwidth related dockets included in 2010 bandwidth calculation).

<sup>11</sup> *Entergy Servs., Inc.*, 132 FERC ¶ 61,065, at P 26 (2010) (Hearing Initiation Order).

<sup>12</sup> *Entergy Servs., Inc.*, 134 FERC ¶ 63,018 (2011).

7. Outside of the record in this proceeding, LPSC has proffered pursuant to Commission Rule 510(f)<sup>13</sup> testimony purporting to show that ADIT computed on the Waterford 3 sale/leaseback should be included in the bandwidth calculation.<sup>14</sup> LPSC makes this proffer to preserve the issue for review on exceptions to the Commission.<sup>15</sup> I ruled to exclude this issue from the proceeding<sup>16</sup> on the grounds that it has already been litigated and decided by the Commission in Docket Nos. ER07-956<sup>17</sup> and ER08-1056,<sup>18</sup> and that the Commission has directed this proceeding not to re-litigate this specific issue.<sup>19</sup> I deny reconsideration of my ruling. Accordingly, the proffered testimony is hereby lodged with the Commission.

8. The omission from this Initial Decision of any argument raised by the participants at the hearing or in their briefs does not mean that it has not been considered. Rather, it has been evaluated and found to either lack merit or significance such that inclusion would only tend to lengthen this Initial Decision without altering its substance or effect. Accordingly, all arguments made by the participants which have not been specifically discussed or adopted by this decision have been considered and are rejected.

---

<sup>13</sup> 18 C.F.R. § 385.510(f) (2013).

<sup>14</sup> LPSC Initial Br. at 46-48; Exs. LC Proffer-101 through LC Proffer-105.

<sup>15</sup> LPSC Initial Br. at 46.

<sup>16</sup> *Entergy Servs., Inc.*, Order Granting in Part and Denying in Part Motion of the Louisiana Public Service Commission, Docket No. ER10-1350-001, at PP 26-32 (Dec. 20, 2013).

<sup>17</sup> *Entergy Servs., Inc.*, 124 FERC ¶ 63,026, at P 596 (2008), *aff'd*, Opinion No. 505, 130 FERC ¶ 61,023, at P 233 (2010), *aff'd on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103, at P 51 (2012), *appeal docketed sub nom. La. Pub. Serv. Comm'n v. FERC*, No. 12-1282/1283 (D.C. Cir. July 5, 2012), *on compliance filing*, 139 FERC ¶ 61,104 (2012), *aff'd on reh'g*, 145 FERC ¶ 61,046 (2013), *appeal docketed sub nom. Entergy Servs., Inc. v. FERC*, No. 13-1295 (D.C. Cir. Nov. 26, 2013).

<sup>18</sup> *Entergy Servs., Inc.*, 128 FERC ¶ 63,015, at P 326 (2009), *rev'd*, Opinion No. 514, 137 FERC ¶ 61,029, at P 117 (2011), *reh'g denied*, Opinion No. 514-A, 142 FERC ¶ 61,013 (2013), *aff'd sub nom. La. Pub. Serv. Comm'n v. FERC*, Nos. 13-60140/13-60141, 2014 WL 3805468 (5th Cir. Aug. 1, 2014).

<sup>19</sup> *Entergy Servs., Inc.*, 132 FERC ¶ 61,065, at P 26 (2010).

## I. BACKGROUND

9. Entergy Corporation is an integrated electric utility holding company that is comprised of the six Operating Companies<sup>20</sup> and a number of other related subsidiaries, including ESI. In this case, ESI is participating on behalf of the Operating Companies and states that its goal is to comply with the Commission's bandwidth policy and that it has no incentive to favor any of the Operating Companies over the others.<sup>21</sup> Although each Operating Company owns its own generation and transmission assets, all of these entities are governed by the System Agreement and its establishment of a centrally planned and operated integrated electric system.<sup>22</sup>

10. Opinion Nos. 480 and 480-A established a policy of "rough production cost equalization" for the Entergy system and the ordered mechanism for carrying out this policy is the annual bandwidth filing.<sup>23</sup> Specifically, the bandwidth filings serve as the vehicle for presenting bandwidth calculations as dictated by the bandwidth formula contained in Service Schedule MSS-3.<sup>24</sup> The formula serves to allocate the costs of producing energy among the Operating Companies and relies on cost data from the prior calendar year; i.e., the 2010 Bandwidth Filing uses calendar year 2009 cost data.<sup>25</sup> The formula calculates the total production costs incurred by each Operating Company and determines whether any of the resulting figures deviate by more than 11 percent above or below the average production costs of the Entergy system; hence the "bandwidth"

---

<sup>20</sup> See *supra* note 1.

<sup>21</sup> Entergy Initial Br. at 1 (stating that the bandwidth remedy is a "zero-sum game" for Entergy).

<sup>22</sup> See Ex. ESI-107.

<sup>23</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 1 ("We affirm the presiding judge's finding that the Entergy system is no longer in rough production cost equalization and his use of a bandwidth as a remedial device. . . .").

<sup>24</sup> See *Entergy Servs., Inc.*, 145 FERC ¶ 61,049, at P 6 (2013) (Order Granting Clarification and Denying Request for Rehearing); see also *Entergy Servs., Inc.*, 137 FERC ¶ 61,019, at P 10 (2011) (Order Granting, in Part, and Denying, in Part, Rehearing).

<sup>25</sup> Ex. ESI-107 at 52 n.1-2.

name.<sup>26</sup> If any Operating Company's production costs fall outside of this plus or minus 11 percent bandwidth range, payments and receipts among the Operating Companies are calculated so that no Operating Company's individual production costs fall outside of the bandwidth range.<sup>27</sup>

11. Historically, the bandwidth formula has resulted in EAI making payments to other Operating Companies.<sup>28</sup> This trend also is reflected by the 2010 Bandwidth Filing as submitted by Entergy, which results in EAI payments of \$41.6 million, ELL receipts of \$22.2 million, and EMI receipts of \$19.4 million.<sup>29</sup> The outcome of the issues set for hearing in this proceeding have significant implications for these payment and receipt figures.

12. The specific bandwidth formula that calculates each Operating Company's annual production cost is contained in section 30.12 of Service Schedule MSS-3.<sup>30</sup> This formula is primarily populated by references to specific FERC account balances as reported on FERC Form 1. Footnote 1 to section 30.12 states:

All Rate Base, Revenue and Expense items shall be based on the actual amounts on the Company's books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company; and shall include certain retail regulatory adjustments pursuant to the production cost methodology set forth in Exhibit ETR-26/ETR-28 filed in Docket No. EL01-88-001.<sup>31</sup>

This financial data is commonly referred to as the bandwidth formula inputs.

---

<sup>26</sup> See Opinion No. 480, 111 FERC ¶ 61,311 at P 144 ("Based on this historical data, we conclude that a bandwidth remedy of +/- 11 percent allowing for a maximum of a 22 percent spread of production costs, between Operating Companies on an annual basis, is just and reasonable and will help keep the Entergy system in rough production cost equalization.").

<sup>27</sup> *Id.*

<sup>28</sup> Tr. at 594:1-16 (Sammon).

<sup>29</sup> Ex. ESI-101 at 8 tbl.1; Ex. ESI-127 at 5.

<sup>30</sup> Ex. ESI-107 at 52-58.

<sup>31</sup> Ex. ESI-107 at 52.

## II. PROCEDURAL HISTORY

13. This proceeding arises under section 205 of the FPA.<sup>32</sup> Pursuant to that section, on May 27, 2010, Entergy filed annual rates in accordance with Service Schedule MSS-3 of the System Agreement.<sup>33</sup> Entergy filed an update to its original submission on September 21, 2010, to reflect two specific revisions.<sup>34</sup> Collectively, these filings constitute the 2010 Bandwidth Filing<sup>35</sup> and were required by Commission Opinion Nos. 480 and 480-A.<sup>36</sup>

14. Notice of Entergy's 2010 Bandwidth Filing was published in the Federal Register on June 10, 2010, with interventions and protests due on or before June 17, 2010.<sup>37</sup>

15. On May 28, 2010, Arkansas Public Service Commission (APSC) filed a notice of intervention. On June 7, 2010, Occidental Chemical Corporation filed a motion to intervene. On June 16, 2010, Mississippi Public Service Commission (MPSC) filed a notice of intervention.

16. On June 17, 2010, Louisiana Public Service Commission (LPSC) filed a notice of intervention and protest, Council of the City of New Orleans (CNO) filed a notice of intervention and protest, Texas Industrial Energy Consumers filed a motion to intervene, and East Texas Cooperatives filed a motion to intervene.

17. On July 2, 2010, Entergy filed a motion for leave to answer and answer.

18. On July 8, 2010, Louisiana Energy Users Group filed an untimely motion to intervene.

---

<sup>32</sup> 16 U.S.C. § 824d.

<sup>33</sup> Ex. ESI-103.

<sup>34</sup> Ex. ESI-104.

<sup>35</sup> The docket numbers for the preceding bandwidth filings are ER07-956 (First Bandwidth Proceeding), ER08-1056 (Second Bandwidth Proceeding), and ER09-1224 (Third Bandwidth Proceeding). *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105, at PP 4-6 (2012).

<sup>36</sup> Opinion No. 480, 111 FERC ¶ 61,311; Opinion No. 480-A, 113 FERC ¶ 61,282.

<sup>37</sup> Combined Notice of Filings #1, 75 Fed. Reg. 32,937, 32,938 (2010).

19. On July 9, 2010, CNO filed an answer to Entergy's July 2, 2010 answer.
20. On July 23, 2010, the Commission issued the Hearing Initiation Order.<sup>38</sup> In this order the Commission stated that the timely motions to intervene and notices of intervention serve to make those filing entities parties to the proceeding, and the Commission accepted Entergy's answer on the basis that it provided information that assisted with its decision-making process.<sup>39</sup> The Commission also specifically "direct[ed] the Presiding Judge to not allow re-litigation of issues that are the subject of other proceedings pending before the Commission."<sup>40</sup>
21. On August 18, 2010, the Chief Administrative Law Judge appointed me as the Presiding Judge in this case in the wake of the settlement procedures that had reached an impasse.<sup>41</sup>
22. On August 23, 2010, LPSC filed a request for clarification of the Hearing Initiation Order. On September 22, 2010, the Commission granted rehearing for further consideration of LPSC's request.
23. On September 7, 2010, I convened a prehearing conference to establish a procedural schedule and address other preliminary matters.<sup>42</sup>
24. On January 20, 2011, Entergy filed a motion to strike portions of the direct testimony of LPSC witnesses on the basis that this testimony constituted a relitigation of issues raised in previous bandwidth-related proceedings and that the relevant results of those proceedings should govern in this case. Thereafter, on January 28, 2011, I issued an order to show cause (Show Cause Order) why this instant proceeding should not be stayed pending the issuance of Commission decisions in prior bandwidth proceedings

---

<sup>38</sup> Hearing Initiation Order, 132 FERC ¶ 61,065.

<sup>39</sup> *Id.* P 22.

<sup>40</sup> *Id.* P 26.

<sup>41</sup> *Entergy Servs., Inc.*, Order of Chief Judge Terminating Settlement Judge Procedures, and Designating Presiding Administrative Law Judge, Docket Nos. ER10-1350-000 & ER10-1350-001, at PP 1-3 (2010).

<sup>42</sup> Tr. at 1:1-22:8.

that remained unresolved.<sup>43</sup> The parties filed initial and reply briefs regarding the Show Cause Order and I commenced an oral argument addressing the matter on March 3, 2011.<sup>44</sup> On that same day I issued an order (Order Staying Proceeding) holding this proceeding in abeyance until certain issues that were pending before the Commission in various bandwidth proceedings reached final Commission determinations.<sup>45</sup> Thereafter, on March 4, 2011, the Chief Administrative Law Judge suspended the procedural time standards in this proceeding.<sup>46</sup>

25. On October 6, 2011, the Commission issued an order (First Clarification Order) granting in part and denying in part LPSC's August 23, 2010, request for rehearing of the Hearing Initiation Order.<sup>47</sup> This order specifically addressed the scope of what the Commission set for hearing in this proceeding.<sup>48</sup>

26. On November 7, 2011, LPSC filed a request for rehearing and clarification of the First Clarification Order. On December 7, 2011, the Commission granted rehearing for further consideration of LPSC's request.

27. On September 18, 2013, more than two years since the imposition of the stay, LPSC, APSC, CNO, and Entergy (collectively, the Active Parties) filed a joint motion to reactivate this proceeding on the basis that the unresolved dockets cited in the Order Staying Proceeding "have either been finally decided, or to the extent not finally decided,

---

<sup>43</sup> *Entergy Servs., Inc.*, 134 FERC ¶ 63,008, at P 2 (2011) (Show Cause Order). The Show Cause Order directed the parties not to respond to Entergy's motion to strike until further notice. Show Cause Order, 134 FERC ¶ 63,008 at P 2.

<sup>44</sup> Tr. at 24:1-75:4.

<sup>45</sup> *Entergy Servs., Inc.*, 134 FERC ¶ 63,018, at P 39 (2011) (Stay Order) (the relevant issues were pending before the Commission in Docket Nos. ER07-956, ER08-1056, ER09-1224, and EL10-55).

<sup>46</sup> *Entergy Servs., Inc.*, Order of Chief Judge Suspending Procedural Time Standards, Docket No. ER10-1350-001 (Mar. 4, 2011).

<sup>47</sup> *Entergy Servs., Inc.*, 137 FERC ¶ 61,019 (2011) (First Clarification Order). While LPSC titled its August 23, 2010, pleading as a "Request for Clarification," the Commission's order treated it and referred to it as a request for rehearing. *See, e.g.*, First Clarification Order, 137 FERC ¶ 61,019 at P 1.

<sup>48</sup> First Clarification Order, 137 FERC ¶ 61,019 at P 1.

will not preclude identifying issues discrete to this case.”<sup>49</sup> I convened a hearing on this joint motion on October 17, 2013, and memorialized my rulings from that hearing in an order the next day lifting the stay (Order Lifting Stay).<sup>50</sup> The Chief Administrative Law Judge subsequently issued an Order Lifting Suspension of Track II Procedural Time Standards and Directing Establishment of New Track II Procedural Schedule.

28. On October 16, 2013, the day before the hearing on the motion to lift the stay, the Commission issued an order (Second Clarification Order) granting clarification and denying a request for rehearing filed by LPSC on November 7, 2011, with respect to the First Clarification Order.<sup>51</sup> On this same day the Commission concurrently issued an order on rehearing and clarification pertaining to the Third Bandwidth Proceeding.<sup>52</sup>

29. On October 21, 2013, I issued an Order Adopting Updated Rules for the Conduct of the Hearing, and given the reduced scope of the issues remaining in the case since the stay was issued, ordered the parties to resubmit their current exhibits, limit them to the remaining issues, and directed that no new exhibits would be permitted except by motion showing good cause.<sup>53</sup>

30. In November and December of 2013, a number of parties filed motions and responsive answers regarding the specific issues set for hearing, allowance of

---

<sup>49</sup> Active Parties September 18, 2013 Joint Motion to Lift Stay and Establish Procedural Schedule at 1 (Motion to Lift Stay). While Staff was not a signatory to the motion, the Active Parties represented that Staff supported this action. Motion to Lift Stay at 1 n.1.

<sup>50</sup> *Entergy Servs., Inc.*, Order Lifting Stay, Docket No. ER10-1350-001 (Oct. 18, 2013).

<sup>51</sup> *Entergy Servs., Inc.*, 145 FERC ¶ 61,049 (2013) (Second Clarification Order).

<sup>52</sup> *Entergy Servs., Inc.*, 145 FERC ¶ 61,047 (2013). While this order specifically addressed the Third Bandwidth Proceeding, some of its content addressed the adjudication of bandwidth proceedings in general. *See, e.g., id.* P 11 (“In sum, parties can challenge in a bandwidth proceeding. . .”).

<sup>53</sup> *Entergy Servs., Inc.*, Order Adopting Updated Rules for the Conduct of the Hearing, Docket No. ER10-1350-001, at P 3 (Oct. 21, 2013).

supplemental testimony, and other requests and clarifications.<sup>54</sup> I issued orders on December 2, 2013, December 17, 2013, and December 20, 2013, to resolve these motions and ultimately set the following four issues for hearing: 1) EAI Fuel Inventory in Account 151; 2) Casualty Loss ADIT; 3) Waterford 3 Sale/Leaseback Amortization Expense; and 4) Contra-Securitization ADIT.<sup>55</sup>

31. These issues were tried during a three-day hearing that spanned March 26-28, 2014.<sup>56</sup>

32. On June 24, 2014, LPSC filed a post-hearing motion to supplement the record in this case regarding the treatment by EAI of fuel inventory in Exhibits ETR-26 and ETR-28 of Commission Docket No. EL01-88. On July 9, 2014, Entergy and APSC individually filed answers in opposition to LPSC's motion. On July 14, 2014, I issued an order denying the motion on the basis that LPSC's request to reopen the record did not meet the requirements established by Rule 716<sup>57</sup> of the Commission's Rules of Practice and Procedure and its associated precedent.<sup>58</sup>

---

<sup>54</sup> APSC November 12, 2013 Motion for Clarification of Order Lifting Stay; LPSC November 21, 2013 Motion to Permit Discovery, Allow Introduction of Issue, and for Reconsideration of Ruling; Staff November 21, 2013 Motion to Allow Filing of Supplemental Direct and Answering Testimony; LPSC November 27 Answer; Staff November 27 Answer; APSC December 4, 2013 Answer; LPSC December 12, 2013 Answer; APSC December 12, 2013 Answer; Entergy December 12, 2013 Answer; Staff December 12, 2013 Answer; LPSC December 19, 2013 Reply.

<sup>55</sup> *Entergy Servs., Inc.*, Order Granting Motion for Clarification of Order Lifting Stay, Docket No. ER10-1350-001 (Dec. 2, 2013); *Entergy Servs., Inc.*, Order Granting Motion of Staff to Allow Filing of Supplemental Direct and Answering Testimony, Docket No. ER10-1350-001 (Dec. 17, 2013); *Entergy Servs., Inc.*, Order Granting in Part and Denying in Part Motion of the LPSC, Docket No. ER10-1350-001 (Dec. 20, 2013).

<sup>56</sup> Tr. at 126:1-612:24.

<sup>57</sup> 18 C.F.R. § 385.716.

<sup>58</sup> *Entergy Servs., Inc.*, 148 FERC ¶ 63,002 (2014) (Order Denying Motion to Supplement Record).

### III. THE STANDARD OF DECISION IN THE ANNUAL BANDWIDTH PROCEEDINGS

33. The Commission institutes these bandwidth proceedings pursuant to Entergy's annual filings under section 205 of the FPA<sup>59</sup> implementing the Commission's decisions in Opinion Nos. 480 and 480-A.<sup>60</sup> In two orders that the Commission issued in this proceeding prior to the hearing,<sup>61</sup> the Commission clarified what challenges to formula inputs may be made in an annual bandwidth proceeding like this one: 1) "whether the inputs were calculated consistent with the formula and applicable accounting rules and conformance with retail regulatory approvals to the extent the formula requires use of values approved by retail regulators;" 2) "the prudence of cost inputs to the bandwidth formula in a bandwidth proceeding;" and 3) whether there has been a "misapplication of the formula rate (such as use of erroneous data or incorrect calculations), which includes the prudence of a cost input, as well as whether the formula was misapplied or miscalculated because the inputs were unjust and unreasonable."<sup>62</sup>

34. The Commission further clarified in those orders that "although the formula approved in Service Schedule MSS-3 takes precedence in any conflict with the methodology found in Exhibits ETR-26 and ETR-28 [that were admitted into the record of the administrative proceeding in Docket No. EL01-88 and led to the formula that was approved in Commission Opinion Nos. 480 and 480-A], in instances where there are details omitted from the accepted Service Schedule MSS-3 formula (such as the source of data to use to calculate formula inputs), the underlying details included in the methodology used in Exhibits ETR-26 and ETR-28 control."<sup>63</sup>

---

<sup>59</sup> 16 U.S.C. §824d.

<sup>60</sup> Opinion No. 480, 111 FERC ¶ 61,311; Opinion No. 480-A, 113 FERC ¶ 61,282 (2005).

<sup>61</sup> First Clarification Order, 137 FERC ¶ 61,019; Second Clarification Order, 145 FERC ¶ 61,049.

<sup>62</sup> Second Clarification Order, 145 FERC ¶ 61,049 at P 8 & n.22; *accord*, First Clarification Order, 137 FERC ¶ 61,019 at P 13.

<sup>63</sup> First Clarification Order, 137 FERC ¶ 61,019 at P 13 n.21 (citing Opinion No. 505, 130 FERC ¶ 61,023 at PP 133-134).

35. The Commission also clarified that it is authorized “to order refunds for imprudent costs charged to customers through an existing formula rate.”<sup>64</sup> Regarding when challenges for imprudent cost charges can be brought, the Commission pointed out that it has “rejected attempts to limit the timeframe for prudence inquiries.”<sup>65</sup> The Commission affirmed its willingness to address such challenges no matter when they are brought to its attention because it recognizes that “customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.”<sup>66</sup>

36. By contrast, the Commission made clear in those orders that what cannot be done in bandwidth proceedings is to change the bandwidth formula itself. The Commission insists that “modifications to the bandwidth formula itself must be raised in an FPA section 206 complaint, or proposed by Entergy in a section 205 filing.”<sup>67</sup>

37. In this Initial Decision of the Fourth Bandwidth Proceeding, we examine in Issue One whether the data input into the EAI “Fuel Inventory” (FI) variable of the formula is devised correctly. We examine in Issue Two whether data that was moved from one account into another account that constitutes an input of the “Accumulated Deferred Income Taxes” (ADIT) variable was properly moved. We examine in Issue Three whether the retail-regulator approved depreciation rate that the formula calls for was properly used to populate the inputs to the depreciation components of certain variables of the formula. Finally, in Issue Four, we examine whether line items in sub-accounts for “contra-securitization” that may be a component of the ADIT variable of several Operating Companies should be included in or excluded from that formula variable. It is emphasized that in doing all of this, *we never change the bandwidth formula itself.*

---

<sup>64</sup> Second Clarification Order, 145 FERC ¶ 61,049 at P 10 (internal quotation marks omitted).

<sup>65</sup> *Id.*

<sup>66</sup> *Entergy Services, Inc.*, 145 FERC ¶ 61,047, at P 10 (2013) (internal quotation marks omitted).

<sup>67</sup> *Id.* P 11 (2013); *accord*, First Clarification Order, 137 FERC ¶ 61,019 at P 12 (Parties “are not deprived of the opportunity to raise any issues before this Commission. They just have to raise them in the proper forum—bandwidth filings to raise whether the required formula inputs were correctly applied in the bandwidth calculation and section 206 complaints or section 205 filings to raise whether the formula is just and reasonable.”).

38. The bandwidth formula contains an instruction that “All Rate Base, Revenue and Expense items shall be based on the actual amounts on the Company’s books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company.”<sup>68</sup> The Commission applied this “actual data” limitation to challenges of the formula’s use of depreciation rates that were approved by retail regulators:

[In annual bandwidth proceedings], the purpose is to establish the payments and receipts necessary under the bandwidth formula set forth in Service Schedule MSS-3. It is, thus, not about what production costs would have been if different depreciation rates had been in effect in 2006, *but simply about applying the formula using actual 2006 data.*<sup>69</sup>

39. Notwithstanding this statement, the clarifying orders mentioned above point out that annual bandwidth proceedings are not “simply about applying the formula using actual 2006 data,” but also about whether the data used, whether actual or not, is inconsistent with the formula or applicable accounting rules, or not in conformance with retail regulatory approvals, or imprudent, or unjust and unreasonable, or in conflict with the methodology used in Exhibits ETR-26 and ETR-28 as to some detail that has been omitted from the formula itself. In other words, this proceeding is not only about verifying that the data used for the inputs was the “real” data from the test year; it is also about whether the data that was used to populate the formula, or is proposed to be so used, is appropriate.

40. In this Fourth Bandwidth Proceeding pursuant to FPA section 205, Entergy has populated the formula inputs with actual 2009 data for the most part, but has proposed alternatives to some of the inputs. LPSC and Commission Trial Staff (Staff) have proposed alternatives of their own to the input data. This state of the litigation brings to the fore an issue about the requisite burden of proof that each party must shoulder in this proceeding.

41. In general, a party filing a rate adjustment with the Commission under section 205 bears the burden of proving that the adjustment is lawful.<sup>70</sup> Hence, Entergy bears the

---

<sup>68</sup> Ex. ESI-103 at 18 (bandwidth formula calculation, schedule A.2, note 1); Ex. ESI-107 at 52 (System Agreement, section 30.12, note 1).

<sup>69</sup> Opinion No. 505, 130 FERC ¶ 61,023 at P 173 (emphasis added); *accord*, *Entergy Servs., Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103, at P 49 (2012) (noting that this language “correctly explained . . . the purpose of the bandwidth filings”).

<sup>70</sup> *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1993).

burden of proving the accuracy, prudence, and justness and reasonableness of its proposed annual inputs to the bandwidth formula for test year 2009.<sup>71</sup>

42. However, where other parties to the bandwidth proceeding propose alternative formula inputs of their own, as is the case in this Fourth Bandwidth Proceeding, they are subject to the provisions of section 556 of the Administrative Procedure Act that impose the burden of proof on “the proponent of a rule or order.”<sup>72</sup> They, then, bear the burden of proving that 1) the existing inputs produce a rate that is unjust, unreasonable, unduly discriminatory, or preferential, and 2) the proposed alternative will produce a just and reasonable rate.<sup>73</sup>

43. In that event, however, Entergy bears no burden of proving that any bandwidth input or procedure that it intends to continue without change is just and reasonable, even in the face of alternative proposals by other parties. Courts have made clear that “[t]he statutory obligation of the utility... is not to prove the continued reasonableness of *unchanged* rates or *unchanged* attributes of its rate structure.”<sup>74</sup> The burden of promoting a change to the *status quo* in this Fourth Bandwidth Proceeding, then, rests entirely with the challenger of the *status quo*.

---

<sup>71</sup> See Second Clarification Order, 145 FERC ¶ 61,049 at P 8 & n.22 (stating that in bandwidth formula proceedings, opponents of annual update may challenge (and, consequently, Entergy must defend) “the prudence of a cost input, as well as whether the formula was misapplied or miscalculated because the inputs were unjust and unreasonable.”).

<sup>72</sup> 5 U.S.C. § 556(d); see also *Pub. Serv. Co. of N.H.*, 6 FERC ¶ 61,299, at 61,710 (1979).

<sup>73</sup> See *Seminole Elec. Coop., Inc.*, 32 FERC ¶ 63,087, at 65,334 (1985) (Lewnes, J.) (“[T]he proponent of a change in an existing rate has the burden of adducing substantial evidence to support a finding that (1) the existing rate is unjust, unreasonable, unduly discriminatory, or preferential, and (2) the proposed change will produce a just and reasonable result.”) (citing *Pub. Serv. Comm’n of N.Y. v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980)). Challengers to an existing rate, however, do not have to propose an alternative rate and prove that it is just and reasonable if they do not want to. See *FirstEnergy Serv. Corp. v. FERC*, No. 12-1461, 2014 WL 3538062, at \*6 (D.C. Cir. July 18, 2014).

<sup>74</sup> *City of Winnfield, La. v. FERC*, 744 F.2d 871, 877 (D.C. Cir. 1984) (internal quotation marks and punctuation omitted).

44. The Commission may establish a lawful set of bandwidth transfer payments and receipts on the basis of formula inputs propounded by parties other than the filing utility. To quote the U.S. Court of Appeals for the D.C. Circuit in *Winnfield v. FERC*:

If evidence is introduced in the proceeding supporting a rate increase, the increase can lawfully be imposed, regardless of the source from which that evidence comes. In this case, the evidence introduced by the Commission staff satisfied the requirement of § 205.<sup>75</sup>

45. Thus, each party who proposes any new input or input methodology to use in the bandwidth formula calculation bears the burden of proving that it is just and reasonable and not discriminatory or preferential. Furthermore, if LPSC, APSC, or Staff proposes any new input or methodology, it bears the burden of proving first and foremost that the existing bandwidth input or methodology is unjust, unreasonable, discriminatory or preferential. The bandwidth transfer payments and receipts determined through the use of whichever inputs from these parties are deemed in this proceeding to be proper will thereby be the lawful rate for the 2010 Bandwidth Filing.

#### IV. ISSUES AND DISCUSSION

**A. Issue One: Whether ESI included the proper fuel inventory balance as an input to the bandwidth formula in its bandwidth filing for the 2009 test year?**

**1. Positions of the Parties**

**a. Entergy**

46. Entergy states that it used the proper fuel inventory balance as an input for the bandwidth formula.<sup>76</sup> Entergy contends that it appropriately calculated EAI's coal inventory by taking into account EAI's ownership share of the coal inventory at the Independence and White Bluff generating units.<sup>77</sup> Entergy states that due to a mismatch created by timing differences, the reported balance for Account 151 on EAI's FERC Form 1 is not an accurate figure for reflecting EAI's actual fuel inventory production

---

<sup>75</sup> *Winnfield v. FERC*, 744 F.2d 871, 877 (D.C. Cir. 1984).

<sup>76</sup> Entergy Initial Br. at 8 ("In sum, ESI's calculation of the EAI coal inventory (variable 'FI') is correct. It produces actual production costs, it is consistent with the Bandwidth tariff, and it is consistent with Exhibits ETR-26 and ETR-28. Thus, it should be approved.").

<sup>77</sup> *Id.* at 4, 8.

costs.<sup>78</sup> To cure this, Entergy states that it used the following methodology. It removed the co-owner advance credits from EAI's Account 151 balance to determine the total amount of fuel inventory for all co-owners and then applied EAI's co-owner percentage to the total fuel inventory balance for each co-owned plant to calculate EAI's cost for fuel inventory.<sup>79</sup> Entergy states that this methodology is consistent with the bandwidth tariff and its language allowing for the use of "other supporting data" when necessary, and also is "similar" to the methodology used by the seminal bandwidth formula Exhibits ETR-26 and ETR-28 devised in Docket No. EL01-88.<sup>80</sup>

47. With respect to the preparation of EAI's FERC Form 1, Entergy states that any accounting adjustments that are ordered here with the intent to more accurately reflect EAI's fuel inventory should make use of Account 253, "Other deferred credits."<sup>81</sup> Entergy notes that co-owner advances may be recorded in this account, with the fuel inventory amounts continuing to be recorded in Account 151.<sup>82</sup> However, Entergy notes that under this methodology, the balance in Account 151 would still include the fuel inventory costs for all co-owners, thereby still requiring an adjustment for bandwidth purposes that applies EAI's co-owner percentage to this figure.<sup>83</sup>

#### **b. LPSC**

48. LPSC's position is that Entergy did not use the proper fuel inventory figure in its 2010 Bandwidth Filing.<sup>84</sup> LPSC asserts that Entergy used the wrong figure because it modified the actual amount recorded in EAI's accounting books and listed on its FERC

---

<sup>78</sup> Ex. ESI-113 at 7 (Peters).

<sup>79</sup> Entergy Initial Br. at 6.

<sup>80</sup> Ex. ESI-113 at 7-8 (Peters); Entergy Initial Br. at 8; Tr. at 165:16-17 (Peters). In its reply brief Entergy stated that its recommended approach is the "same" method that was used in Exhibits ETR-26 and ETR-28, however Entergy retracted this statement in a subsequent filing whereby it characterized the relationship as "similar to, but not exactly the same." Entergy Reply Br. at 3; Entergy July 9, 2014 Answer at 3.

<sup>81</sup> Entergy Initial Br. at 7-8; Entergy Reply Br. at 7.

<sup>82</sup> Entergy Initial Br. at 7-8; Entergy Reply Br. at 7.

<sup>83</sup> Entergy Initial Br. at 7-8; Entergy Reply Br. at 7.

<sup>84</sup> LPSC Initial Br. at 2.

Form 1.<sup>85</sup> LPSC contends that the bandwidth formula does not permit this type of adjustment.<sup>86</sup> LPSC argues that the “other supporting data” language in footnote 1 to Service Schedule MSS-3 section 30.12 cannot be used to amend inputs to the bandwidth formula if the actual information is available on FERC Form 1.<sup>87</sup> LPSC rests its argument on the language that begins footnote 1 and its provision for the use of the “actual amounts on the Company’s books for the twelve months ended December 31 of the previous year as reported in FERC Form 1.”<sup>88</sup>

49. LPSC also roots its position in the claim that the methodology used in Exhibits ETR-26 and ETR-28 did not remove the co-owner advances from the Account 151 balance.<sup>89</sup> Rather, LPSC states that the advances were retained and that EAI’s ownership percentage was applied to the unadjusted balance.<sup>90</sup>

50. LPSC additionally observes that the co-owner advances are “non-EAI-supplied capital” upon which EAI should not be permitted to earn a return.<sup>91</sup> LPSC charges that Staff’s accounting proposal for arriving at the proper fuel inventory figure would violate Commission precedent that prohibits utilities from collecting returns from ratepayers on cost-free capital.<sup>92</sup>

### c. APSC

51. APSC’s position is that Entergy used the proper fuel inventory balance.<sup>93</sup> APSC argues that sections 30.11 – 30.13 of Service Schedule MSS-3 uniformly dictate that

---

<sup>85</sup> *Id.*

<sup>86</sup> Ex. LC-101 at 21-25 (Kollen).

<sup>87</sup> *Id.* at 22-24 (Kollen) (citing *Entergy Servs., Inc.*, 132 FERC ¶ 63,005, PP 17-19 (2010) (Dring, J.)); LPSC Initial Br. at 4 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 27).

<sup>88</sup> LPSC Initial Br. at 3; Ex. LC-101 at 22 (Kollen).

<sup>89</sup> LPSC Reply Br. at 4-5.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 6.

<sup>92</sup> *Id.* at 7 (citing *ARCO Pipe Line Co.*, 52 FERC ¶ 61,055, at 61,238 (1990)).

<sup>93</sup> APSC Initial Br. at 5.

production costs must be calculated for each Operating Company independently.<sup>94</sup> APSC states that operating agreements governing the Independence and White Bluff coal-fired generating units provide that 100 percent of the coal inventory at the co-owned plants is owned by EAI, and while this is the figure that is currently reported on FERC Form 1, it is not accurate and must be adjusted for purposes of bandwidth calculations given the formula's intent to "exclude non-Operating Company production costs."<sup>95</sup> APSC explains that this approach's origins date back Exhibits ETR-26 and ETR-28 that comprise the roots of the bandwidth formula and that this practice has continued to be used in every bandwidth proceeding since.<sup>96</sup> APSC additionally supports the legitimacy of this approach by citing the testimony of Entergy witness, Peters.<sup>97</sup>

52. APSC opposes LPSC's position that the unadjusted Account 151 figure from EAI's FERC Form 1 should be used for the bandwidth formula.<sup>98</sup> APSC argues that LPSC's position is grounded in a "selective reading" of the fuel inventory component of the bandwidth formula and that this approach would not accurately reflect EAI's actual production costs because they would be inappropriately decreased and thereby cause EAI to be responsible for unjustifiably high bandwidth payments.<sup>99</sup>

53. APSC additionally proposes that the Account 151 fuel stock balances reported on FERC Form 1 should only reflect EAI's ownership share of the fuel inventory.<sup>100</sup> APSC's position endorses and is in accord with the recommendation by Staff that the Account 151 balance can be accurately stated if entries are made to Account 186, "Miscellaneous Deferred Debits," to cure the timing differences associated with the co-owner coal purchases and advances.<sup>101</sup> As an alternative, APSC also states its amenability to curing the noted timing differences by recording co-owner advances in

---

<sup>94</sup> *Id.* at 5-6; Ex. ESI-107 at 50, 52.

<sup>95</sup> APSC Initial Br. at 6-7; APSC Reply Br. at 5.

<sup>96</sup> APSC Reply Br. at 5-6.

<sup>97</sup> APSC Initial Br. at 7-8 (citing Ex. ESI-113 at 7 (Peters)).

<sup>98</sup> APSC Reply Br. at 7-8.

<sup>99</sup> Ex. AC-101 at 4 (Helsby); APSC Reply Br. at 4.

<sup>100</sup> Ex. AC-101 at 4-8 (Helsby).

<sup>101</sup> APSC Reply Br. at 11.

FERC Account 253, “Other Deferred Credits.”<sup>102</sup> APSC characterizes Account 253 as a “catch-all account” and quotes the Commission Uniform System of Accounts’ (USofA) language stating that the account “shall include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.”<sup>103</sup> Under this approach that relies on Account 253, all of the coal inventory itself would continue to be booked in Account 151, however it would still be necessary to apply the co-owner percentages to these amounts.<sup>104</sup>

**d. Staff**

54. Staff’s position is that Entergy did not use the proper fuel inventory input figure for the bandwidth formula.<sup>105</sup> Staff asserts that Entergy erred in two different, but related respects, and then Staff proceeds to propose a comprehensive solution to the two noted shortcomings.

55. First, Staff argues that Entergy erred because it impermissibly adjusted EAI’s FERC Form 1 balance for Account 151 when it incorporated it into the bandwidth formula. This claimed violation is based on Staff’s contention that the bandwidth formula does not permit adjustments to the FERC Form 1 data for Account 151.<sup>106</sup> Staff disputes the contentions advanced by Entergy and APSC that the “other supporting data” language included in Service Schedule MSS-3 and the bandwidth formula’s overriding goal of calculating “actual” production costs are sufficient considerations that negate the blatant tariff violation committed by Entergy.<sup>107</sup>

---

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 13 & n.2.

<sup>104</sup> APSC Initial Br. at 12.

<sup>105</sup> Ex. S-108 at 9-10 (Sammon); Staff Initial Br. at 6-7.

<sup>106</sup> Ex. S-108 at 9-10 (Sammon); Staff Initial Br. at 8-10 (citing the “plain language” of section 30.12 of Service Schedule MSS-3 and arguing that the “other supporting data” language of note 1 to that section is not a ground for departing from the FERC Form 1 figure, as held by the Commission in Opinion No. 518, 139 FERC ¶ 61,105 at P 27).

<sup>107</sup> Staff Reply Br. at 6-9.

56. Second, Staff asserts that EAI erred in compiling and reporting Account 151 on FERC Form 1 itself and that its methodology violated the USofA.<sup>108</sup> The specific noncompliance relates to its accounting of the coal inventory for the jointly-owned Independence and White Bluff generating units, as Staff contends that EAI improperly netted in Account 151 the co-owners' share of the coal purchases and the co-owners' advances, and that the resulting balance is inaccurate due to timing differences between the coal purchases and the co-owner advances.<sup>109</sup>

57. Staff proposes that the timing differences can be resolved if EAI is ordered to make corrective accounting entries and ordered to refile its 2009 FERC Form 1.<sup>110</sup> In articulating the needed corrective accounting entries, Staff recommends two alternative methodologies, detailed later herein, that modify Account 151 to take care of the timing difference without the need for a separate workpaper.<sup>111</sup>

58. Under either of these methodologies, Staff contends that an accurate 2009 FERC Form 1 balance for Account 151 would be achieved. This is necessary because the value reported directly on the FERC Form 1 for Account 151 must be used, without adjustment, as the fuel inventory input for the bandwidth formula. Therefore, Staff believes that the only proper approach for curing the problem is to require EAI to refile a corrected FERC Form 1 for the year 2009 utilizing one of these stated accounting methodologies.

## 2. Discussion and Conclusion

59. "FI" is the "fuel inventory" variable of the bandwidth formula.<sup>112</sup> It is a component of the "fixed production rate base" (FPRB) factor of the bandwidth equation.<sup>113</sup> The inputs for the "FI" variable are derived from data for each Operating Company that is recorded in Account 151, "Fuel stock (Major only)," which covers "the book cost of fuel on hand."<sup>114</sup> Note 2 of the bandwidth formula provides that the test

---

<sup>108</sup> Ex. S-103 at 21-22 (Nicholas); 18 C.F.R. pt. 101 (2013).

<sup>109</sup> Ex. S-103 at 22, 25 (Nicholas).

<sup>110</sup> *Id.* at 23-24 (Nicholas).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 20 (bandwidth formula calculation, schedule A.4, line 75); Ex. ESI-107 at 56 (System Agreement, section 30.12, definition of "FI").

<sup>113</sup> Ex. ESI-103 at 20 (bandwidth formula calculation, schedule A.4, lines 70-71).

<sup>114</sup> 18 C.F.R. pt. 101, USofA Account 151.

year's beginning and ending balances on an Operating Company's books in Account 151 are averaged to determine the amount of fuel inventory to be input into the "FI" variable.<sup>115</sup>

60. The balance reported in EAI's Account 151 includes the total book cost of coal inventory on hand for its Independence and White Bluff generating units.<sup>116</sup> EAI co-owns these plants with other entities. The operating agreements between the co-owners specify that 100 percent of the coal inventory at these plants is the property of EAI.<sup>117</sup> As a consequence, EAI records the full "book cost" of the fuel in Account 151 and also includes offsetting amounts in the account to represent advances from the co-owners to pay for their shares of the fuel cost.<sup>118</sup> These co-owner advances lower EAI's share of the cost of the fuel inventory.

61. The co-owner advances, as so booked in Account 151, are entered at various times during the year. Therefore, they do not correspond at any given point in time to the full percentage share of the fuel that is owned by each co-owner. Consequently, EAI adjusts its input to the "FI" variable from Account 151 in order to eliminate such timing differences and ensure that the input reflects only EAI's percentage ownership share, independent of the percentage shares of the co-owners.<sup>119</sup> Entergy has determined the EAI "FI" input this way in all previous annual bandwidth proceedings as well as in this current proceeding.<sup>120</sup>

62. The adjustment is detailed on Workpaper 3.1.1 of the annual bandwidth formula calculation.<sup>121</sup> EAI deducts co-owner advances from beginning and ending balances of full fuel inventory (which raises these balances up to their full original cost), then

---

<sup>115</sup> Ex. ESI-113 at 6:11-15 (Peters Reb. Test.); Ex. ESI-103 at 18 (bandwidth formula calculation, schedule A.2, note 2); Ex. ESI-107 at 52 (System Agreement, section 30.12, note 2).

<sup>116</sup> Ex. ESI-115 at 21:3-6 (Kenney Reb. Test.).

<sup>117</sup> *Id.* at 21:16-17.

<sup>118</sup> *Id.* at 21:9-12.

<sup>119</sup> Ex. LC-101 at 22:8-12 (Kollen Dir. Test.).

<sup>120</sup> Tr. at 165:15-16 (Peters).

<sup>121</sup> Ex. ESI-113 at 8:4-16 (Peters Reb. Test.); Ex. ESI-103 at 86 (bandwidth formula calculation, workpaper 3.1.1).

subtracts from that amount the percentage ownership interest in that inventory that each co-owner holds. The remainder represents the share of fuel inventory for which EAI is responsible.<sup>122</sup> According to Entergy's expert witness, Peters, this adjustment is "similar" to the analysis upon which the bandwidth formula was based originally, as set forth in Exhibits ETR-26 and ETR-28 of the original bandwidth proceeding in Docket No. EL01-88.<sup>123</sup>

63. APSC argues in support of this approach that it is consistent with the bandwidth remedy's purpose "to include the production costs of the Entergy Operating Companies only, and no one else."<sup>124</sup> APSC points to language in section 30.11 of Service Schedule MSS-3 that the purpose of the remedy is "[t]o maintain Rough Production Cost Equalization (RPCE) among the companies ..." and in section 30.12 that the actual production cost "shall be determined for each Company."<sup>125</sup> Given that the bandwidth formula is intended to exclude all non-Operating Company production costs, APSC maintains, it is reasonable for EAI to adjust the actual amount for Account 151 in preparing the inputs to the bandwidth formula.<sup>126</sup>

64. According to LPSC, however, EAI's long-standing methodology is not exactly the same as the methodology of Exhibits ETR-26 and ETR-28.<sup>127</sup> LPSC contends that in those original analyses, the co-owner advances were not removed from the Account 151 input.<sup>128</sup> Rather, says LPSC, they were left in and the EAI ownership percentage was applied to the unadjusted balance.<sup>129</sup>

65. If LPSC's contention were true, then EAI would have experienced lower production costs than it now shows in this and in all previous bandwidth proceedings.<sup>130</sup>

---

<sup>122</sup> Ex. ESI-103 at 86 (bandwidth formula calculation, workpaper 3.1.1).

<sup>123</sup> Tr. at 165:16-17 (Peters).

<sup>124</sup> APSC Initial Br. at 6; APSC Reply Br. at 4; Tr. at 476:10-19 (Helsby).

<sup>125</sup> APSC Initial Br. at 6 (quoting Ex. ESI-107 at 50, 52).

<sup>126</sup> APSC Reply Br. at 5.

<sup>127</sup> *Id.* at 4-5.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> LPSC Reply Br. at 5.

However, LPSC produced nothing at the hearing to corroborate its assertion that the methodology of ETR-26 and ETR-28 did not remove co-owner advances.<sup>131</sup> After the hearing record closed, LPSC moved to re-open the record in order to present “evidence” that it purported to be proof of its point. However, as the subsequent Order denying LPSC’s motion explained, LPSC’s showing proved to be insufficient and was rejected.<sup>132</sup> Entergy’s answer to LPSC’s motion to reopen the record also made statements regarding Exhibits ETR-26 and ETR-28 and their methodology as to the fuel inventory variable, however these statements were similarly unsubstantiated.<sup>133</sup>

66. At bottom, there is a significant gap between the conclusory statements of the parties and the unreliable, or altogether absent evidence regarding how Exhibits ETR-26 and ETR-28 specifically handled this fuel inventory issue.<sup>134</sup> As recognized by my prior Order, the failure of the parties to present “reliable, probative, and substantial evidence” for the record upon which a decision could be made was not achieved.<sup>135</sup> Therefore, the arguments regarding the import of Exhibits ETR-26 and ETR-28 to this issue are not credited.

67. LPSC raises other grounds for claiming that EAI’s methodology for determining its “FI” variable is incorrect.<sup>136</sup> LPSC claims that Service Schedule MSS-3 does not authorize such an adjustment for the “FI” variable, nor is there any exception to the requirement in Note 1 of the bandwidth formula to use “actual amounts on the Company’s books for the twelve months ended December 31 of the previous year as reported in FERC Form 1.”<sup>137</sup> Indeed, the bandwidth formula as set forth in section 30.12 of Service Schedule MSS-3 contains no specific provision for EAI’s methodology or for Workpaper 3.1.1.<sup>138</sup>

---

<sup>131</sup> See Tr. at 403:2-12 (Kollen).

<sup>132</sup> Order Denying Motion to Supplement Record, 148 FERC ¶ 63,002.

<sup>133</sup> Entergy July 9, 2014 Answer at 3-4.

<sup>134</sup> Order Denying Motion to Supplement Record, 148 FERC ¶ 63,002 at PP 6, 12-13.

<sup>135</sup> *Id.* P 13 (citing 5 U.S.C. § 556(d)).

<sup>136</sup> LPSC Initial Br. at 2-6; Ex. LC-101 at 21:17-25:9 (Kollen Dir. Test.).

<sup>137</sup> LPSC Initial Br. at 3; Ex. LC-101 at 22:16-20 (Kollen Dir. Test.).

<sup>138</sup> Ex. ESI-107 at 56 (System Agreement, section 30.12, definition of “FI”).

68. LPSC asserts that EAI is relying improperly on a clause in Note 1 that follows the aforesaid language: “or such other supporting data as may be appropriate for each Company.”<sup>139</sup> This clause, LPSC argues, was interpreted by the Administrative Law Judge in the Third Bandwidth Proceeding to mean the following:

[T]he “other supporting data” clause is to be employed to change FERC Form 1 data only where the Bandwidth calculation requires use of data from sources other than the Form 1 or when such other data are summarized at a higher level than required by MSS-3.<sup>140</sup>

69. LPSC points out that the Commission, in Opinion No. 518, upheld the Administrative Law Judge’s ruling as follows:

We also agree with the Presiding Judge that the language in footnote 1 of Service Schedule MSS-3 that actual amounts recorded in the FERC Form 1s or “such other supporting data as may be appropriate for each company” should not be given an expansive interpretation that would allow parties to ignore the requirements of the bandwidth formula. . . . [S]uch an interpretation “could render the section 30.12 formula rate superfluous and make Entergy’s annual bandwidth filings a ‘free for all’ in which each party adjusts the FERC Form 1 data of the various Operating Companies to achieve what it believes should be the appropriate result.”<sup>141</sup>

70. As a consequence, LPSC asserts, EAI’s actual amount in Account 151, as reported in EAI’s FERC Form 1 for 2009, should be used for the “FI” input to the bandwidth formula without any adjustment.<sup>142</sup>

71. Staff agrees with LPSC that EAI’s adjustment of the Account 151 value reported in its 2009 FERC Form 1 violates the bandwidth formula and conflicts with the

---

<sup>139</sup> LPSC Initial Br. at 3-4; Ex. LC-101 at 22:22-23:2.

<sup>140</sup> Ex. LC-101 at 23:16-24:41 (quoting *Entergy Servs., Inc.*, 132 FERC ¶ 63,005, at P 19 (2010)).

<sup>141</sup> LPSC Initial Br. at 4 (quoting *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105, at P27 (2012)); LPSC Reply Br. at 1-2.

<sup>142</sup> LPSC Initial Br. at 6; LPSC Reply Br. at 1; Ex. LC-101 at 25:1-6.

Commission's ruling in Opinion No. 518.<sup>143</sup> Staff states that based on the plain language of the bandwidth formula, whatever figure that is listed on FERC Form 1 for Account 151 must be directly incorporated into the bandwidth formula, without modification.<sup>144</sup> Based on its position that there is no ambiguity in the formula itself regarding the fuel inventory input, Staff asserts that there is no need to resort to the methodology used by Exhibits ETR-26 and ETR-28 to settle this issue as LPSC has advocated.<sup>145</sup>

72. However, Staff's ultimate position on this issue departs from that of LPSC and more closely aligns with that of Entergy and APSC, in that Staff believes that the balance currently reported on FERC Form 1 for Account 151 is not an accurate representation of EAI's fuel inventory and that it should be subject to corrective accounting actions.<sup>146</sup> More specifically, Staff argues that EAI must correct its procedures and revise its 2009 FERC Form 1 in order to properly account for the timing differences between coal inventory changes and co-owner advances that are entered into Account 151, as its expert witness, Nicholas, opined in her hearing testimony.<sup>147</sup>

73. Staff advances two alternative corrective accounting methodologies designed to appropriately reflect EAI's "FI" input.<sup>148</sup> According to Staff's expert witness, Nicholas, EAI should account only for its fuel stock inventory in Account 151, and co-owner advances should be treated in a different account.<sup>149</sup>

74. Under Staff's first alternative, EAI would continue to record 100 percent of the purchase price of coal acquired for the Independence and White Bluff generating units in Account 151. EAI would also record credit entries in Account 151 for each coal

---

<sup>143</sup> Staff Initial Br. at 8-10; Staff Reply Br. at 7-8.

<sup>144</sup> Staff Reply Br. at 7.

<sup>145</sup> *Id.* at 9 (“[T]here is no ambiguity regarding the input for the Bandwidth FI input. Therefore, it is not necessary or appropriate to apply the methodology in Exh. Nos. ETR-26/ETR-28.”).

<sup>146</sup> *Id.* at 11 (“Trial Staff recommends that, beginning with calendar year 2009, Entergy Arkansas be required to modify its accounting procedures and FERC Form No. 1. . . .”).

<sup>147</sup> Staff Initial Br. at 11.

<sup>148</sup> Ex. S-103 at 21:9-24:15 (Nicholas Dir. and Ans. Test.).

<sup>149</sup> *Id.* at 22:11-24:4 (Nicholas Dir. and Ans. Test.).

purchase, presumably in a separate subaccount, for the co-owners' share of these purchases. At the same time that these credits are recorded in Account 151, Account 186, "Miscellaneous deferred debits," would be debited. When EAI receives advances from its co-owners for coal purchases, the co-owner advances would be recorded as credits to Account 186. Under this accounting approach, Account 186 would reflect a net debit or credit which represents the timing difference between the co-owners' share of coal purchases and the co-owners' advances to date, and EAI's Account 151 would correctly account for only EAI's ownership share of coal inventory for the jointly-owned generating units.<sup>150</sup>

75. Under Staff's second alternative, Account 186 would also be used to account for the co-owners' share of coal purchases and the co-owners' advances. When coal is purchased for the jointly-owned generating plants, EAI would only record in Account 151 its ownership share of the coal purchase. The remaining purchase cost of the coal would be debited directly to Account 186. This would eliminate the need for a separate 151 sub-account for the co-owner's shares of the purchases. When the co-owners' advances are received, they would be credited solely to Account 186.<sup>151</sup>

76. APSC concurs with Staff's position.<sup>152</sup> Entergy also concurs, with one modification: Rather than using Account 186 for the co-owners' share of coal purchases and the co-owners' advances, Entergy recommends that the co-owners' advances should be recorded in Account 253, "Other deferred credits."<sup>153</sup> This change, according to Entergy, would keep 100 percent of the coal inventory in Account 151, which Entergy views as appropriate because EAI retains 100 percent ownership of the coal inventory.<sup>154</sup> Staff agrees with this modification.<sup>155</sup>

77. Despite LPSC's hard-and-fast opposition to changing Account 151 at all, its expert, Kollen, found merit in Staff's recommendation, testifying on cross-examination as follows:

---

<sup>150</sup> Staff Initial Br. at 11; Ex. S-103 at 23:7-18 (Nicholas Dir. and Ans. Test.).

<sup>151</sup> Ex. S-103 at 23:19-24:4 (Nicholas Dir. and Ans. Test.).

<sup>152</sup> APSC Initial Br. at 12-13; Ex. AC-101 at 6:21-7:12 (Helsby Cross-ans. Test.).

<sup>153</sup> Entergy Initial Br. at 7-8.

<sup>154</sup> Ex. ESI-115 at 22:5-11 (Kenney Reb. Test.).

<sup>155</sup> Ex. ESI-124.

If indeed the Commission does go with whatever the accounting proposed by either the FERC Staff or by Ms. Kenney, *if it is coupled with the calculation that modifies the 100 percent of the coal inventory in account 151 to reflect only the EAI share, that would at least give you the correct answer.* I don't think that the formula allows for that at this point in time.

But in any event, if the Judge or the Commission determines that some modification is necessary, that would be the approach to do it. At that point it wouldn't matter whether it was in account 186 or 253, *as long as the amount reflected in the bandwidth formula only represented the EAI share of that coal inventory, not 100 percent.*<sup>156</sup>

78. All parties but LPSC are in agreement on the substantive outcome that should be reached in terms of EAI's fuel inventory bandwidth input, but the parties maintain different positions on what is the appropriate avenue to reach that outcome.<sup>157</sup> Despite these conflicting views, it is readily apparent that Staff's alternatives, with or without Entergy's proposed modification, would simplify the present way in which the bandwidth formula has been implemented in all bandwidth proceedings up to now by eliminating the need for Workpaper 3.1.1 to annually adjust the "FI" input for EAI. The "FI" input would come out the same way that it does now, but by virtue of the re-wiring of underlying accounts to eliminate the effect of co-owner advances and co-owner shares rather than by reconfiguring the input on a workpaper.

79. This change would not require an alteration of the bandwidth formula itself because the formula already defines the "FI" variable as "Fuel Inventory recorded in FERC Account 151."<sup>158</sup> The ultimate input to the "FI" variable resulting from this change is no different from the result under the former methodology; it is just derived in a different way.

80. Eliminating Workpaper 3.1.1 does not constitute a change to the formula because, as APSC's expert witness, Helsby, made clear at the hearing, the workpapers filed

---

<sup>156</sup> Tr. at 397:22-398:9 (Kollen) (emphasis added).

<sup>157</sup> See Entergy Reply Br. at 2; APSC Reply Br. at 10-11; Ex. S-119 at 4:6-5:6 (Sammon Cross-ans. Test.) (Staff expert witness Nicholas "recommends corrections to Entergy Arkansas' accounting which make Entergy's Account 151 adjustments in this proceeding unnecessary and renders LPSC witness Kollen's testimony on this issue moot.").

<sup>158</sup> Ex. ESI-103 at 20 (bandwidth formula calculation, schedule A.4, line 75); Ex. ESI-107 at 56 (System Agreement, section 30.12, definition of "FI").

annually by Entergy are themselves inputs to the bandwidth formula, not part of the formula itself.<sup>159</sup> Therefore, a section 205 or 206 filing to change the formula itself need not be filed in order to make this change.<sup>160</sup>

81. LPSC opposes this proposal as just the type of “expansive interpretation” of the “other supporting data” language of Note 1 of Section 30.12 of the bandwidth formula that Opinion No. 518 cautioned against.<sup>161</sup> However, LPSC has failed to show how this proposal is “expansive” when it produces the same result as EAI’s long-standing methodology.

82. The burden of proving that EAI’s long-standing methodology is erroneous rests with LPSC as the challenger of the *status quo*, not with Entergy. As explained earlier in this Initial Decision, “[t]he statutory obligation of the utility . . . is not to prove the continued reasonableness of *unchanged* rates or *unchanged* attributes of its rate structure.”<sup>162</sup> LPSC might possibly have met that challenge in this annual bandwidth proceeding by presenting convincing evidence showing that “the underlying details included in the methodology used in Exhibits ETR-26 and ETR-28”<sup>163</sup> did not incorporate this methodology. It has failed to do so.

83. LPSC, in its reply brief, raises a late-inning concern that Staff’s recommended change, with or without Entergy’s recommended modification, to remove co-owner advances from Account 151 and record them in a different account “would allow Account 151, a rate base account, to reflect non-investor capital in rate base and would permit EAI to earn a return on cost-free capital.”<sup>164</sup> This result would allow EAI to earn an improper return from ratepayers on cost-free capital, which the Commission does not allow utilities to earn from cash currently collected from ratepayers for the payment of deferred taxes at a later date.<sup>165</sup>

---

<sup>159</sup> Tr. at 491:10-492:17 (Helsby).

<sup>160</sup> See Ex. AC-101 at 7:18-23 (Helsby Cross-ans. Test.)

<sup>161</sup> LPSC Initial Br. at 4 (quoting Opinion No. 518, 139 FERC ¶ 61,105 at P 27); LPSC Reply Br. at 2.

<sup>162</sup> *City of Winnfield, La. v. FERC*, 744 F.2d 871, 877 (D.C. Cir. 1984) (internal quotation marks and punctuation omitted.).

<sup>163</sup> Opinion No. 518, 139 FERC ¶ 61,105 at P 26.

<sup>164</sup> LPSC Reply Br. at 5-6.

<sup>165</sup> *Id.* at 7 (quoting *ARCO Pipe Line Co.*, 52 FERC ¶ 61,055, at 61,238 (1990)).

84. This concern is obviated, however, by Nicholas' explicit recommendation:

EAI would continue to record 100 percent of the purchase price of coal acquired for the Independence and White Bluff generating units in Account 151. Simultaneously, EAI would record credit entries in Account 151 for each coal purchase, *presumably in a separate subaccount*, for the co-owners' share of these purchases.<sup>166</sup>

85. As Nicolas' explanation makes clear, the *primary* Account 151 would include the entirety of the coal inventory (thereby reflecting EAI's underlying full ownership of it) as a debit, whereas a *sub-account* of Account 151 would include the *co-owners'* shares of that inventory as a credit. The two 151 accounts combined would reflect *only* EAI's share of the coal inventory, excluding the shares of the co-owners. Account 151, as so combined, would be input into the "FI" variable, thereby representing only EAI's share and excluding the co-owners' shares that would otherwise be misused as "free capital."

86. Nicholas' explanation also obviates Entergy's argument that even if corrective accounting entries are made involving Account 253, an adjustment will still need to be made to the FERC Form 1 Account 151 balance when implementing the bandwidth formula.<sup>167</sup> Staff's proposal of relying on a sub-account in Account 151 as a means of accurately reflecting EAI's ownership share only, when deployed in conjunction with Entergy's recommended Account 253 entries, prevents any need for a post-FERC Form 1 adjustment to the Account 151 balance when implementing the bandwidth formula.<sup>168</sup>

87. Accordingly, Staff has shown that Entergy's methodology for correcting inputs from Account 151 to the "FI" variable is unjust and unreasonable. Staff has further shown that changing the input to the "FI" variable of the bandwidth formula in accordance with the its recommendations is just and reasonable as long as it reaches the same quantitative result as the original EAI methodology used in Workpaper 3.1.1.

---

<sup>166</sup> Ex. S-103 at 23:7-11 (Nicholas Dir. and Ans. Test.) (emphasis added).

<sup>167</sup> Ex. ESI-113 at 8-9 (Peters); Entergy Initial Br. at 8 ("However, even if the accounting for co-owner advances is changed to Account 253, the balance in EAI's Account 151 will include the total fuel inventory costs of all co-owners, not just that of EAI. Therefore, it still will be necessary to apply the EAI co-owner percentage to determine the EAI fuel inventory amount to be used in the Bandwidth calculation."); Entergy Reply Br. at 7.

<sup>168</sup> See Ex. S-103 at 23-24 (Nicholas).

Either of Staff's two alternatives, as modified by Entergy's recommendation to substitute Account 253 for Account 186, is appropriate to take because it would ensure that Account 151 would be the only source of input to the "FI" variable of the bandwidth formula. At the same time, Account 151 would properly reflect only EAI's share of the coal inventory apart from the shares of the co-owners, consistent with the requirements of the "FI" variable. Either approach, therefore, may be adopted for the bandwidth formula calculation for the 2009 test year.

**B. Issue Two: Whether prior FERC approval was required for ESI to reclassify casualty loss ADIT from Account 283 to Account 282, making it eligible as an ADIT input to the bandwidth formula in its bandwidth filing for the 2009 test year?**

**1. Positions of the Parties**

**a. Entergy**

88. Entergy states that prior Commission approval was not required for it to reclassify casualty loss ADIT from Account 283, "Accumulated deferred income taxes—Other," to Account 282, "Accumulated deferred income taxes—Other property."<sup>169</sup> Entergy argues that no prior Commission approval was required because its action merely constituted a "reclassification" between ADIT accounts, as distinct from a "transfer" which would have implicated the need for prior Commission approval.<sup>170</sup> The USofA specifically defines the rules governing "transfers" with respect to Account 283 and the need for prior Commission approval in such situations; however, Entergy contends that "reclassifications" are outside the scope of this framework.<sup>171</sup> More specifically, Entergy argues that the need for prior Commission approval only applies to "transfers" that involve "the disposition (whether by sale, exchange, abandonment or other means) of the related depreciable property."<sup>172</sup>

89. Entergy cites that the basis for its reclassification was the fact that under Commission accounting rules, Account 282 includes all property-related ADIT, and that the recorded amounts that were reclassified from Account 283 to Account 282 were more

---

<sup>169</sup> Ex. ESI-115 at 19-20 (Kenney).

<sup>170</sup> *Id.* at 20 (Kenney); Entergy Initial Br. at 10-11; Entergy Reply Br. at 10-12.

<sup>171</sup> Entergy Initial Br. at 11-12 (quoting 18 C.F.R. pt. 101, USofA Account 283).

<sup>172</sup> *Id.* at 11.

closely related to property.<sup>173</sup> Simply stated, Entergy demarcates the difference between the two accounts as follows: “Account 283 is designed to capture credit tax deferral ADIT that is not property related, and Account 282 is designed to capture ADIT that is property-related....”<sup>174</sup> Entergy states that in 2008 when completing an internal accounting review it discovered that it had incorrectly been recording the following items in Account 283 instead of Account 282: 1) casualty losses associated with damage to property from hurricanes; 2) capital expenditures qualified for research and experimental tax deductions; and 3) capital expenditures associated with the capitalization of overhead for income tax purposes.<sup>175</sup> Similar to the arguments it advances with respect to other issues in this case,<sup>176</sup> Entergy contends that this accounting change had to be initiated to correct this recently discovered error.<sup>177</sup> Considering this premise, Entergy’s position is that no prior Commission approval is required to correct an accounting mistake.<sup>178</sup> Additionally, Entergy asserts that the fact that this issue involves a previously committed mistake further solidifies the corrective action it took as constituting a reclassification and not a transfer.<sup>179</sup>

90. Given the absence of any need to receive prior Commission approval for this reclassification, or stated more simply, to merely “record an ADIT amount in the correct ADIT account,” Entergy contends that the reclassified Account 282 casualty loss ADIT was properly included in its 2010 Bandwidth Filing.<sup>180</sup> Entergy argues that Commission precedent compels it to do just this, citing Opinion No. 518 and its statement that “we

---

<sup>173</sup> Ex. ESI-115 at 17-20.

<sup>174</sup> Entergy Initial Br. at 9; *see also* Entergy Reply Br. at 8-9.

<sup>175</sup> Ex. ESI-115 at 18-19 (Kenney); *see also* Tr. at 217:6-10 (Roberts).

<sup>176</sup> *See infra* PP 121-122 (arguing that corrective accounting entries are needed remedy its past errant accounting of the Waterford 3 sale/leaseback for years 2005-2009).

<sup>177</sup> Entergy Initial Br. at 10.

<sup>178</sup> Entergy Reply Br. at 13.

<sup>179</sup> In justifying this argument, Entergy relies on testimony that the Public Company Accounting Oversight Board describes reclassifications as changes from one account to another, “often in the context of an error.” *Id.* at 13 (citing Tr. at 353:17-25 (Kenney)).

<sup>180</sup> Entergy Initial Br. at 12.

affirm the Presiding Judge's finding that casualty loss ADIT, recorded in Account No. 282, should be included in the bandwidth calculation."<sup>181</sup>

**b. LPSC**

91. LPSC's position is that the casualty loss ADIT amounts that Entergy moved from Account 283 to Account 282 constitute "transfers," not mere "reclassifications."<sup>182</sup> Pursuant to the USofA, LPSC argues that a utility cannot transfer Account 283 balances without prior Commission approval.<sup>183</sup> LPSC relies on the plain language of the USofA description for Account 283 that requires pre-approval and testimony from Entergy's own witness that no prior authorization from the Commission was sought.<sup>184</sup> LPSC thus argues that the transfer of casualty loss ADIT to Account 282 is void and should not be included in the bandwidth formula.<sup>185</sup> LPSC bolsters its claim that these amounts should not be included in the bandwidth formula on the basis that Account 283 amounts are excluded from the bandwidth formula.<sup>186</sup> In response to Entergy's position that the accounting change is more appropriately categorized as a "reclassification," it contends that such an argument is "semantic gamesmanship" that runs contrary to the plain meaning of the word "transfer" and the Commission's corresponding accounting rules.<sup>187</sup>

92. LPSC also accuses Entergy of misleading the Commission in a prior bandwidth proceeding on this issue.<sup>188</sup> LPSC alleges that Entergy previously portrayed casualty loss ADIT as relating to storm cost expenditures, and based on that portrayal the Commission ruled in the Third Bandwidth Proceeding that such casualty loss ADIT should be included in the bandwidth formula.<sup>189</sup> However, LPSC states that the testimony Entergy

---

<sup>181</sup> Entergy Reply Br. at 9 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 84).

<sup>182</sup> LPSC Initial Br. at 9.

<sup>183</sup> Ex. LC-101 at 15; LPSC Reply Br. at 10-11.

<sup>184</sup> Ex. LC-101 at 15; Tr. at 327:24-328:3 (Kenney).

<sup>185</sup> LPSC Initial Br. at 7-8.

<sup>186</sup> *Id.* at 7.

<sup>187</sup> LPSC Initial Br. at 9; *see also* Tr. at 330:10-20 (Kenney).

<sup>188</sup> LPSC Initial Br. at 12-16; LPSC Reply Br. at 12.

<sup>189</sup> LPSC Initial Br. at 12 (quoting Opinion No. 518, 139 FERC ¶ 61,105 at P 88).

submitted in this proceeding reveals that this casualty loss ADIT is not the result of storm damage expenses, but rather is derived from reductions in the fair market value of pre-existing plant due to storm damage.<sup>190</sup> These alleged misstatements are offered by LPSC as additional grounds for finding against Entergy on this issue.

**c. APSC**

93. APSC states that no prior Commission approval was required for Entergy to reclassify the relevant casualty loss ADIT amounts from Account 283 to Account 282, and that therefore these amounts were appropriately included in the 2010 Bandwidth Filing.<sup>191</sup>

94. APSC asserts that the Commission, in Opinion No. 518, already rejected LPSC's argument on this issue and that the casualty loss ADIT amounts as reclassified from Account 283 to Account 282 are properly included in the 2010 Bandwidth Filing.<sup>192</sup> APSC notes that Staff likewise interprets Opinion No. 518 to constitute implicit approval of the reclassification of casualty loss ADIT from Account No. 283 to Account 282.<sup>193</sup>

95. In attacking LPSC's position that Entergy was required to make a section 205 filing and obtain Commission approval before transferring any amounts from Account 283 to Account 282, APSC notes that the Commission was fully aware that Entergy obtained no such pre-approval at the time it issued Opinion No. 518 and chose not to disturb a stipulation among the parties (including LPSC) that the reclassification was proper.<sup>194</sup> If pre-approval was required, the Commission would have ordered it then, and APSC argues that the Presiding Judge should not disturb that precedent here.<sup>195</sup>

---

<sup>190</sup> *Id.* at 12 (citing Ex. ESI-113 at 4-5 (Peters)).

<sup>191</sup> APSC Initial Br. at 13-14.

<sup>192</sup> *Id.* (quoting Opinion No. 518, 139 ¶ 61,105 at P 92); APSC Reply Br. at 12-13.

<sup>193</sup> APSC Reply Br. at 12.

<sup>194</sup> *Id.* at 13.

<sup>195</sup> *Id.* at 13.

#### d. Staff

96. While Staff initially submitted no testimony nor took any position on this issue,<sup>196</sup> in its initial brief Staff changed course and advocated that prior Commission approval is required to transfer casualty loss ADIT from Account 283 to Account 282, but that this requirement does not bar Entergy from including these amounts in its 2010 Bandwidth Filing.<sup>197</sup> Staff's argument accords with the position advanced by APSC,<sup>198</sup> in that both parties state that the Commission implicitly approved of Entergy's approach to casualty loss ADIT when it declared in Opinion No. 518 that all casualty loss ADIT in Account 282 should be included in the bandwidth calculations.<sup>199</sup> Staff extrapolates from Opinion No. 518 that if the Commission took no remedial action when confronted with this same issue, the Presiding Judge should similarly follow suit and not prevent Entergy from including these amounts in the 2010 Bandwidth Filing.<sup>200</sup> Staff reasons that reaching the "correct accounting result" should trump an alleged procedural violation of the USofA, particularly given the specific context here in which the Commission already had an opportunity to order alternative bandwidth treatment and refused to do so.<sup>201</sup>

## 2. Discussion and Conclusion

97. One consequence of the decision in the Third Bandwidth Proceeding to include casualty loss ADIT that was recorded in Account 282 of each of the Operating Companies as an input to the "ADIT" variable of the bandwidth formula was to raise an issue about Entergy's purportedly impermissible reclassification of certain amounts from Account 283 ("Accumulated deferred income taxes—Other") to Account 282 ("Accumulated deferred income taxes—Other property") in test years 2008 and 2009. This was stipulated not to be an issue in the Third Bandwidth Proceeding,<sup>202</sup> but in light of the subsequent Commission decision to include casualty loss ADIT, the issue has now arisen with full force here.

---

<sup>196</sup> Active Parties March 12, 2014 Joint Statement of Positions at 5.

<sup>197</sup> Staff Initial Br. at 11-12.

<sup>198</sup> *See supra* PP 95-97.

<sup>199</sup> Staff Initial Br. at 12.

<sup>200</sup> *Id.* at 18.

<sup>201</sup> *Id.* at 19.

<sup>202</sup> Ex. ESI-115 at 18:1-8 (Kenney Reb. Test.); APSC Initial Br. at 13-14.

98. According to testimony that was admitted into the record of the Third Bandwidth Proceeding and re-introduced here, Entergy in early 2007 implemented certain accounting changes pursuant to guidance issued by the Financial Accounting Standards Board (FASB) and FERC regarding uncertain tax positions.<sup>203</sup> During this process, Entergy determined that it was more appropriate to include all property-related temporary tax differences in Account 282.<sup>204</sup> Entergy also reviewed the classification of other deferred tax items recorded in Account 283. Entergy's reclassification of those other amounts from Account 283 to Account 282 resulted from this analysis.<sup>205</sup>

99. In this connection, Entergy identified amounts in Account 283 where the deferred tax liability was more closely associated with a property-related basis difference.<sup>206</sup> Entergy therefore reclassified these amounts from Account 283 to Account 282.<sup>207</sup> In particular, amounts associated with casualty losses that were deductible on the Operating Companies' federal and state income tax returns for losses associated with damage to property from hurricanes in the Companies' service areas in recent years were reclassified because those amounts were considered to be more closely related with property-related basis differences.<sup>208</sup>

100. These reclassified amounts are among the amounts in Account 282 that have made their way into the "ADIT" variable of the bandwidth formula as a result of the Third Bandwidth Proceeding's decision to include casualty loss ADIT. LPSC contends that these amounts should not be included, however, because they were moved from Account 283 to Account 282 by Entergy without prior FERC approval.<sup>209</sup> The USofA's specification of Account 283 contains the following language:

The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in the account or any portion thereof

---

<sup>203</sup> Ex. LC-113 at 4-5.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 5.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> LPSC Initial Br. at 7-16; LPSC Reply Br. at 10-11.

to retained earnings or to any other account or make any use thereof except as provided in the text of this account, without prior approval of the Commission.<sup>210</sup>

101. APSC disagrees with LPSC's contention.<sup>211</sup> APSC points out that the Commission, in the Third Bandwidth Proceeding, determined in Opinion No. 518 as follows with regard to the same argument that LPSC raised there:

Finally, with regard to the Louisiana Commission's argument that moving casualty loss ADIT from Account No. 283 to Account No. 282 violates the Commission's accounting instructions, we note that the reclassification issue was specifically raised in this proceeding and was one of the issues enumerated on the Issue List. In fact, according to the record evidence in the pre-filed testimony, all parties, including the Louisiana Commission, entered into the following stipulation that the reclassification was appropriate: "the parties agree that there is no dispute regarding the reclassification of certain ADIT amounts from Account 283 to Account 282."<sup>212</sup>

102. APSC argues that this statement in Opinion No. 518 indicates that the Commission was aware of LPSC's argument and did not agree with it, thereby letting the stipulation stand to the effect that the reclassification was appropriate.<sup>213</sup>

103. Staff also disagrees with LPSC's contention.<sup>214</sup> Staff acknowledges that Entergy's transfer of casualty loss ADIT from Account 283 to Account 282 required prior Commission approval.<sup>215</sup> However, Staff disagrees with LPSC's argument that the lack of prior Commission approval disqualifies the transfer.<sup>216</sup> Instead, Staff agrees with

---

<sup>210</sup> Ex. LC-101 at 15:21-25 (Kollen Dir. and Ans. Test.) (quoting 18 C.F.R. pt. 101, USofA Account 283, Instr. E.).

<sup>211</sup> APSC Initial Br. at 13-14.

<sup>212</sup> Opinion No. 518, 139 FERC ¶ 61,105 at P 92 (footnote omitted).

<sup>213</sup> APSC Initial Br. at 14; APSC Reply Br. at 12-13.

<sup>214</sup> Staff Initial Br. at 11-19.

<sup>215</sup> *Id.* at 13-16.

<sup>216</sup> *Id.* at 16.

APSC that the Commission implicitly approved the transfer in Opinion No. 518.<sup>217</sup> Alternatively, Staff argues that just as the Commission took no action against Entergy for failing to obtain prior Commission approval for the transfer in Opinion No. 518, similarly no action should be taken against Entergy for the same offense here.<sup>218</sup>

104. It is not essential to rule on whether Commission Opinion No. 518 “implicitly” approved the transfer or not. A fair reading of Opinion No. 518 indicates that the Commission merely acknowledged there that the transfer issue was raised in the Third Bandwidth Proceeding and that the parties had stipulated that it was not in dispute in that proceeding.<sup>219</sup> The Commission did not rule definitively on the issue, nor did the stipulation resolve it.<sup>220</sup> Such an outcome does not preclude the transfer issue from consideration here. Courts have held that “[g]enerally speaking, when a particular fact is established not by judicial resolution but by stipulation of the parties, that fact has not been ‘actually litigated’ and thus is not a proper candidate for issue preclusion.”<sup>221</sup> Hence, it is ripe for adjudication here.

105. Entergy disputes LPSC’s contention on the ground that the change of amounts from 283 to 282 is not a “transfer” requiring FERC approval under this provision, but rather a “reclassification” requiring none.<sup>222</sup> Entergy contends that the word “transfer,” as it is used in the context provided by the USofA’s full description of Account 283, has a narrow scope that does not include reclassifications.<sup>223</sup> According to Entergy, “the ‘transfer’ for which a utility must seek prior [Commission] approval is a transfer associated with the disposition (whether by sale, exchange, abandonment or other means) of the related depreciable property,” not a mere reclassification.<sup>224</sup>

---

<sup>217</sup> *Id.* at 16-18.

<sup>218</sup> *Id.* at 18-19.

<sup>219</sup> *See* LPSC Reply Br. at 11-12.

<sup>220</sup> *Id.*

<sup>221</sup> *Otherson v. Dep’t of Justice, I.N.S.*, 711 F.2d 267, 274 (D.C. Cir. 1983).

<sup>222</sup> Entergy Initial Br. at 10-11; Entergy Reply Br. at 10-12; Ex. ESI-115 at 20:1-5 (Kenney Reb. Test.).

<sup>223</sup> Entergy Initial Br. at 11-12; Entergy Reply Br. at 10-11.

<sup>224</sup> Entergy Initial Br. at 11; Entergy Reply Br. at 11.

106. Entergy admits that there are no definitions in the USofA of the terms “transfer” or “reclassification.”<sup>225</sup> Hence, as Staff points out,<sup>226</sup> the law requires the ordinary, contemporary, common meaning of these two words to be used.<sup>227</sup> “Transfer” is a broad, general term. A dictionary definition of the word “transfer” is “to carry or take from one person or place to another.”<sup>228</sup> At the hearing, Entergy’s witness, Kenney, accepted the definition of “to transfer” as “to convey from one person, place, or situation to another.”<sup>229</sup> Similarly, the word “reclassify” means “to move from one class, classification, or category to another.”<sup>230</sup> Kenney, in her testimony, referred to “reclassification” as “a change from one account to another.”<sup>231</sup> There is no difference in the meaning of these words that is relevant here.<sup>232</sup>

107. Entergy’s claim about what “transfer” means in the broader context of the description in the USofA of Account 283 is not a fair or accurate reading of that provision.<sup>233</sup> “Transfer” is used elsewhere in the description of Account 283 to describe how Account 283 is to be charged in the event of “the disposition by sale, exchange, *transfer*, abandonment or premature retirement of items on which there is a related

---

<sup>225</sup> Entergy Reply Br. at 10.

<sup>226</sup> Staff Initial Br. at 15-16.

<sup>227</sup> *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876 (2014) (“It is a fundamental canon of statutory construction that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.” (internal quotation marks omitted)); *Idaho Power Co. v. FERC*, 312 F.3d 454, 462 (D.C. Cir. 2002) (“[T]he definition contained in the tariff is consistent with the ordinary meaning of ‘competing.’”); *ETC Tiger Pipeline, LLC*, 138 FERC ¶ 61035, at P 40 (2012) (“[W]e find the relevant contractual provisions to be straightforward and unambiguous and thus we must give effect to the unambiguous language in those agreements, based on the plain and ordinary meaning of the terms of the agreement.”).

<sup>228</sup> *Webster’s Third New International Dictionary* 2426-27 (1986) (unabridged).

<sup>229</sup> Tr. at 330:10-24 (Kenney); *see also* Staff Initial Br. at 15-16.

<sup>230</sup> *Webster’s Third New International Dictionary* 1896 (1986) (unabridged).

<sup>231</sup> Tr. at 353:14-354:2 (Kenney).

<sup>232</sup> *See* LPSC Initial Br. at 9.

<sup>233</sup> *See id.* at 11-12; Entergy Reply Br. at 10-11.

balance herein.”<sup>234</sup> This use of “transfer” is not about moving an item from one account to another account at all, but is instead about charging Account 283 in the event that an asset that has engendered a line item in the account is itself “transferred” (i.e., by “sale, exchange, ... abandonment or premature retirement”). Later in Account 283, “transfer” is again used in a general sense to refer not to only one, but two entirely different types of transfers: “When plant is disposed of by *transfer* to a wholly owned subsidiary, the related balance in this account shall also be *transferred*.”<sup>235</sup>

108. In the context of Account 283, therefore, the word “transfer” has many uses, as general words usually do. Modern legal scholarship recognizes that “[w]ithout some indication to the contrary, general words (like all words, general or not) are to be accorded their full and fair scope. They are not to be arbitrarily limited.”<sup>236</sup> More to the point, those scholars have also said that “the presumed point of using general words is to produce general coverage—not to leave room for courts to recognize *ad hoc* exceptions.”<sup>237</sup>

109. The Commission has long exercised its authority to approve accounting “transfers” and “reclassifications” that were merely changes from one account to another. For example, in *Baltimore Gas & Electric Co.*, BG&E sought Commission approval to “reclassify for accounting purposes” all of its bulk power supply network facilities from distribution to transmission assets.<sup>238</sup> The Commission approved the “reclassification.”<sup>239</sup> Similarly, the Commission in *Boston Edison Co.* approved the utility’s transfer of “redemption premiums and issuance expenses associated with the 1987, 1991, and 1992 redemptions of series \$1.175, Stated Rate Auction, and \$1.46 Preference Stock from Account 182.3, Other Regulatory Assets, to Account 210, Gain on Resale or Cancellation of Reacquired Capital Stock.”<sup>240</sup>

---

<sup>234</sup> 18 C.F.R. pt. 101, USofA Account 283 (emphasis added).

<sup>235</sup> *Id.* (emphasis added).

<sup>236</sup> Antonin Scalia and Bryan A. Garner, *Reading Law, The Interpretation of Legal Texts* 101 (2012) (Canon 9, the “General Terms Canon”).

<sup>237</sup> *Id.*

<sup>238</sup> *Baltimore Gas & Elec. Co.*, 111 FERC ¶ 61,313, at P 3 (2005).

<sup>239</sup> *Id.* P 8.

<sup>240</sup> *Boston Edison Co.*, 77 FERC ¶ 61,319, at 62,460 (1996).

110. Entergy's citation in support of its position to a 1986 Commission Letter Order in *Long Island Lighting Co.*,<sup>241</sup> which followed an audit of that utility, is unavailing.<sup>242</sup> Similarly to this case, one part of that Letter Order dealt with an ADIT cost that was incorrectly classified in Account 283 and directed LILCO to "record the appropriate entry to *reclassify* the accumulated deferred taxes related to removal costs at December 31, 1984" to Account 282.<sup>243</sup> Another part of that Letter Order, however, dealt with an advance payment for a uranium fuel shipment that was incorrectly classified in Account 120.1 and directed LILCO to "*transfer* the advances and related carrying charges capitalized through June 1981 from Account 120.1 to Account 186."<sup>244</sup> The semantic difference between these two terms in this Letter Order, if indeed there is one, is impossible to discern.

111. The word "transfer" in the context of Account 283, then, is a genus of our lexicon that encompasses species like "reclassification." As such, the reclassification of an entry from Account 283 to Account 282 is not exempt from the requirement of prior Commission approval; rather, prior Commission approval is a precondition for it.

112. Although casualty loss ADIT was indeed transferred without prior Commission approval from Account 283 to Account 282 (and no party denies that the line items in question were transferred to the right account<sup>245</sup>), Staff nevertheless points out that it is "inappropriate to ignore the correct accounting result and exclude the 'Casualty Loss ADIT' as an eligible Bandwidth Formula input because of a procedural violation of the USofA, which was known by the Commission when it issued Opinion No. 518, but took no remedial action."<sup>246</sup> Indeed, LPSC cites no Commission precedent that authorizes excluding the transferred casualty loss ADIT from the bandwidth calculation as a remedy for Entergy's failure to seek Commission approval for the transfer.<sup>247</sup>

---

<sup>241</sup> *Long Island Lighting Co.*, 36 FERC ¶ 61,117 (1986) (*Long Island*).

<sup>242</sup> Entergy Reply Br. at 11-12.

<sup>243</sup> *Long Island*, 36 FERC ¶ 61,117 at P 11 (emphasis added).

<sup>244</sup> *Id.* P 2 (emphasis added).

<sup>245</sup> Entergy Reply Br. at 8; Staff Initial Br. at 18.

<sup>246</sup> Staff Initial Br. at 19.

<sup>247</sup> See LPSC Initial Br. at 7-11; LPSC Reply Br. at 9-13.

113. To the contrary, Commission precedent has allowed *post hoc* approvals in similar instances. For example, in *Hydro Development Group, Inc. and Pyrites Associates*,<sup>248</sup> a hydro power project transferred a one-half interest in the project to an outside entity without seeking prior Commission approval of the transfer in accordance with its FERC license application. Despite the violation, the Commission approved the transfer:

In the instant case, the prior transfers of project properties appear to have been the result of an honest mistake on the part of the licensee in its attempt to facilitate the intended transfer before the Commission. Under the circumstances, these transfers are not indicative of bad faith conduct on the Licensee's part. Additionally, the Licensee was fortunate that the premature transfer of project property did not impair its ability to comply with its license and our directives thereunder. We shall therefore approve the transfer application. Although no penalties will be imposed for the Licensee's violation, we will not, however, condone the Licensee's failure to seek prior Commission approval of the transfer by making the license transfer effective as of the date of the unauthorized conveyance of project property.<sup>249</sup>

114. Here, as in *Hydro Development Group*, Entergy has transferred casualty loss ADIT from Account 283 to Account 282 without prior Commission approval, in violation of the USofA. Nevertheless, no party questions that Account 282 is indeed the correct account for the line item; hence, no party accuses Entergy of bad faith in making the transfer without seeking prior approval.

115. “As the Commission has explained on a number of occasions, accounting does not control ratemaking.”<sup>250</sup> Therefore, even though Commission approval was not obtained for accounting purposes prior to Entergy’s transfer of casualty loss ADIT from Account 283 to Account 282, that omission does not dictate the path to follow for ratemaking purposes in this Fourth Bandwidth Proceeding. There is no reason, as Staff correctly points out, “to ignore the correct accounting result and exclude the ‘Casualty Loss ADIT’ as an eligible Bandwidth Formula input.”<sup>251</sup> That line item, therefore, will be included in the bandwidth calculation.

---

<sup>248</sup> 31 FERC ¶ 61,198 (1985).

<sup>249</sup> *Id.* at 61,408.

<sup>250</sup> *Entergy Servs., Inc.*, Opinion No. 506, 130 FERC ¶ 61,026, at P 89 (2010).

<sup>251</sup> Staff Initial Br. at 19.

116. LPSC raises a tangential matter related to this issue that warrants some comment. LPSC accuses Entergy of having “misled the Commission as to the basis for the Casualty Loss ADIT,” and of having the Commission “rel[y] on that misinformation” (in less oblique terms, to have defrauded the Commission), by portraying the casualty loss ADIT as being related to storm cost expenditures.<sup>252</sup> This purported misinformation, LPSC asserts, induced the Commission in the Third Bandwidth Proceeding to rule that because casualty loss ADIT is related to “storm damage costs . . . included in expense accounts that are included in the bandwidth formula,” therefore the casualty loss ADIT should be included in the bandwidth calculation.<sup>253</sup> However, LPSC points out, Entergy’s tax expert, Roberts, testified here that the casualty loss tax deduction is *not* based on such costs, which Entergy’s chief accountant, Bunting, described in the Third Bandwidth Proceeding as “internal labor, contracted labor, and materials and supplies used to repair or replace damaged property.”<sup>254</sup>

117. This alleged contradiction, however, is not one at all, but is merely a misunderstanding of basic tax law on LPSC’s part. As the following passage from a tax law treatise explains:

Only rarely is the amount of the casualty loss eligible for deduction equal to the cost of the property destroyed. . . . The [IRS] regulations suggest that fair market value before and after the casualty should be determined by “competent appraisal.” Doubtlessly recognizing the impracticability of this procedure in many instances, the regulations also provide that *the cost of repairs essential to restore the property to its prior condition, if reasonable, may be accepted as evidence of the amount of loss in value.*<sup>255</sup>

118. In short, both Bunting and Roberts spoke correctly in their respective proceedings. The casualty loss *tax deduction*, as Roberts testified,<sup>256</sup> is technically a difference in the *value* of damaged property before and after the catastrophic event. The proxy that is

---

<sup>252</sup> LPSC Initial Br. at 12; LPSC Reply Br. at 12.

<sup>253</sup> LPSC Initial Br. at 12 (quoting Opinion No. 518, 139 FERC ¶ 61,105 at P 88).

<sup>254</sup> *Id.* at 12-16.

<sup>255</sup> Gerald J. Robinson, *Federal Income Taxation of Real Estate* ¶ 2.02[4][b], 1999 WL 630053, at \*32 (2014) (emphasis added).

<sup>256</sup> Tr. at 219:18-220:18 (Roberts).

properly used for tax purposes to represent that differential, since such values are hard to determine, is the *cost of repair*, such as the “internal labor, contracted labor, and materials and supplies used to repair or replace damaged property” as Bunting testified in the Third Bandwidth Proceeding.<sup>257</sup> LPSC’s claim, therefore, is frivolous.

**C. Issue Three: Whether ESI properly accounted for the amortization period for the Waterford 3 sale/leaseback in recording this expense in ELL’s Form No. 1 and in using it in the 2009 test year bandwidth filing?**

**1. Positions of the Parties**

**a. Entergy**

119. Entergy states that the proper amortization period for the Waterford 3 sale/leaseback is 60 years and that given the company’s internal findings that it had used an incorrect amortization period for years 2005-2009,<sup>258</sup> it corrected the amortization expense prior to filing ELL’s 2009 FERC Form 1 and incorporated the corrected amount into the 2010 Bandwidth Filing.<sup>259</sup> Entergy justifies the 60-year amortization rate for 2005 through 2009 by citing a 2005 LPSC regulatory order<sup>260</sup> approving of that figure to govern the plant’s depreciation rates and a series of Commission precedents including Opinion No. 514.<sup>261</sup> Entergy’s position that Generally Accepted Accounting Principles (GAAP) guidance dictates that the Waterford 3 sale/leaseback must be accounted for as a financing transaction, and not a capital lease, similarly supports the 60 year amortization period.<sup>262</sup>

---

<sup>257</sup> LPSC Initial Br. at 13 (citing Ex. LC-155 at 7 (Ex. ESI-28 at 4 from Docket No. ER09-1224)).

<sup>258</sup> Ex. ESI-115 at 3; *see also* Tr. at 272:9-274:8 (Kenney).

<sup>259</sup> Entergy Initial Br. at 15, 20.

<sup>260</sup> Ex. ESI-110 (LPSC Order No. U-20925, May 25, 2005).

<sup>261</sup> Entergy Initial Br. at 17-18 (citing Opinion No. 514, 137 FERC ¶ 61,029 at P 49).

<sup>262</sup> Entergy specifically quotes Accounting Standards Codification (ASC) 840-40-25-4, which provides, “[i]f the seller-lessee retains, though a leaseback, substantially all of the benefits and risks incident to the ownership of the property sold, the sale-leaseback transaction is merely a financing.” *Id.* at 24.

120. Entergy states that its prior accounting of the Waterford 3 sale/leaseback was a mistake, but presented no witnesses with personal knowledge as to why the errant accounting methodology was used.<sup>263</sup> Entergy's correction of the identified error is made by means of an accounting procedure known as a "top-side entry."

121. A top-side entry is a journal entry that is recorded on the books and records of the company after the general ledger is closed.<sup>264</sup> Entergy states that top-side entries become part of the accounting books and records and are used in preparing financial statements.<sup>265</sup> Entergy states that even though the needed amortization expense adjustment was not recorded in the 2009 general ledger, its inclusion as a top-side entry permits this data to be incorporated into ELL's 2009 FERC Form 1.<sup>266</sup> Entergy asserts that this was necessary because it is the actual amortization expense amount as reported on FERC Form 1 that must be used for bandwidth purposes.<sup>267</sup> Entergy also affirms that the top-side entries themselves, and the decision to include that corresponding data in ELL's FERC Form 1, do not violate the USofA.<sup>268</sup>

122. While Entergy's position accords with that of Staff's<sup>269</sup> in that both agree that prior accounting mistakes were made that require correction, they differ as to the remedial accounting action.<sup>270</sup>

123. As for the specific corrective accounting entries, Entergy adjusted the Account No. 404 amortization expense for 2009 to accord with the 60-year amortization period.<sup>271</sup>

---

<sup>263</sup> Tr. at 272:9-273:20 (Kenney) ("We even called some people who were in the accounting department who were retired, and we could not find out the rationale for that change.").

<sup>264</sup> Entergy Initial Br. at 21.

<sup>265</sup> Ex. ESI-115 at 4-5 (Kenney Reb.); Entergy Initial Br. at 21.

<sup>266</sup> Entergy Initial Br. at 22.

<sup>267</sup> *Id.*

<sup>268</sup> Ex. ESI-115 at 13-14.

<sup>269</sup> *See infra* PP 138-140.

<sup>270</sup> Entergy Initial Br. at 23.

<sup>271</sup> *Id.*; Ex. ESI-118 at 1-2; Ex. S-106.

For each of the years 2005-2008, Entergy made corrections to the balance sheet accounts for regulatory assets and accumulated depreciation to eliminate the excessive amortization that resulted from the incorrect use of the 27.5 year period.<sup>272</sup> According to Entergy, recovering the entire amortization expense for all five years in Account 404 for 2009 alone would violate General Instruction 7.1(A) of the USofA.<sup>273</sup> Entergy's approach, then, is to correct and reduce the excess amortization expense from year 2009, but not for years 2005-2008. For those prior years, Entergy only adjusts the accumulated amortization amounts that are reflected in balance sheet accounts.

**b. LPSC**

124. LPSC's position is that the Waterford 3 sale/leaseback was correctly depreciated from 2005-2009 pursuant to a 27.5 year amortization period and that the sale/leaseback was appropriately treated as a capital lease for FERC accounting purposes during this time.<sup>274</sup> In sum, LPSC contends that there are no accounting errors to correct for 2005-2009.<sup>275</sup>

125. In asserting that Entergy did not commit an error when it initially relied on the 27.5 year period to govern its amortization accounting of the sale/leaseback, LPSC witness, Kollen, argues that "there were factual circumstances during the years 2005-2009 period that supported use of the lease life, due to uncertainty regarding the continued operation of the plant and renewal of the lease or purchase of the leased portion."<sup>276</sup>

126. LPSC contends that Entergy's departure from the prior accounting methodology it used for the Waterford 3 sale/leaseback cannot be characterized as a correction of a past error, but rather constitutes a "Change in Accounting Estimate."<sup>277</sup> This is a term of art in the accounting arena and is defined by FASB as being "[a] change that has the effect of adjusting the carrying amount of an existing asset or liability or altering the subsequent

---

<sup>272</sup> Tr. at 323:17-22 (Kenney)

<sup>273</sup> Ex. ESI-128 at 3:1-7 (Kenney).

<sup>274</sup> Ex. LC-144 at 10-14; LPSC Initial Br. at 18-24; LPSC Reply Br. at 25-26.

<sup>275</sup> Ex. LC-144 at 10-14; LPSC Initial Br. at 18-24; LPSC Reply Br. at 25-26.

<sup>276</sup> Ex. LC-144 at 10-14.

<sup>277</sup> LPSC Initial Br. at 30 ("Entergy did not identify an error in accounting; it changed the assumption supporting the accounting.").

accounting for existing or future assets or liabilities.”<sup>278</sup> Under Commission precedent and GAAP, LPSC states that such “changes in estimates” may only be implemented on a prospective basis and not retroactively, and that therefore the 27.5 year amortization period used in prior bandwidth filings cannot be modified as Entergy attempted with its 2010 Bandwidth Filing.<sup>279</sup>

127. Given LPSC’s belief that there is no past accounting error to correct, LPSC additionally advocates that the corrective accounting entries made by Entergy are not authorized by Commission precedent or accounting rules. LPSC alleges that Entergy’s actions violate Service Schedule MSS-3, section 30.12, note 1 of the bandwidth formula which states that bandwidth filings must use “actual production data that exists on the Company’s books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company.”<sup>280</sup> Based on this directive, LPSC asserts that 27.5 years was the amortization period that was “actually” used in years 2005-2009 to depreciate the Waterford 3 sale/leaseback, and that incorporating the 60-year duration as an input violates this actuality requirement.<sup>281</sup>

128. LPSC also attacks Entergy’s use of top-side entries, arguing that Entergy’s adjustments to ELL’s financial data should not flow into the bandwidth calculations. LPSC states that FERC Form 1 should report final year-end trial balances without adjustment and that Entergy’s adjustments cannot be included in ELL’s FERC Form 1 because they were not included in ELL’s Securities and Exchange Commission (SEC) 10-K financial statements.<sup>282</sup>

129. In the event that the use of the 27.5 year period for amortization purposes is deemed to have been an error, LPSC presents a corresponding set of separate arguments regarding how any necessary remedial action should proceed.<sup>283</sup>

---

<sup>278</sup> *Id.* at 27-28 (citing Ex. ESI-116 at 2).

<sup>279</sup> *Id.* at 28-29.

<sup>280</sup> *Id.* at 38 (citing Ex. ESI-107 at 52 n.1).

<sup>281</sup> Ex. LC-101 at 7; Ex. LC-103 at 18.

<sup>282</sup> Ex. LC-101 at 8-12.

<sup>283</sup> LPSC Initial Br. at 34-42.

130. LPSC states that General Instruction 7.1(A) of the USofA precludes making adjustments to “income” accounts for the current year for the purpose of correcting errors committed in prior year financial statements, and notes that Account 404, which is the subject of proposed changes, constitutes such an income statement account.<sup>284</sup> LPSC specifically attacks Staff’s proposal on this ground, charging that it impermissibly incorporates “prior period adjustments” for years 2005 through 2008 into the year 2009 amortization expense, an expense that factors into the determination of net income for year 2009.<sup>285</sup> In addition to violating General Instruction 7.1(A), LPSC argues that Staff’s tactic of remedying all of the prior year amortization expense overcharges through a correction only to year 2009 results in a substantively flawed outcome.<sup>286</sup> LPSC argues that if the errors are corrected in each of the respective years that they were actually committed, the receipts and payments among the Operating Companies would be significantly different than under Staff’s model, and more importantly, would be more accurate.<sup>287</sup>

131. LPSC states that it would be improper to apply the correction to year 2005, because the Waterford 3 sale/leaseback item was not even included in the bandwidth formula until after this period.<sup>288</sup> LPSC therefore contends that the earliest period that may be subject to any corrective action is test year 2006.<sup>289</sup>

132. LPSC also argues that any changes that reduce ELL’s amortization expense, as advocated here by Entergy and Staff, would also produce increased financing costs.<sup>290</sup> More specifically, LPSC contends that ELL’s debt service cost of production would increase, thereby requiring adjustments to Account 427.<sup>291</sup> While this account does not directly flow into the bandwidth formula, LPSC states that the formula does include the “average imbedded cost of debt capital” in the calculation of the Operating Company

---

<sup>284</sup> *Id.* at 34.

<sup>285</sup> *Id.* at 34-35.

<sup>286</sup> *Id.* at 33-34.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.* at 40; Ex. LC-131 at 6, 12-13.

<sup>289</sup> Ex. LC-131 at 7, 12-17 (Futral).

<sup>290</sup> *Id.* at 19-25; LPSC Initial Br. at 41-42.

<sup>291</sup> LPSC Initial Br. at 41-42.

costs.<sup>292</sup> LPSC's witness, Futral, testified that "interest and related loan servicing costs are included in the cost of debt calculation that gets included in the cost of capital computation in the Bandwidth" and that any additional interest costs that flow from changes in amortization "should be added back into the Bandwidth formula."<sup>293</sup>

133. Finally, LPSC points to a number of factors that preclude achieving an adequate remedy for Entergy's past errors.<sup>294</sup> These arguments include that the benefits of any correction will not accurately flow to those constituencies who were allegedly injured because different Operating Companies participate in the bandwidth payments and receipts from year-to-year,<sup>295</sup> and that the proposed corrections do not capture the fact that ELL's net investment rate base would have been higher and that corresponding higher return requirements would serve to partially offset the reduced amortization.<sup>296</sup>

### c. APSC

134. APSC supports Entergy's position on this issue,<sup>297</sup> stating that Entergy appropriately accounted for the Waterford 3 sale/leaseback amortization period on ELL's FERC Form 1 and in using it in the 2010 Bandwidth Filing.<sup>298</sup> Consistent with APSC's endorsement of Entergy's position, APSC states that 60 years is the proper amortization period for the Waterford 3 sale/leaseback and that this stance is supported by the LPSC's own retail ratemaking orders and Commission Opinion Nos. 514 and 519.<sup>299</sup> APSC also observes that LPSC is the only active participant in this proceeding that is advocating for the disparately shorter 27.5 year amortization period for the sale/leaseback portion of the plant.<sup>300</sup>

---

<sup>292</sup> *Id.* at 42.

<sup>293</sup> Ex. LC-131 at 20-21.

<sup>294</sup> LPSC Initial Br. at 39-42.

<sup>295</sup> *Id.* at 40 (citing Tr. at 609:7-15 (Sammon))

<sup>296</sup> *Id.*

<sup>297</sup> *See supra* PP 121-124.

<sup>298</sup> APSC Initial Br. at 15.

<sup>299</sup> *Id.*

<sup>300</sup> APSC Reply Br. at 14.

135. APSC emphasizes that in adjudicating this issue, the decision must be confined to resolving the identified “accounting question” and not decided on the basis of peripheral, non-accounting considerations involving “equities and inequities” and the need to arrive at the “alleged right result.”<sup>301</sup>

136. APSC endorses Entergy’s corrective accounting methodology to fix the identified error. APSC states that in March 2010, Entergy determined that it had used the wrong amortization period in accounting for the Waterford 3 sale/leaseback for years 2005-2009, and that in May 2010 Entergy made appropriate top-side accounting entries to its year 2009 trial balance to correct the mistake.<sup>302</sup> APSC notes that such top-side entries are commonplace in accounting practice and that Entergy’s independent auditors certified that it was appropriate for the top-side entries to inform the preparation of ELL’s FERC Form 1.<sup>303</sup> After touting the validity of the FERC Form 1 balances, APSC cites Opinion No. 514 and its requirement that the bandwidth formula utilize the inputs for depreciation and amortization expenses as recorded on that filing.<sup>304</sup>

**d. Staff**

137. Staff’s position is that for a series of years Entergy used the wrong amortization period when accounting for the Waterford 3 sale/leaseback, and that in now attempting to correct these past accounting errors, Entergy has also erred.<sup>305</sup> Pursuant to Commission precedent, Staff endorses 60 years as the proper amortization period that should apply to the Waterford 3 sale/leaseback, not the 27.5 year duration that Entergy concedes it mistakenly used.<sup>306</sup> Due to Entergy’s inadvertent use of a shorter amortization period, ELL’s FERC Form No. 1 filings overstated the amortization expense amounts recorded in Account 404, “Amortization of limited-term electric plant,” and Account 111, “Accumulated provision for amortization of electric utility plant (Major only).”<sup>307</sup> Staff

---

<sup>301</sup> *Id.* at 16.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.* (citing Ex. ESI-115 at 11 (Kenney)).

<sup>304</sup> *Id.* at 18 (citing Opinion No. 514, 137 FERC ¶ 61,029 at P 49).

<sup>305</sup> Staff Initial Br. at 19.

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

additionally notes that for accounting purposes, the sale/leaseback should be treated as a financing transaction.<sup>308</sup>

138. Staff proposes that Entergy be compelled to correct its past errors, which spanned multiple years, by adjusting ELL's 2009 FERC Form 1 and Entergy's 2010 Bandwidth Filing.<sup>309</sup> Specifically, Staff notes that the excess amortization expense that was recorded from 2005-2009 totals \$40,664,853, and that by adopting its proposal this improperly collected figure can be restored to its proper amount and recovered by the appropriate Operating Companies under the bandwidth formula.<sup>310</sup>

139. Staff states that Entergy's remedial accounting methodology violates the USofA and fails to accurately correct the totality of Entergy's prior mistakes.<sup>311</sup> Staff states that Entergy made two corrective top-side entries, the first of which Staff affirms appropriately implemented the 60-year amortization period for calendar year 2009.<sup>312</sup> However, Staff states that the second top-side entry, intended to resolve the accounting errors spanning 2005-2008, misses the mark, because of the four accounts impacted by the mistake (Accounts 111, 182.3, 404, and 407.4), only two were corrected (Accounts 111 and 182.3).<sup>313</sup> Staff states that the USofA requires that amortization expenses be recorded as debits to Account 404 and credits to Account 111, but that Entergy's methodology does not achieve this result. Instead, Staff asserts that there is a disconnect between the amounts recorded in the respective accounts to the tune of \$31,778,741.<sup>314</sup> To resolve this problem, Staff's proposal is to credit the year 2009 balance of Account 404 for this amount and debit the year 2009 balance of Account 407.4 for this amount, for these figures to be included in a refiled 2009 FERC Form 1, and for them to accordingly flow into the 2010 Bandwidth Filing.<sup>315</sup> In essence, Staff's proposal endeavors to correct all of the Waterford 3 sale/leaseback accounting errors committed

---

<sup>308</sup> *Id.* at 20.

<sup>309</sup> Ex. ESI-101 at 5 (Nicholas).

<sup>310</sup> Staff Initial Br. at 30.

<sup>311</sup> *Id.* at 7, 32-34.

<sup>312</sup> *Id.* at 31-32.

<sup>313</sup> *Id.* at 32.

<sup>314</sup> *Id.* at 33.

<sup>315</sup> *Id.* at 34.

during the period 2005-2009 through modification of the 2009 FERC Form 1 and the 2010 Bandwidth Filing.

## 2. Discussion and Conclusion

140. The most controversial issue in this Fourth Bandwidth Proceeding concerns the Waterford 3 sale/leaseback amortization. This issue has been purposefully framed as “whether ESI properly *accounted for* the amortization period for the Waterford 3 sale/leaseback.” The words “accounted for” in characterizing this issue were deliberately chosen in order to make clear that the issue centers on an accounting question, as opposed to the more generalized inquiry that the parties originally sought, which was “whether ESI *reflected the proper* amortization period for the Waterford 3 sale/leaseback.”<sup>316</sup>

141. Waterford 3 is a 1,158 MW nuclear power plant operated by ELL. It was placed in commercial operation in 1985 and is located in Taft, Louisiana.<sup>317</sup> ELL owns 90.7 percent of the facility outright (Waterford 3 Owned Plant). The remaining 9.3 percent of the facility (Waterford 3 Leased Plant), is subject to a sale/leaseback transaction that ELL concluded in 1989.<sup>318</sup>

142. The Waterford 3 lease runs for 27.5 years, terminating in 2017.<sup>319</sup> The plant was licensed by the Nuclear Regulatory Commission (NRC) in 1984 for a period of 40 years, and is eligible for a 20-year extension at the end of that period.<sup>320</sup> There is no distinction between the owned and leased portions of the plant for operational purposes.<sup>321</sup>

143. When LPSC approved the sale/leaseback transaction in 1989, it instructed the predecessor of ELL, Louisiana Power & Light Company, to ensure that only shareholders, not ratepayers, would be responsible for the contingencies that would arise at the end of the lease term—the need to exercise a repurchase option, lease renewal, or extension option; or the possibility of having to replace the terminated lease rights with

---

<sup>316</sup> Order Lifting Stay at P 6.

<sup>317</sup> Ex. ESI-108 at 8:4-6 (Kenney Dir. Test.).

<sup>318</sup> *Id.* at 8:10-12.

<sup>319</sup> Ex. LC-101 at 5:20-34, 6:13-15 (Kollen Dir. and Ans. Test.).

<sup>320</sup> *See* Ex. ESI-110 at 20.

<sup>321</sup> Ex. LC-101 at 6:2-3 (Kollen Dir. and Ans. Test.).

purchased power.<sup>322</sup> In the words of Entergy's controller, Kenney, LPSC expected ELL to limit the exposure of ratepayers to the contingencies arising with the eventual end of the lease "as if the sale-leaseback never occurred."<sup>323</sup>

144. From the outset of Waterford 3's service, ELL depreciated the Waterford 3 Owned Plant over the 40-year term of the plant's NRC license. In 1992, the Chief Accountant of FERC informed ELL in an audit report (1992 FERC Audit Report)<sup>324</sup> that the Waterford 3 Leased Plant should also be depreciated over the 40-year NRC license term rather than amortized over the 27.5-year term of the lease.<sup>325</sup>

145. In 2005, the LPSC instructed ELL for retail ratemaking purposes to amortize both the Owned Plant and the Leased Plant over the 40-year term of the plant's NRC license and its 20-year extension period, a total of 60 years.<sup>326</sup>

146. Despite these instructions from both commissions, ELL persisted during the period from 2005 through 2009 in applying a depreciation rate to the Waterford 3 Leased Plant that was based on a service life equaling its 27.5-year lease term, even though it amortized the Waterford 3 Owned Plant over a 60-year span, comprised of the license term and extension period.<sup>327</sup>

147. No one from Entergy who testified in this proceeding has any personal knowledge of why the Waterford 3 Leased Plant was amortized that way.<sup>328</sup> As Staff witness

---

<sup>322</sup> Ex. LC-122 at 6-7.

<sup>323</sup> Ex. ESI-108 at 8:19-21 (Kenney Dir. Test.).

<sup>324</sup> Ex. ESI-109.

<sup>325</sup> The parties occasionally speak of "depreciating" the Waterford 3 plant over the 40-year and 60-year NRC license and extended-license periods, whereas they speak of "amortizing" the leased portion of the plant over the lease term. This Initial Decision will adhere to that convention, but refer to "amortization" when speaking of both the leased *and* owned portions.

<sup>326</sup> Ex. ESI-108 at 9:14-20 (Kenney Dir. Test.); Ex. ESI-110 (LPSC Order No. U-20925, May 25, 2005).

<sup>327</sup> Ex. ESI-108 at 11:9-12:8 (Kenney Dir. Test.).

<sup>328</sup> See Tr. at 272:9-274:22 (Kenney).

Sammon aptly observed at the hearing, “for some bizarre reason Entergy Louisiana was using a 27-year lease life, and that was just wrong.”<sup>329</sup>

148. In an effort to fill this void, LPSC submitted undated so-called “draft” and “final” versions of a memorandum written at some time in 2010 by an Entergy employee named Josh Thomas who attempted to discern the original reasons for the corporate decision to amortize the Waterford 3 Leased Plant over the lease term.<sup>330</sup> None of Entergy’s witnesses vouched for these versions, nor did LPSC submit any corroboration of Thomas’ views. Thomas was not subpoenaed by LPSC to testify about them.<sup>331</sup> Quite apart from the fact that Thomas’ views in the memos appear on their face to be confused and unintelligible, they are hearsay statements that fall below normal standards of reliability and trustworthiness as substantive evidence.<sup>332</sup> Accordingly, they are rejected.

149. Amortization of the Waterford 3 Leased Plant over the shorter time period of the lease term results in an amortization expense that is greater than that which results from use of either the 40-year license term or the 60-year term comprised of the license term and its extension. Using the lease term, the 2009 amortization expense for the Waterford 3 Leased Plant amounts to \$12.794 million; using the 60-year extended license term, it amounts to \$3.908 million.<sup>333</sup> In terms of the bandwidth formula calculation, use of the lease term leads to a higher production cost for ELL than use of the 40- or 60-year license periods would produce.<sup>334</sup> This result, of course, leads to a higher bandwidth transfer receipt for ELL.<sup>335</sup>

150. Sometime before the end of March 2010, prior to filing its FERC Form 1 for calendar year 2009 (2009 FERC Form 1), ELL decided to change amortization of the

---

<sup>329</sup> *Id.* at 608:19-20 (Sammon).

<sup>330</sup> Ex. LC-167.

<sup>331</sup> Tr. at 301:5-302:2, 309:4-310:4, 310:17-311:5 (Kenney).

<sup>332</sup> See *EchoStar Commc’ns Corp. v. FCC*, 292 F.3d 749, 753 (D.C. Cir. 2002) (“[A]dministrative agencies may consider hearsay evidence as long as it bears satisfactory indicia of reliability; and hearsay can constitute substantial evidence if it is reliable and trustworthy.” (internal punctuation and citation omitted)).

<sup>333</sup> Ex. LC-101 at 10:3-5 (Kollen Dir. and Ans. Test.).

<sup>334</sup> *Id.* at 12:17-20 (Kollen Dir. and Ans. Test.).

<sup>335</sup> *Id.*

Waterford 3 Leased Plant to the 60-year service life, consistent with the rate then being used for the Owned Plant.<sup>336</sup> Although the general ledger for calendar year 2009 was already closed at the time that the decision was finalized, ELL made *post hoc* adjustments to the 2009 general ledger and the 2009 FERC Form 1 by an accounting machination known as “top-side entries” to apply the 60-year rate to the Leased Plant even though the 27.5-year rate was the one that was actually used during 2009.<sup>337</sup> Entergy then used this 2009 FERC Form 1, as so adjusted, to populate the bandwidth formula for this Fourth Bandwidth Proceeding.

151. ELL’s *post hoc* adjustment consists of reducing the 2009 Waterford 3 sale/leaseback amortization expense provision recorded in Accounts 404 (“Amortization of limited term electric plant”) and 111 (“Accumulated provision for amortization of electric utility plant (Major only)”) and removing the 2009 regulatory asset entries for the change in the amortization period from 27.5 years to 60 years, as shown below:<sup>338</sup>

Account	Debit	Credit
11113AM—Accumulated Provision for Plant Under Sale/Leaseback	\$8,886,112	
4043AM—Amortization of Plant Under Sale/Leaseback		\$8,886,112
407411—Regulatory Credit—Waterford 3 Sale/Leaseback	\$8,886,112	
182371—Reg Asset—WF3 Sale/Leaseback		\$8,886,112

152. ELL’s second adjustment reduces the cumulative amortization of the Waterford 3 Leased Plant for the years 2005-2008 to reflect the change in amortization period from 27.5 years to 60 years as shown below, with a corresponding change to the regulatory asset account:<sup>339</sup>

Account	Debit	Credit
11113AM—Accumulated Provision for Plant Under Sale/Leaseback	\$31,778,741	
182371—Reg Asset—WF3 Sale/Leaseback		\$31,778,741

<sup>336</sup> *Id.* at 10:1-5 (Kollen Dir. and Ans. Test.).

<sup>337</sup> Ex. ESI-115 at 6:1-20 (Kenney Reb. Test.).

<sup>338</sup> Staff Initial Br. at 31-32; Ex. ESI-115 at 7:13-21 (Kenney Reb. Test.).

<sup>339</sup> Staff Initial Br. at 32; Ex. ESI-115 at 8:1-5 (Kenney Reb. Test.).

153. Staff does not object to Entergy's use of adjusted 2009 FERC Form 1 data for calculating ELL's 2009 bandwidth receipt because it complies, at least in principle, with the instructions of the 1992 FERC Audit Report on how the amortization of ELL's Waterford 3 Leased Plant should be handled.<sup>340</sup> Staff argues, however, that Entergy did not adhere to that instruction in bandwidth years 2005-2008,<sup>341</sup> and that Entergy should adjust its 2009 FERC Form 1 and its 2010 bandwidth transactions to recoup the excess amortization expense that ELL collected over the period 2005-2009 as a result of its application of the erroneous lease-term service life.<sup>342</sup>

154. Staff argues that the bandwidth formula's definition of the "NDE" variable (that is, "Nuclear Depreciation and Amortization Expense") requires Entergy to amortize the Waterford 3 Leased Plant over the retail-regulator determined, 60-year extended term of the NRC license rather than over the 40-year term of the non-extended license that the 1992 FERC Audit Report recommended.<sup>343</sup> This action would have the effect of conforming the amortization of the Leased Plant with the 60-year term being used for the Owned Plant for retail purposes as ordered by the LPSC in 2005.<sup>344</sup>

155. According to Staff, the excess amortization that was collected from 2005 through 2009, totaling \$40,664,853 (that is, \$31,778,741 during years 2005 through 2008 and \$8,886,112 during 2009), should be recovered entirely through the current Fourth Bandwidth calculation.<sup>345</sup> Staff would require ELL to record the following additional entry to the changes that it recorded on its 2009 books for the years 2005-2008:<sup>346</sup>

---

<sup>340</sup> See Ex. S-101 at 3:13-22 (Nicholas Supp. Dir. and Ans. Test.); Staff Initial Br. at 25.

<sup>341</sup> Ex. S-101 at 4:9-15; Staff Initial Br. at 30-34.

<sup>342</sup> Ex. S-101 at 4:16-5:12; Staff Initial Br. at 33-34.

<sup>343</sup> See Staff Initial Br. at 29.

<sup>344</sup> *Id.* at 24.

<sup>345</sup> *Id.*

<sup>346</sup> Staff Initial Br. at 34; Ex. S-101 at 5:1-14 (Nicholas Supp. Dir. and Ans. Test.).

<b>Account</b>	<b>Debit</b>	<b>Credit</b>
407411—Regulatory Credit—Waterford 3 Sale/Leaseback	\$31,778,741	
4043AM—Amortization of Plant Under Sale/Leaseback		\$31,778,741

156. This change would result in a negative amortization expense for ELL's production cost of service in 2009 and would significantly reduce the bandwidth receipt that ELL is to receive and the bandwidth payment that EAI is to pay.<sup>347</sup>

157. To all these suggested solutions to the problem, LPSC's response is, essentially, as follows: There is no problem.<sup>348</sup> Leave everything in test year 2009 just as it is.<sup>349</sup> ELL used the 27.5-year lease term to amortize the Waterford 3 Leased Plant in 2009, and that is all that should be used, even if it was "wrong" to use it.<sup>350</sup> If anything is to be changed, it can only be done prospectively in test years following 2009; nothing can be done to 2009 because it is a closed subject.<sup>351</sup>

158. LPSC's solution, unsurprisingly, leaves ELL with the highest relative production costs and the largest possible bandwidth transfer receipt for the 2010 bandwidth calculation that this particular issue would allow it. If there are to be any changes to be made along the lines suggested by the other parties, however, LPSC has a few changes of its own to suggest.

159. First, LPSC points out that 2005 was not a bandwidth year and Waterford 3 amortization expenses did not enter the bandwidth calculation until 2007.<sup>352</sup> Therefore, any correction to the Waterford 3 Leased Plant amortization should start, if at all, with test year 2006, not 2005.<sup>353</sup>

---

<sup>347</sup> See Ex. ESI-102 at 6:1-17 (Sammon Supp. Dir. and Ans. Test.).

<sup>348</sup> LPSC Initial Br. at 16, 18-20.

<sup>349</sup> See *id.* at 16-17, 18-24.

<sup>350</sup> See *id.* at 17, 27-34.

<sup>351</sup> See *id.* at 17, 36-42.

<sup>352</sup> Ex. LC-131 at 6:13-14, 12:4-13:3 (Futral Supp. Cross-ans. Test.).

<sup>353</sup> *Id.* at 12:4-12 (Futral Supp. Cross-ans. Test.).

160. Second, LPSC notes that Staff's proposal to recoup in test year 2009 all of ELL's excess amortization expense over the years in question would result in different receipts and payments to the Operating Companies from what would have occurred if the excess amounts had been recovered in each year itself.<sup>354</sup> Therefore, rather than applying all corrections exclusively to test year 2009, each yearly correction should be applied to each year of the period 2006-2009 in which an error was made in order to account for the impact that each year's correction has on that year's bandwidth calculation results.

161. Third, LPSC argues that if Waterford 3 is to be treated as a financing transaction, then ELL's excess amortization expense should be treated as an interest expense for the years in question and included in the bandwidth formula's debt cost.<sup>355</sup> This would raise ELL's debt service costs of production and, in turn, ELL's bandwidth receipts.

162. The first question to address is whether it is appropriate to make any correction to the test year 2009 Waterford 3 Leased Plant amortization at all. LPSC has argued vigorously and in various ways that to now reverse the decision that ELL made to amortize the Waterford 3 Leased Plant over the 27.5-year lease term during the period from 2005 through 2009 – that is, in the parlance of this case, to have treated the Waterford 3 Leased Plant as a “capital lease” rather than as a “financing” – would be disruptive and contrary to good accounting practice.<sup>356</sup>

163. On the other hand, no one disputes that ELL was told by both LPSC in 1989<sup>357</sup> and FERC in 1992<sup>358</sup> *not* to amortize the Waterford 3 Leased Plant as if it were a capital lease. It was to be amortized, those agencies then said, over a 40-year service life in accordance with what was then the term of its NRC license. For retail ratemaking purposes, LPSC has required ELL since 2005 to amortize the entirety of the Waterford 3 Plant over the projected 60-year term of the NRC license that would result from the

---

<sup>354</sup> *Id.* at 7:1-3, 13:5-17:9 (Futral Supp. Cross-ans. Test); LPSC Initial Br. at 33-34.

<sup>355</sup> Ex. LC-131 at 19:8-25:7 (Futral Supp. Cross-ans. Test.).

<sup>356</sup> LPSC Initial Br. at 16-42.

<sup>357</sup> Ex. LC-122 at 5-11 (LPSC letter dated August 30, 1989).

<sup>358</sup> Ex. ESI-109 (1992 FERC Audit Report).

extension of that license,<sup>359</sup> and since 2010 FERC has opined that the 60-year state-approved service life is appropriate for its purposes as well.<sup>360</sup>

164. The Commission considers changes to a rate of depreciation that is used in the Entergy bandwidth formula to be a change to the formula itself.<sup>361</sup> “Replacing actual state approved depreciation expense inputs required for use by the bandwidth formula with reconstructed inputs,” the Commission has held, “would explicitly alter the depreciation component of the bandwidth.”<sup>362</sup> But the 60-year depreciation rate is not the “reconstructed input” here. Rather, it is ELL’s unexplained and inexplicable 27.5-year lease life that it used to amortize the Waterford 3 Leased Plant during 2005 through 2009 that constitutes the “reconstructed input.” That rate contradicts the bandwidth formula itself, which had always required the *retail regulator-approved* service life to be used – that is, from 2005 on, the LPSC-approved 60-year life.<sup>363</sup>

165. “The Commission has held that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate.”<sup>364</sup> The Commission has further clarified that it is authorized “to order refunds for imprudent costs charged to customers through an existing formula rate.”<sup>365</sup> It is willing to address such challenges no matter when they are brought to its attention because it recognizes that “customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.”<sup>366</sup>

---

<sup>359</sup> Ex. ESI-110 (LPSC Order No. U-20925, May 25, 2005).

<sup>360</sup> Opinion No. 505, 130 FERC ¶ 61,023; Opinion No. 519, 139 FERC ¶ 61,107 at P 26.

<sup>361</sup> Opinion No. 514, 137 FERC ¶ 61,029 at P 51 (“We disagree with the Presiding Judge that his rulings [altering depreciation rates] do not challenge a component of the bandwidth formula, and instead only challenge ‘the input for that component.’”) (footnote omitted).

<sup>362</sup> *Id.*

<sup>363</sup> See Ex. ESI-107 at 53 (Definition of “NAD” variable), 55 (Definition of “NDE” variable).

<sup>364</sup> Second Clarification Order, 145 FERC ¶ 61,049 at P 9.

<sup>365</sup> *Id.* P 10.

<sup>366</sup> *Entergy Servs., Inc.*, 145 FERC ¶ 61,047, at P 10 (2013) (internal quotation marks omitted).

166. As a consequence of this Commission rule, revising these erroneous costs does not constitute impermissible “retroactive ratemaking,”<sup>367</sup> as LPSC characterizes it.<sup>368</sup> The rule against retroactive ratemaking only applies to *post hoc* modifications of the formula itself, which alone constitutes the filed rate.<sup>369</sup> The prohibition against retroactive ratemaking does not apply to the annual inputs that update the formula and determine the yearly charge because they are not part of the filed rate.<sup>370</sup>

167. In *Public Service Electric and Gas Co.*, the Commission explained how formula inputs relate to the formula itself under the filed rate doctrine, and why the prohibition against retroactive ratemaking is not a concern when examining the inputs alone:

[T]he Commission rejects PSE&G's efforts to establish a cut-off date by which parties must file a complaint, or the Commission must initiate a proceeding, under section 206 or lose the right to do so.... [U]nder a formula rate proposal, the Commission accepts the formula, i.e., the algebraic equation used to calculate PSE&G's rates. It does not accept the inputs into the formula or the charges resulting from the application of the inputs to the algebraic equation. The Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the

---

<sup>367</sup> *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1211 (D.C. Cir. 2009) (“FERC may not retroactively alter a filed rate to compensate for prior over- or underpayments. A corollary to this rule against retroactive ratemaking, the filed rate doctrine, ‘forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority.’ Together, these rules generally limit the relief FERC may order to prospective remedies.”) (citations omitted).

<sup>368</sup> LPSC Reply Br. at 17-19.

<sup>369</sup> *Pub. Serv. Co. of N.H.*, 6 FERC ¶ 61,299, at 61,710 (1979); *see also Pub. Utils. Comm'n of Cal. v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001) (“When the Commission accepts a formula rate as a filed rate, it grants waiver of the filing and notice requirements of § 205, and the utility's rates, then, can change repeatedly, without notice to the Commission, provided those changes are consistent with the formula.”) (internal quotation marks and brackets omitted).

<sup>370</sup> *Am. Electric Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 34 (2008) (“[I]n approving any formula rate, the Commission approves the formula itself, the algebraic equation used to calculate the rates. It does not approve the inputs into the formula or the charges resulting from the application of the inputs to the algebraic equation.”).

inputs to, or the implementation of, the formula at whatever time they discover errors in the inputs or the implementation of the formula. Indeed, customers may not uncover errors in data or imprudent costs or otherwise inappropriate costs until well after the challenge period.<sup>371</sup>

168. This proceeding is authorized, therefore, to order corrections to what was, in essence, ELL's use of the wrong inputs in the depreciation components of the bandwidth formula during 2005 through 2009.<sup>372</sup> This proceeding is also authorized to require refunds for those past errors through adjustments to current bandwidth receipts and payments.<sup>373</sup> It is appropriate to do so here in particular because this Fourth Bandwidth Proceeding does not change the bandwidth formula itself at all.

169. The total excess amortization that the parties agree has been collected by ELL during the period from 2005 through 2009 amounts to over \$40 million.<sup>374</sup> This sum has been collected by Entergy from the ratepayers of its service territory as a whole through the bandwidth formula without any justification whatsoever. When viewed as a whole, *all* Entergy ratepayers in all jurisdictions have lost as a result of bearing this fictitious charge.

170. The zero-sum bandwidth formula worked in such a way that, over the period from 2005 through 2009, Arkansas ratepayers were unjustly overcharged while Louisiana ratepayers received an undue windfall as a result of this error. That state of affairs is inherently unjust and unreasonable. It cannot be the right answer, then, to just do nothing and perpetuate Entergy's mistake by leaving things the way they are, as LPSC advocates. It is appropriate to consider—and, if just and reasonable, to implement—corrective measures in accordance with the proposals offered by the parties in this proceeding.

---

<sup>371</sup> *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 17 (2008) (footnotes omitted).

<sup>372</sup> I am mindful of the Commission-level debate regarding the filed rate doctrine and retroactive ratemaking that recently generated conflict in an unrelated case. *See ISO New England Inc.*, 148 FERC ¶ 61,201 (2014) (Chairman LaFleur concurring); Docket No. ER14-1409-000 (Sept. 16, 2014) (Statements of Chairman LaFleur and Comm'rs Moeller, Clark, and Bay). As that debate gave rise to no Commission ruling on the issue, the legal principle and law of the case as stated here stands.

<sup>373</sup> *Entergy Servs., Inc.*, 145 FERC ¶ 61,047 at PP 8, 10 (2013).

<sup>374</sup> Staff Initial Br. at 24.

171. A great deal of Entergy's testimony is devoted to its use of "top-side entries" to correct its inputs to the bandwidth formula, and neither Staff nor APSC dispute Entergy's use of that accounting maneuver to do so.<sup>375</sup> LPSC objects to Entergy's use of top-side entries to make the correction.<sup>376</sup> That objection, however, centers on LPSC's preference for an accounting strategy known as a "change in accounting estimate," which is used for prospective changes, rather than Entergy's "top-side entry" strategy, which is used for retroactive changes. This conflict is dealt with elsewhere here. It is appropriate at this juncture to go right to an analysis of the proposal that Entergy makes to correct the Waterford 3 Leased Plant amortization entry, as modified by the proposal of Staff.

172. Ordinarily,

[p]ursuant to section 205 of the Federal Power Act, the Commission limits its evaluation of a utility's proposed tariff revisions to an inquiry into whether the rates proposed by a utility are reasonable—and not to extend to determining whether a proposed rate schedule is more or less reasonable to alternative rate designs. . . . [E]ven if an intervenor develops an alternative proposal, the Commission must accept a section 205 filing if it is just and reasonable, regardless of the merits of the alternate proposal.<sup>377</sup>

In this case, however, Entergy's proposed remedy for its accounting error regarding the Waterford 3 Leased Plant is *not* just and reasonable, whereas the remedy proposed by the Staff achieves a just and reasonable result.

173. Staff proposes a more sweeping revision of ELL's Waterford 3 Leased Plant amortization for 2009 than Entergy does. According to Staff, the difference between the amortization expense of the Waterford 3 Leased Plant calculated on the basis of the 27.5-year lease term and the 60-year extended NRC license term of the plant over the years 2005-2009 should be removed entirely from ELL's 2009 amortization expense in addition to being removed from accumulated amortization as of 2009.<sup>378</sup> This adjustment would result in a negative amortization expense for that year in ELL's production cost of service and a concomitant reduction of its bandwidth receipt for 2010 by \$15.625

---

<sup>375</sup> *Id.* at 24-28; APSC Initial Br. at 18

<sup>376</sup> LPSC Initial Br. at 36-39.

<sup>377</sup> *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61103, at P 318 (2009) (internal quotation marks omitted).

<sup>378</sup> Staff Initial Br. at 19-20.

million.<sup>379</sup> By the same token, EAI's bandwidth payment to ELL and other Operating Companies for 2010 would decline by \$5.785 million.<sup>380</sup>

174. Entergy cuts ELL's amortization expense (Account 404) for only one test year—2009—but fully truncates ELL's accumulated amortization provision (Account 111) for all of years 2005 through 2009. Entergy corrects its balance sheet accounts (Account 111 and corresponding regulatory asset Account 182) retroactive to 2005, but does not correct its income statement accounts (Account 404 and corresponding regulatory Account 407) retroactive to 2005 as well.<sup>381</sup> Staff's accounting expert witness, Nicholas, asserts that Account 111 of the USofA requires amortization expense provisions to be recorded as equal and offsetting debits to Account 404 and credits to Account 111.<sup>382</sup> Staff's proposal takes this step, whereas Entergy's accounting does not.

175. Entergy's solution would correct its error prospectively, but would not recover almost \$32 million in excessive amortization charges for the Waterford 3 Leased Plant that ELL exacted from ratepayers from 2005 through 2009, and in particular that Entergy shifted primarily away from Louisiana ratepayers and onto Arkansas ratepayers by means of previous annual bandwidth calculations. Staff's solution, by contrast, would correct that error prospectively and, in addition, would recover the previously collected amount for ratepayers. Moreover, the resulting 2010 bandwidth calculation would reverse the imbalance between Louisiana and Arkansas ratepayers that the error created. Hence, Staff's remedy is the just and reasonable one that should prevail.<sup>383</sup>

---

<sup>379</sup> *Id.* at 36; Ex. S-102 at 6:1-14 (Sammon Supp. Dir. and Ans. Test.).

<sup>380</sup> Staff Initial Br. at 36; Ex. S-102 at 6:1-14 (Sammon Supp. Dir. and Ans. Test.).

<sup>381</sup> Staff Initial Br. at 30-33; Ex. S-101 at 5:3-6 (Nicholas Supp. Dir. and Ans. Test.).

<sup>382</sup> Staff Initial Br. at 33; Ex. S-103 at 17:16-18 (Nicholas Dir. and Ans. Test.); 18 C.F.R. pt. 101, USofA Account 111, ¶ A(1); *but see* Entergy Reply Br. at 27.

<sup>383</sup> *Complex Consol. Edison Co. of N.Y., Inc. v. FERC*, 165 F.3d 992, 1003-04 (D.C. Cir. 1999) (“While incremental treatment may be required at one end of the rate-setting continuum, and rolled-in pricing required at the other, in between the two extremes lie a series of intermediate points in which both cost-recovery methods would satisfy section 4's just and reasonable test. At each of these places along the continuum, the pricing mechanism will essentially lie in the hands of the initiating pipeline. It is only when the proposed rate crosses the boundary separating the just from the unjust that FERC can act under its section 5 authority to order a rate of its own formulation.”).

176. Although Staff's approach fulfills the Commission's policy to order full refunds to remedy overcharges,<sup>384</sup> it is problematic for two reasons. First, Staff's proposal suffers from the same infirmity as Entergy's proposal of not using "actual amounts on the Company's books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company."<sup>385</sup> Staff's proposal applies data from 2005-2008 that is not on ELL's 2009 books, which like Entergy's proposal violates the Commission's directive to "*use the actual data that exists on the Operating Companies' books*" for each bandwidth year.<sup>386</sup>

177. The second problem with Staff's approach stems from General Instruction 7.1 A. of the USofA, which provides:

Items of profit and loss related to the following shall be accounted for as prior period adjustments and *excluded* from the determination of net income for the current year:

- (1) Correction of an error in the financial statements of a prior year.<sup>387</sup>

178. Instruction 7.1 A. directs that those corrections cannot be combined with ELL's 2009 amortization expense.<sup>388</sup> As both Entergy and LPSC correctly point out in a rare

---

<sup>384</sup> See, e.g., *Consolidated Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 972 (D.C. Cir. 2003); *Towns of Concord, Norwood, & Wellesley, Mass. v. FERC*, 955 F.3d 67, 76 (D.C. Cir. 1992) (*Towns of Concord*); *accord, La. Pub. Serv. Comm'n v. FERC*, 174 F.3d 218, 223, 224 (D.C. Cir. 1999) ("Commission's self-described general policy is to provide full refunds to remedy overcharges"); *Corp. Comm. of Okla. v. Am. Electric Power Co.*, 125 FERC ¶ 61,237, at P 33 (2008) ("Commission's general policy is to order refunds for overcharges"), *reh'g denied*, 130 FERC ¶ 61,237, at P 32; *Entergy Servs., Inc.*, 82 FERC ¶ 61,098, at 61,369 (1998) ("the Commission's general policy is to order refunds to remedy overcharges"), *aff'd*, 174 F.3d 218 (D.C. Cir. 1999).

<sup>385</sup> Ex. ESI-107 at 52 (System Agreement, section 30.12, note 1).

<sup>386</sup> Opinion No. 505, 130 FERC ¶ 61,023 at P 171; *accord*, First Clarification Order, 137 FERC ¶ 61,019 at P 10 n.14.

<sup>387</sup> 18 C.F.R. pt. 101, General Instructions, Instruction 7.1 A (2014) (emphasis added).

<sup>388</sup> Ex. ESI-115 at 16:1-16 (Kenney Reb. Test.).

moment of agreement,<sup>389</sup> Staff's proposed corrections of ELL's Waterford 3 amortization expenses that were incurred in years 2005 through 2008 constitute "prior period adjustments" to the 2009 amortization expense that cannot factor into the determination of net income for 2009.<sup>390</sup> Staff's further proposal that ELL revise its FERC Form 1 for 2009 to reflect this change would also violate this Instruction.<sup>391</sup>

179. Entergy's proposal, taken by itself, does not have this infirmity because it corrects amortization expense only for 2009, which affects current (that is, 2009) income consistently with Instruction 7.1 A. It corrects for prior years only through accumulated amortization and an offsetting regulatory asset, which show up only on ELL's 2009 balance sheet, not in current income.<sup>392</sup>

180. LPSC suggests a modification to Staff's methodology that solves these problems. LPSC suggests that past errors in ELL's inputs for amortization of the Waterford 3 Leased Plant should be corrected in each individual year of the period 2005 through 2009 rather than all in the accounts of 2009 alone.<sup>393</sup>

181. LPSC notes that EGSL and ETI did not participate in bandwidth transfer payments for the 2009 test year but did participate in prior years, in which case Staff's proposal would not provide them the benefits related to higher payments in prior years.<sup>394</sup> LPSC further points out that had the Waterford 3 Leased Plant been amortized over 60 rather than 27.5 years, ELL's amortization expense would have been lower in prior years, which means that its net investment rate base would have been higher, which would have partially offset the reduced amortization.<sup>395</sup>

182. LPSC asserts that its year-by-year modification to Staff's approach, as applied to test years 2007, 2008 and 2009, would cause ELL's 2009 bandwidth transfer receipt to

---

<sup>389</sup> Entergy Reply Br. at 26-27; LPSC Initial Br. at 34-35.

<sup>390</sup> Tr. at 322:6-24 (Kenney); Tr. at 545:20-546:22 (Nicholas).

<sup>391</sup> Ex. S-101 at 5:9-12 (Nicholas Supp. Dir. and Ans. Test.).

<sup>392</sup> See Tr. at 321:7-323:23 (Kenney); Ex. LC-170.

<sup>393</sup> LPSC Initial Br. at 39-41; Ex. LC-131 at 13:5-14:9, 16:5-17:9 (Futral Supp. Cross-ans. Test.); Exs. LC-136 through LC-138.

<sup>394</sup> LPSC Initial Br. at 40.

<sup>395</sup> *Id.*

decline by only \$12.367 million rather than \$15.625 million.<sup>396</sup> EGSL's receipts for those years would increase by a total of \$3.666 million, none of which is reflected if the change is made only for 2009 as Staff proposes.<sup>397</sup> EAI's transfer payment, by contrast, would increase more than Staff's calculation by \$3.397 million.<sup>398</sup>

183. LPSC's modification solves the Staff proposal's problem of running afoul of Instruction 7.1 A of the USofA, because the adjustments would be made in the accounts of each year in which they should have been booked rather than as prior year adjustments to the accounts of a single later year. It also ensures that accumulated depreciation for the Waterford 3 Leased Plant is updated in each of test years 2005 through 2009 in question, which in turn more accurately updates the computation of each year's bandwidth payments and receipts than a single, "one fell swoop" correction in test year 2009 would do.<sup>399</sup>

184. Staff's expert witness on the bandwidth calculation, Sammon, further agreed upon examination at the hearing that adopting a year-by-year remedy will result in more complete relief to ratepayers who overpaid Waterford 3 Leased Plant amortization costs than Staff's one-year remedy would accomplish.<sup>400</sup> In Sammon's words, "I think you would get a much better result. [Ratepayers] would be reimbursed for the incorrect bandwidth payments and receipts that occurred in the prior bandwidth implementation proceedings. . . . To the extent possible, I think you would get the correct just result if you did it year by year."<sup>401</sup> Entergy concurs with Sammon's comments.<sup>402</sup>

185. For the foregoing reasons, and in light of the Commission's approval of correcting past calculation errors through annual bandwidth proceedings as stated earlier,<sup>403</sup> it is therefore appropriate to adopt LPSC's year-by-year approach to Staff's proposal.

---

<sup>396</sup> Ex. LC-131 at 16:15-18, 17:1-2 (Futral Supp. Cross-ans. Test.); Ex. LC-138.

<sup>397</sup> Ex. LC-131 at 16:15-18; 17:1-2.

<sup>398</sup> *Id.*

<sup>399</sup> *See* Tr. at 580:12-581:25 (Sammon).

<sup>400</sup> *Id.* at 608:7-610:22 (Sammon).

<sup>401</sup> *Id.* at 610:4-7, 14-16 (Sammon).

<sup>402</sup> Entergy Reply Br. at 27.

<sup>403</sup> Second Clarification Order, 145 FERC ¶ 61,049 at P 10.

186. Notwithstanding its suggested improvements to Staff's proposal, LPSC dismisses it as an improper use of hindsight.<sup>404</sup> ELL testified that it did not know prior to 2010 whether it would exercise the Waterford 3 lease's purchase option or fixed rate renewal option at the end of the term.<sup>405</sup> Presumably, that lack of knowledge might have provided the impetus for ELL to use the 27.5-year lease term life for amortization purposes up to that year. In 2010, ELL purportedly changed its expectations and came to realize that it *will* exercise one of those options.<sup>406</sup> On the basis of those assertions, LPSC claims that ELL could not have foreseen the need to change to the 60-year rate during 2005-2009.<sup>407</sup>

187. This justification for Entergy's error falls flat before the undisputed fact that ELL was *never* allowed by *either* FERC *or* LPSC to apply a 27.5-year service life to the Waterford 3 Leased Plant.<sup>408</sup> ELL knew as early as 1989 that LPSC would not allow it,<sup>409</sup> and as early as 1992 that FERC would not allow it.<sup>410</sup> Neither Entergy nor LPSC have provided any plausible explanation as to why ELL would ignore the directives of both regulatory bodies and simply choose to use an outlawed service life for the Waterford 3 Leased Plant.

188. LPSC also claims that Staff's suggested correction qualifies as a collateral attack against prior Commission bandwidth orders.<sup>411</sup> Once those orders became final, LPSC says, "a party may not attempt to relitigate the issues that could have been raised as to

---

<sup>404</sup> LPSC Initial Br. at 27.

<sup>405</sup> Ex. ESI-108 at 10:20-11:7, 12:18-23 (Kenney Dir. Test.); Ex. ESI-111 at 4-5 (ASC Topic 840, *Leases*); Ex. ESI-115 at 3:13-4:3 (Kenney Reb. Test.).

<sup>406</sup> Ex. ESI-108 at 10:20-11:7, 12:18-23 (Kenney Dir. Test.); Ex. ESI-111 at 4-5 (ASC Topic 840, *Leases*); Ex. ESI-115 at 3:13-4:3 (Kenney Reb. Test.).

<sup>407</sup> LPSC Initial Br. at 25-27 (citing Opinion No. 505, 130 FERC ¶ 61,023).

<sup>408</sup> Ex. ESI-108 at 8:21-9:2, 11:9-12 (Kenney Dir. Test.); Ex. ESI-109 (1992 FERC Audit Report); Ex. ESI-110 (LPSC Order No. U-20925, May 25, 2005).

<sup>409</sup> See Ex. LC-122.

<sup>410</sup> See Ex. ESI-109.

<sup>411</sup> LPSC Reply Br. at 15-17.

those rates in a subsequent proceeding.”<sup>412</sup> “Collateral estoppel bars claims that *could have been* litigated, but were not,” LPSC says.<sup>413</sup>

189. As this Fourth Bandwidth Proceeding has been directed by Commission Order *not* to re-litigate issues that have been covered in prior proceedings,<sup>414</sup> and since LPSC expressly agreed with the other parties and me to hear *only* issues in this proceeding that have *not* been litigated before,<sup>415</sup> this “collateral attack” jibe from LPSC is strange indeed. It is particularly perplexing since this issue was expressly *narrowed* in order to distinguish this case from issues that were already litigated in Docket No. EL10-55-001, which spawned Commission Opinion No. 519.<sup>416</sup> As already stated above, the Commission has made clear that this proceeding is authorized to require refunds for errors in past bandwidth proceedings.<sup>417</sup> LPSC has already given assurances, together with its fellow parties, that they do not view this proceeding to be a collateral attack on any prior bandwidth case.

190. LPSC further suggests modifying Staff’s approach to remove the correction for test year 2005 because the Waterford 3 Leased Plant had not yet been added to the bandwidth calculation in that year.<sup>418</sup> The amendment to the bandwidth formula that

---

<sup>412</sup> *Id.* at 16 (citing *California ex rel. Brown v. Powerex Corp.*, 139 FERC ¶ 61,210, at P 15 (2012)).

<sup>413</sup> LPSC Reply Br. at 17 (quoting *California ex rel. Brown v. Powerex Corp.*, 139 FERC ¶ 61,210, at P 15 n.39 (2012)).

<sup>414</sup> *Entergy Servs., Inc.*, 132 FERC ¶ 61,065, at P 26 (2010).

<sup>415</sup> *Entergy Servs., Inc.*, Order Granting in Part and Denying in Part Motion of LPSC, Docket No. ER10-1350-001 (Dec. 20, 2013); *Entergy Servs., Inc.*, Order Granting Motion for Clarification of Order Lifting Stay, Docket No. ER10-1350-001 (Dec. 2, 2013); Order Lifting Stay.

<sup>416</sup> *Entergy Servs., Inc.*, Order Granting Motion for Clarification of Order Lifting Stay, Docket No. ER10-1350-001, at P 6 (Dec. 2, 2013) (citing Opinion No. 519, 139 FERC ¶ 61,107).

<sup>417</sup> *Entergy Servs., Inc.*, 145 FERC ¶ 61,047, at PP 8, 10 (2013).

<sup>418</sup> Ex. LC-131 at 12:4-12 (Futral Supp. Cross-ans. Test.); Ex. LC-144 at 10:2-6 (Kollen Supp. Cross-ans. Test.).

added the Waterford 3 Leased Plant provisions became effective May 30, 2007.<sup>419</sup> It was implemented in the First Bandwidth Proceeding in 2007 for test year 2006.<sup>420</sup>

191. Originally, in Opinion Nos. 480 and 480-A, the Commission made the bandwidth formula effective starting with data from calendar year 2006, out of which the first bandwidth transfer payments and receipts were made in 2007.<sup>421</sup> Subsequently, those opinions were reversed and remanded to the Commission by the U.S. Court of Appeals for the D.C. Circuit<sup>422</sup> because the Commission, in the Court's view, failed to give "a reasonable explanation for FERC's decision to delay implementation of the bandwidth remedy."<sup>423</sup> The Commission thereafter decided to commence the bandwidth remedy on June 1, 2005, using a partial year of data for the first bandwidth transfer payments in 2006.<sup>424</sup>

192. The LPSC required ELL to adopt the 60-year service life for the Waterford 3 nuclear plant by order effective on May 25, 2005.<sup>425</sup> Therefore, Waterford 3's retail-regulator approved 60-year service life was operative as of the beginning of the bandwidth remedy on June 1, 2005. It is appropriate, therefore, to include 2005 partial year data in using the 60-year service life to compute the Waterford 3 Leased Plant amortization amounts for bandwidth purposes. Accordingly, LPSC's suggested modification to begin the Waterford 3 Leased Plant amortization input to the bandwidth calculation later than that date is not adopted.

193. LPSC also contends that the 1992 FERC Audit Report suggested treating the difference between amortizing the Waterford 3 Leased Plant over the 27.5-year lease

---

<sup>419</sup> *Entergy Servs., Inc.*, 119 FERC ¶ 61,193, at P 16 (2007) (in evidence at Ex. LC-158).

<sup>420</sup> Entergy, Cover Letter to Filing, Docket No. ER07-956-000, at 1 (filed May 29, 2007) (First Bandwidth Filing).

<sup>421</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 145; Opinion No. 480-A, 113 FERC ¶ 61,282 at PP 53-54.

<sup>422</sup> *La. Pub. Service Comm'n v. FERC*, 522 F.3d 378, 400 (D.C. Cir. 2008).

<sup>423</sup> *Id.*

<sup>424</sup> *Entergy Servs., Inc.*, 137 FERC ¶ 61,047, at P 34 (2011), *reh'g denied*, 146 FERC ¶ 61,152, at P 33 (2014).

<sup>425</sup> Ex. ESI-110 at 4-5 (LPSC Order No. U-20925, May 25, 2005).

term and depreciating it over its NRC license term (Waterford 3 Leased Plant Excess Amortization) as “additional financing costs” and recording it as interest expense in Account 427, “Interest on Long-term Debt.”<sup>426</sup> This account is not included in the bandwidth formula.<sup>427</sup> Nevertheless, LPSC proposes that the excess amortization that ELL recorded in that account should be included in ELL’s bandwidth calculation of the cost of capital that is represented by the “CM” variable of the formula.<sup>428</sup> Thus, says LPSC, while the reduction of ELL’s Waterford 3 amortization expense in 2009 would lower its bandwidth transfer receipts, this increase in cost of capital will offset the reduction in part by raising ELL’s rate base.<sup>429</sup>

194. LPSC’s proposal stems from the following passage in the 1992 FERC Audit Report on the Waterford 3 sale/leaseback transaction:

The Company's accrual of the additional expense was related to the possibility that it will not exercise any options to continue control over the facility after the expiration of the lease. *Therefore, the additional charge was in essence a cost of financing the sale/leaseback.* The Uniform System of Accounts contemplates that the additional financing costs are not depreciation or amortization, *but rather are additional interest costs properly chargeable to Account 427, Interest on Long-term Debt.*<sup>430</sup>

195. At the hearing, Staff’s accounting expert witness, Nicholas, testified that she had worked at the time with Russell Faudree, FERC’s Chief Accountant in 1992, and was familiar with his knowledge of accounting.<sup>431</sup> Nicholas described her view of Faudree’s intention behind the foregoing passage in the 1992 FERC Audit Report as follows:

As I read this report, the chief accountant [Faudree] is taking the factual basis or the facts that were related to this transaction and that the company was, in fact, booking more expense than depreciation methodologies would

---

<sup>426</sup> LPSC Initial Br. at 42; Ex. LC-131 at 19:10-14 (Futral Supp. Cross-ans. Test.); Ex. ESI-109 at 10.

<sup>427</sup> Ex. LC-131 at 20:9-10 (Futral Supp. Cross-ans. Test.).

<sup>428</sup> *Id.* at 20:9-21:12.

<sup>429</sup> *Id.* at 21:9-10.

<sup>430</sup> Ex. ESI-109 at 9-10 (emphasis added).

<sup>431</sup> Tr. at 511:13-512:7 (Nicholas).

allow. And the chief accountant essentially said that additional amount that you booked—I don't see where the chief accountant has endorsed or supported necessarily a particular approach on what additional amount should be booked, but he was saying any additional amount that you book over and beyond the depreciation is not depreciation, it has to go somewhere else. And because the company was accruing additional amounts due to the termination, potential termination of the lease, that was a lease cost, a financing cost.<sup>432</sup>

196. Nicholas thus inferred from the aforementioned passage from the 1992 Audit Report that the FERC Chief Accountant meant that the Waterford 3 Leased Plant Excess Amortization *could* be tracked in ELL's books as an extra cost of financing the sale/leaseback transaction and *could* be recorded, for the sake of convenience, to Account 427, "Interest on Long-term Debt." However, Nicholas correctly observed, the Chief Accountant did not imply that the excess amortization *must* be tracked and recorded that way.

197. Nicholas' view suggests that another alternative is to ignore excess amortization altogether for bandwidth purposes. There is no evidence in the record that demonstrates that the excess amortization indeed represents "interest" of any kind on any "long term debt." There is nothing in the original 1989 Waterford 3 sale/leaseback document that refers to it, or that creates any type of "interest payment," "cost of financing," or any similar charge. The only charge described in the Waterford 3 lease is "rent,"<sup>433</sup> and nothing in the record links that charge to excess amortization.

198. Entergy, in opposition to LPSC's proposal,<sup>434</sup> asserts that the Waterford 3 excess amortization that ELL accrues in Account 427 in accordance with the 1992 FERC Audit Report (currently up to \$63 million) has nothing to do with interest.<sup>435</sup> Instead, according to Entergy, it acts as a provision for loss to cover events that are expected to occur at the end of the lease term as a result of the LPSC's 1989 requirements upon

---

<sup>432</sup> *Id.* at 515:11-25 (Nicholas) (emphasis added).

<sup>433</sup> *See* Ex. LC-169 at 4-6.

<sup>434</sup> *See* LPSC Initial Br. at 41-42; LPSC Reply Br. at 27.

<sup>435</sup> Entergy Initial Br. at 25-31; Entergy Reply Br. at 28-32.

approving the sale-leaseback transaction.<sup>436</sup> The excess amortization, Entergy asserts, does not factor into the bandwidth calculation.<sup>437</sup>

199. Much testimony was taken from Entergy's controller witness, Kenney, on this purported connection that the excess amortization has to ELL's professed need to accrue funds in order to cover events that are expected to occur at the end of the lease term.<sup>438</sup> However, Kenney did not speak from personal knowledge<sup>439</sup> and she presented no credible evidence that directly links the Waterford 3 Leased Plant Excess Amortization accrual in Account 427 to that effort. It is apparent that Entergy's alleged rationale for this accrual is speculative at best.

200. Entergy gives no sensible reason as to why the excess amortization amount can or will cover the future contingencies that ELL may or may not face at the end of the lease term. Entergy's rationale is no better than LPSC's at explaining away the fact that the excess amortization amount is simply a mistake.

201. Another reason why the Waterford 3 Leased Plant Excess Amortization cannot be assigned the role of an interest expense in the "CM" variable of the bandwidth formula is that there is *already* an interest expense for the Waterford 3 sale/leaseback in the "CM" variable. In an amendment to the bandwidth formula for test year 2006 that Entergy filed with the FERC on April 6, 2007<sup>440</sup> and that FERC approved on May 25, 2007,<sup>441</sup> to become effective May 30, 2007, Entergy added the Waterford 3 Leased Plant into the formula for the purpose of calculating the formula's "CM" variable for ELL's 2006 cost of capital.<sup>442</sup>

202. Entergy prepared a worksheet of this calculation in 2006 and every test year thereafter that included the Waterford 3 sale/leaseback as a debt instrument, just like one

---

<sup>436</sup> Entergy Initial Br. at 25-31; Entergy Reply Br. at 28-32.

<sup>437</sup> Entergy Initial Br. at 25-31; Entergy Reply Br. at 28-32.

<sup>438</sup> See Tr. at 264:18-268:7 (Kenney).

<sup>439</sup> *Id.* at 268:21-269:3 (Kenney).

<sup>440</sup> Ex. LC-157.

<sup>441</sup> Ex. LC-158 (*Entergy Servs., Inc.*, 119 FERC ¶ 61,193 (2007)).

<sup>442</sup> See Ex. LC-141 at 2 (Waterford 3 sale/leaseback included among debt instruments used to calculate test year 2006 cost of capital).

of ELL's long-term bonds.<sup>443</sup> This computation is derived from the amount of bonds outstanding on the Waterford 3 sale-leaseback transaction as of the end of the calendar year, with the coupon rate and unamortized premium debt discount and loss applied, to arrive at the embedded cost of the Waterford 3 debt balance.<sup>444</sup> These amounts are recorded in Accounts 428 and 429 of ELL's books.<sup>445</sup> This computation is not derived from the Waterford 3 Leased Plant Excess Amortization that is recorded in Account 427.<sup>446</sup>

203. For test year 2009 at issue here, ELL's unfiled "CM" worksheet reports the effective cost rate for the Waterford 3 sale/leaseback to be 8.08 percent; in test years 2006 and 2007 it had been reported to be 8.09 percent.<sup>447</sup> These amounts are almost exactly 0.125 percent above the 7.965 percent rate at which LPSC "assumed that LP&L [ELL's predecessor] could have issued new debt for refunding purposes" instead of engaging in a sale/leaseback transaction.<sup>448</sup> The 8.08 percent effective cost rate for the Waterford 3 sale/leaseback is used to compute the long-term debt cost<sup>449</sup> for test year 2009 that in turn enters as variable "i"<sup>450</sup> in the computation of the formula's overall weighted average cost of capital variable "CM."<sup>451</sup>

---

<sup>443</sup> Tr. at 599:9-600:1 (Sammon); Ex. LC-140 at 2 (for test year 2009); Ex. LC-141 at 2, 4 (for test years 2006 and 2007).

<sup>444</sup> Tr. at 181:13-183:5 (Peters); Tr. at 599:9-600:1 (Sammon); Ex. LC-140 at 2 (for test year 2009); Ex. LC-141 at 2, 4 (for test years 2006 and 2007).

<sup>445</sup> Tr. at 461:15-20 (Futral).

<sup>446</sup> *Id.* at 606:8-608:1 (Sammon).

<sup>447</sup> Ex. LC-140 at 2 (for test year 2009); Ex. LC-141 at 2, 4 (for test years 2006 and 2007).

<sup>448</sup> Ex. LC-140 at 2 n.\*; *see* Tr. at 599:21-600:1 (Sammon).

<sup>449</sup> Ex. ESI-103 at 158 (bandwidth formula calculation, workpaper 6.3.1).

<sup>450</sup> *Id.* at 26 (bandwidth formula calculation, schedule B.3, l. 106, col. "ELL").

<sup>451</sup> *Id.* at 19 (bandwidth formula calculation, schedule A.3, l. 45, col. "ELL").

204. A sale/leaseback transaction is, purely speaking, a sale and a lease. It is only *imputed* to be a financing transaction comparable to a mortgage loan.<sup>452</sup> Since it is a sale and a lease, it does not use terms like “interest” and “principal.” Instead, it uses terms like “purchase price” and “rent.” As a result, the amount of “interest” to impute to a sale/leaseback as if it were a “financing transaction” can never be anything other than an estimate.<sup>453</sup>

205. In this case, the bandwidth formula sets no standard for how the cost of debt in the “CM” variable is to be computed.<sup>454</sup> ELL’s proxy for the “financing costs” of the Waterford 3 sale/leaseback for the purpose of computing the “CM” variable of the bandwidth formula was the retail interest rate that LPSC deemed to be the maximum interest rate that Louisiana ratepayers would ever pay for the sale/leaseback – namely, “an interest rate 0.125 percent below the interest rate on the long-term debt issued in connection with the S/LB.”<sup>455</sup> Nothing in the record demonstrates that the Waterford 3 Leased Plant Excess Amortization is supposed to replace or supplement the proxy that ELL chose to use—at LPSC’s behest—for the “CM” variable.

206. LPSC’s suggested modification, then, would do no more than elevate an erroneous charge to the level of a bandwidth input with no reason for doing so. Nothing justifies perpetuating Entergy’s mistake by calling the Waterford 3 Leased Plant Excess Amortization “interest” and billing ratepayers for it; that is just calling the erroneous overcharge something else. To put it plainly, “you can put lipstick on a pig; it’s still a

---

<sup>452</sup> See Gerald J. Robinson, *Federal Income Taxation of Real Estate* ¶ 8.03[1][c], 1999 WL 630108 at \*4 (2014) (“[T]he sale-leaseback usually is a substitute for conventional mortgage financing. In some instances, the transaction may be so structured that its economic resemblance to a debt is almost complete.”).

<sup>453</sup> Cf. David Bagley, *Real Estate Values Outpace Going-Concern Values for Storied Credits*, 32 Am. Bankr. Inst. J. 24, 88-89 (2013) (“The implied interest rate on the sale-leaseback transaction was 10 percent; \$1 million in rent paid annually on an investment of \$10 million. Depending on how the investor assessed the risk profile of a portfolio of 14 locations leased by a franchisee of a national restaurant chain, the 10 percent annual return is quite attractive given the 0.01 percent that banks or money market funds are currently offering.”).

<sup>454</sup> Tr. at 461:24-25 (Futral); 604:13-605:20 (Sammon).

<sup>455</sup> Ex. LC-122 at 6.

fig.”<sup>456</sup> Accordingly, LPSC’s suggestion to include that bogus entry in the “CM” variable of the bandwidth calculation is rejected.

207. LPSC further charges that ELL treated the Waterford 3 sale/leaseback during the 2005-2009 period *exclusively* as a capital lease for FERC accounting purposes and therefore it was *correctly* amortized over the 27.5-year lease term.<sup>457</sup> LPSC argues that Waterford 3 was accounted for on ELL’s annual FERC Form 1 filings throughout the period 2005 through 2009 not as an ELL-owned plant in Account 101 (“Electric plant in service”), but as a capital lease in Account 101.1 (“Property under capital leases”), and the Commission accepted that accounting.<sup>458</sup> Therefore, LPSC asserts, the Waterford 3 sale/leaseback must be viewed as having been a capital lease all along, and cannot be turned into a financing transaction retroactively.<sup>459</sup>

208. The Waterford 3 sale/leaseback actually has the trappings of *both* financial forms. ELL is capable of relying on one form or the other depending on the problem *du jour* that it needs to address. For tax purposes, the sale/leaseback can be treated as a “capital lease” that enjoys tax breaks that such financial forms confer, such as a full business expense deduction for “rent.” There are also ratemaking benefits because “rent” can be set to any preferred level and can therefore be used to raise cost-of-service rates. On the other hand, the sale/leaseback can also be viewed as a “financing transaction” that provides ELL with an inexpensive loan at times when interest rates are too high to justify borrowing.

209. As a little bit of both things, it is useless to characterize the excess amortization that emanates from the sale/leaseback as one thing or the other based on these differing traits. We know for certain, however, that the excess amortization is a plain old accounting mistake. We know for certain what both FERC and LPSC, which govern ELL, told ELL to do with the excess amortization during 2005-2009 on the basis of their respective regulatory policies. There is no question that both FERC and LPSC deemed the Waterford 3 sale/leaseback to be *only* a *financing* transaction and *not* a capital lease. ELL’s mistaken treatment of it on its FERC Form 1s during 2005-2009 makes no difference in the face of this fact.

---

<sup>456</sup> Sen. Barack Obama, Presidential Campaign Speech at Lebanon, Pennsylvania (September 10, 2008).

<sup>457</sup> LPSC Initial Br. at 18-24; LPSC Reply Br. at 22-25.

<sup>458</sup> LPSC Reply Br. at 24-25.

<sup>459</sup> LPSC Initial Br. at 18-24; LPSC Reply Br. at 22-25.

210. LPSC's final salvo is that Entergy's correction of the amortization of the Waterford 3 Leased Plant is not in response to an accounting error, but is instead a "change in accounting estimate" that FASB guidelines direct should be recorded only on a prospective basis.<sup>460</sup> Entergy did not identify an "error" in its accounting, LPSC says; rather, Entergy changed its assumption as to whether ELL would exercise its renewal option for the Waterford 3 Leased Plant, which led to the need for a prospective change in the estimate of the Leased Plant's service life.<sup>461</sup> Therefore, ELL was wrong, according to LPSC, to use "top-side entries" to correct its closed 2009 accounting ledger retroactively.<sup>462</sup> LPSC reiterates in this connection that Entergy could not have foreseen in 2005 FERC's later decision to require the use of state-approved depreciation rates that, according to LPSC, impelled this change.<sup>463</sup>

211. LPSC's argument fails on a number of grounds, the first of which is due to factual infirmities. LPSC attempts to invoke accounting rules that prohibit financial data adjustments to past periods by casting this situation as a "change in accounting estimate."<sup>464</sup> However, the record does not support this factual premise, thereby making the legal and accounting rules advocated by LPSC on this point wholly inapplicable. It is readily apparent from the record evidence that Entergy's past accounting of the Waterford 3 sale/leaseback constitutes a mistake.

212. A "change in accounting estimate" is different from a past mistake. It is defined by FASB as being "[a] change that has the effect of adjusting the carrying amount of an existing asset or liability or altering the subsequent accounting for existing or future assets or liabilities."<sup>465</sup> Thus, a "change in accounting estimate" alters *future* accounting treatment, not *past* accounting treatment.

---

<sup>460</sup> LPSC Initial Br. at 27-34.

<sup>461</sup> *Id.* at 30.

<sup>462</sup> *Id.* at 36-39.

<sup>463</sup> *Id.* at 31-32.

<sup>464</sup> *Id.* at 28-30 ("Entergy did not identify an error in accounting; it changed the assumption supporting the accounting.").

<sup>465</sup> *Id.* at 27-28 (citing Ex. ESI-116 at 2).

213. In late 2009 Entergy initiated a review of the amortization period being used to account for the Waterford 3 Leased Plant.<sup>466</sup> The internal investigation culminated shortly thereafter in March 2010 with a determination that Entergy had incorrectly used the life of the lease to amortize the Waterford 3 Leased Plant during the years 2005 through 2009.<sup>467</sup> This investigation created a need for Entergy to correct a *past* mistake.

214. LPSC labels Entergy's review process that uncovered the error a "lengthy evaluation" that is a "classic example of a process leading to a change in estimate."<sup>468</sup> However, the mere fact that a company's structured review process serves to uncover a significant accounting error does not convert the discovery into a "change in accounting estimate." Such a process is equally necessary to correct a past mistake.

215. During the hearing LPSC attempted to challenge that Entergy's behavior constituted as an "error."<sup>469</sup> Entergy's past accounting cannot be construed as anything but an error given the fact that the previously used amortization period was a clear violation of the orders from both the Commission and LPSC. The 1992 FERC Audit Report issued by the Commission's Chief Accountant mandated that Waterford 3 Leased Plant be amortized in the same fashion as the Waterford 3 Owned Plant.<sup>470</sup> On May 18, 2005, LPSC approved a 60-year service life for the purpose of calculating depreciation on the Waterford 3 facility.<sup>471</sup> Based on these dual pronouncements, as affirmed by subsequent precedent,<sup>472</sup> the proper amortization period to be used for the Waterford 3 Leased Plant was 60 years. Entergy used 27.5 years. This discrepancy generated a mistake during a past period.

---

<sup>466</sup> Ex. ESI-115 at 4.

<sup>467</sup> *Id.* at 4-5.

<sup>468</sup> LPSC Initial Br. at 30.

<sup>469</sup> *See, e.g.*, Tr. at 272:17-273:20 (Kenney).

<sup>470</sup> Ex. ESI-109 at 10 (Jan. 16, 1992, delegated letter order from *La. Power & Light Co.*, Docket No. FA90-44-000) (stating that the "definition of depreciation does not indicate that a method of financing should alter the depreciation rate.").

<sup>471</sup> Ex. ESI-110 (LPSC Order No. U-20925, May 25, 2005).

<sup>472</sup> Opinion No. 514, 137 FERC ¶ 61,029 at P 49 ("The formula mandates the use of depreciation rates reported in the FERC Form 1, reflecting, in part, state regulator approved depreciation rates, which the Commission has adopted for use in the bandwidth formula."); *see also* Ex. S-102 at 4 (Sammon).

216. Given the factual finding that Entergy's past accounting of the Waterford 3 Leased Plant constituted an error, the relevant precedent that governs this issue is unambiguous. The Commission has authoritatively prescribed that past errors in implementing the bandwidth formula must be corrected. More specifically, the "Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula."<sup>473</sup>

217. In a 2013 bandwidth-related case, the Commission expressly recognized its authority to "order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate."<sup>474</sup> In justifying this approach, the Commission has noted that data errors and formula implementation mistakes often are not detected until well after the fact, and that just because such findings are delayed does not mean that customers relinquish their right to be charged just and reasonable rates.<sup>475</sup> Entergy's discovery of its erroneous accounting of the Waterford 3 sale/leaseback presents just such an instance.

218. It should be readily apparent that the accounting profession has developed adequate tools to accomplish whatever its clients want to do, regardless of whether they want to do something prospectively or retroactively. "Changes in accounting estimate" can accomplish prospective things, whereas "top-side entries" can accomplish retroactive things. One technique is not more "correct" than the other; the use of either one depends on what the client wishes to do. As has been stated here already, the Commission has long held that "accounting does not control ratemaking."<sup>476</sup> Here, it is obvious that for ratemaking purposes, a retroactive change is needed in order to correct a long-standing mistake. Hence, a "top-side entry" is appropriate here and a "change in accounting estimate" is not, as all of the parties except LPSC readily see. LPSC's contention, therefore, must be rejected.

---

<sup>473</sup> *Am. Electric Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 35 (2008).

<sup>474</sup> *Ark. Public Serv. Comm'n v. Entergy Corp.*, 142 FERC ¶ 61,012, at P 27 (2013).

<sup>475</sup> *Am. Electric Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 35 (2008) (reasoning that "customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.").

<sup>476</sup> Opinion No. 506, 130 FERC ¶ 61,026 at P 89.

219. The Commission approves of correcting past calculation errors through annual bandwidth proceedings.<sup>477</sup> The approach adopted here is by no means a mere substitution of wholly new depreciation rates in place of actual data for 2005 through 2009. Rather, it is a replacement of wholly unauthorized rates with the rates that were authorized in the first instance by LPSC as the retail regulator of ELL, and in the second instance by FERC in its 1992 Audit Report of ELL and later reaffirming decisions. This approach fits comfortably within the limited arena made available by the Commission for challenging the recurring bandwidth calculation filings,<sup>478</sup> while the ordinary avenues for seeking tariff changes under FPA sections 205 or 206 remain open.<sup>479</sup>

220. The Commission has made clear that it will “order refunds for imprudent costs charged to customers through an existing formula rate.”<sup>480</sup> The Commission has further pointed out that it has “rejected attempts to limit the timeframe for prudence inquiries” and that it will address such challenges no matter when they are brought to its attention because it recognizes that “customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.”<sup>481</sup>

221. Accordingly, it is within the purview of this Fourth Bandwidth Proceeding, and adopted here, for the Commission to order: 1) ELL to revise and refile its FERC Form 1s for test years 2005 through 2009 in accordance with the findings reached here; 2) Entergy to revise and refile its 2010 Bandwidth Filing in accordance with the refiled test year 2009 FERC Form 1 and the findings reached here; and 3) Entergy to calculate the revised transfer payments and receipts among the Operating Companies for test years 2005 through 2008, in accordance with the refiled FERC Form 1s for those years and the

---

<sup>477</sup> Second Clarification Order, 145 FERC ¶ 61,049 at P 10.

<sup>478</sup> First Clarification Order, 137 FERC ¶ 61,019 at P 13; Second Clarification Order, 145 FERC ¶ 61,049 at P 8 & n.22.

<sup>479</sup> Second Clarification Order, 145 FERC ¶ 61,049 at P 11; *accord*, First Clarification Order, 137 FERC ¶ 61,019 at P 12 (Parties “are not deprived of the opportunity to raise any issues before this Commission. They just have to raise them in the proper forum—bandwidth filings to raise whether the required formula inputs were correctly applied in the bandwidth calculation and section 206 complaints or section 205 filings to raise whether the formula is just and reasonable.”).

<sup>480</sup> Second Clarification Order, 137 FERC ¶ 61,019 at P 10 (internal quotation marks omitted).

<sup>481</sup> *Id.*

findings reached here, so that the appropriate refunds can be made to correct the excess amortization ELL recorded for the Waterford 3 sale/leaseback expense in years 2005 through 2008. This Initial Decision, which addresses the Fourth Bandwidth Proceeding, is not ordering that all of the filings pertaining to the prior bandwidth proceedings must be redone. However, it is ordering that the necessary recalculations and refunds be made for those prior years, given that the aforementioned Commission precedent does not timebar the recoveries that flow from the Waterford 3 sale/leaseback issue raised in this bandwidth proceeding.

**D. Issue Four: Whether ESI should be required to include an entry in the bandwidth calculation for contra-securitization ADIT related to storm restoration costs?**

**1. Positions of the Parties**

**a. Entergy**

222. Entergy states that it should not be required to include an entry for contra-securitization ADIT in the bandwidth formula computation.<sup>482</sup> Entergy argues that such an entry is not needed, nor appropriate, for the purpose of offsetting the casualty loss ADIT that is included in the 2010 Bandwidth Filing.<sup>483</sup> Entergy notes that while contra-securitization ADIT and casualty loss ADIT are both related to storm costs, they are not the result of one another.<sup>484</sup> Entergy states that the bandwidth input of storm cost casualty loss ADIT arose from investments that were already on the books of the Entergy Operating Companies by the time a storm hit.<sup>485</sup> In contrast, storm cost contra-securitization ADIT is related to costs that were incurred post-storm.<sup>486</sup> Entergy states that these post-storm costs are restoration costs that were securitized, whereas the earlier set of costs were not financed by securitization.<sup>487</sup> Given that these are two separate categories of costs, which have significant differences in terms of their temporality and securitization statuses, Entergy argues that LPSC's proposal to offset casualty loss ADIT

---

<sup>482</sup> Ex. ESI-113 at 4 (Peters).

<sup>483</sup> *Id.* at 4-5 (Peters).

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> *Id.*

<sup>487</sup> Ex. ESI-125 at 5.

by including additional contra-securitization ADIT in the 2010 Bandwidth Filing is in error.<sup>488</sup>

223. Entergy questions LPSC's "ever evolving set of allegations of why contra-securitization ADIT should be included in the Bandwidth Calculation"<sup>489</sup> and in particular questions LPSC's assertion that it should be included in order to offset liberalized depreciation ADIT on assets that were financed via securitization.<sup>490</sup> Entergy also notes that Staff has also joined LPSC in this argument.<sup>491</sup>

224. Entergy attempts to dispel this argument by highlighting the disparity in amounts between the liberalized depreciation ADIT figures and the contra-securitization ADIT figures, noting that the latter is bigger by a factor of at least two to one.<sup>492</sup> Entergy concludes that these respective figures do not offset each other nor were intended to offset each other, and that therefore "no portion of the contra-securitization ADIT" should be included in the 2010 Bandwidth Filing.<sup>493</sup> Entergy also relies on the tax principle of "basis" to support its position, contending that the contra-assets have no tax basis, while the restoration assets do.<sup>494</sup> Pursuant to this distinction, Entergy advocates that the contra-asset is not really an asset, and therefore no contra-securitization ADIT offset is necessary.<sup>495</sup>

#### **b. LPSC**

225. LPSC states that when Entergy accounted for plant costs that were securitized, it recorded these amounts as ADIT on its accounting books, and then also proceeded to include these same amounts in the 2010 Bandwidth Filing.<sup>496</sup> For this same plant, LPSC

---

<sup>488</sup> Ex. ESI-113 at 4-5 (Peters).

<sup>489</sup> Entergy Reply Br. at 35.

<sup>490</sup> *Id.* at 36 (citing LPSC Initial Br. at 45-46).

<sup>491</sup> *Id.* (citing Staff Initial Br. at 41-42).

<sup>492</sup> *Id.*

<sup>493</sup> *Id.* at 36-37.

<sup>494</sup> *Id.* at 37.

<sup>495</sup> *Id.*

<sup>496</sup> LPSC Initial Br. at 43.

also states that Entergy made contra entries on its accounting books to properly reflect their status as securitized, but failed to include these offsetting contra amounts into the 2010 Bandwidth Filing.<sup>497</sup> LPSC alleges that this is a “mismatch” and that contra-securitization ADIT must be included in the 2010 Bandwidth Filing to cure this mismatch.<sup>498</sup>

226. LPSC specifically highlights this mismatch with respect to the ADIT recorded for liberalized depreciation, which was defined at the hearing as accelerated depreciation for plant that was securitized.<sup>499</sup> LPSC states that Entergy’s methodology to account for securitized storm loss costs was as follows: record accounting entries for ADIT that resulted from liberalized depreciation, include these same ADIT amounts in the bandwidth calculations, but then not include in the bandwidth calculations the contra-securitization ADIT amounts for this same liberalized depreciation.<sup>500</sup>

227. LPSC states that this specifically played out with respect to Subaccount 282.111, whereby the entire liberalized depreciation ADIT balance of this subaccount was included in the Account 282 balance for bandwidth purposes.<sup>501</sup> For instance, LPSC identifies that \$68 million of ADIT, stemming from liberalized depreciation on securitized plant, is reflected for ELL in the 2010 Bandwidth Filing, but that no corresponding contra-securitization amounts for this liberalized depreciation are included for ELL in the same bandwidth filing.<sup>502</sup> LPSC alleges that the absence of this latter bandwidth formula input causes the bandwidth formula to artificially lower ELL’s rate base and production costs, thereby harming a specific subset of ratepayers.<sup>503</sup> In essence, LPSC argues that Entergy eliminated certain securitized assets from its books and then proceeded to include ADIT from those assets in the bandwidth formula. This incongruent treatment thereby requires the contra-securitization ADIT entries for which LPSC is advocating for inclusion.

---

<sup>497</sup> *Id.*

<sup>498</sup> *Id.* at 46.

<sup>499</sup> *Id.* at 45-46; Tr. at 240:20-24 (Roberts).

<sup>500</sup> LPSC Initial Br. at 45-46.

<sup>501</sup> Tr. at 240:20-241:18 (Roberts).

<sup>502</sup> *See id.* at 240:20-241:13 (Roberts).

<sup>503</sup> LPSC Initial Br. at 45-46.

228. LPSC had initially relied on casualty loss ADIT as the primary premise for its arguments on this issue (contending that the inclusion of casualty loss ADIT in the bandwidth formula thereby required the inclusion of offsetting contra-securitization ADIT entries),<sup>504</sup> however in the late stages of this proceeding LPSC largely departed from this line of argument and instead now proceeds under the liberalized depreciation theory articulated above.<sup>505</sup> However, despite this focus on liberalized depreciation ADIT, LPSC still claims that the “mismatch goes further” and requests that all contra-securitization ADIT be included in the 2010 Bandwidth Filing.<sup>506</sup>

**c. APSC**

229. APSC states that an entry for contra-securitization ADIT is not required.<sup>507</sup> APSC adopts the arguments made by Entergy on this issue and disagrees with the position of LPSC on this issue.<sup>508</sup>

**d. Staff**

230. While Staff initially submitted no testimony nor took any position on this issue,<sup>509</sup> Staff’s initial and reply briefs reflect a change in course and present a new proposal.<sup>510</sup> Staff essentially has two primary contentions.

231. First, Staff endorses Entergy’s position that the 2010 Bandwidth Filing should not wholly offset casualty loss ADIT through the inclusion of a contra-securitization ADIT entry.<sup>511</sup> Staff observes that these respective ADIT balances arise from two separate and distinct cost categories and that they are not related to each other in a fashion such that

---

<sup>504</sup> *Id.* at 42-46.

<sup>505</sup> LPSC Reply Br. at 29-33.

<sup>506</sup> LPSC Initial Br. at 46.

<sup>507</sup> APSC Initial Br. at 20.

<sup>508</sup> *Id.*; APSC Reply Br. at 19.

<sup>509</sup> Active Parties March 12, 2014 Joint Statement of Positions at 11.

<sup>510</sup> *See* Staff Initial Br. at 37-44.

<sup>511</sup> *Id.* at 37.

they should be netted against one another.<sup>512</sup> Therefore, Entergy's 2010 Bandwidth Filing contains no error for specifically failing to include contra-securitization ADIT entries for the purpose of offsetting casualty loss ADIT.<sup>513</sup>

232. Second, Staff does argue that certain contra-securitization ADIT amounts should be included in the 2010 Bandwidth Filing for the purpose of offsetting a different cost, capitalized storm restoration costs that were securitized.<sup>514</sup> Staff states that Entergy included ADIT for this category of securitized costs in its bandwidth calculations, but failed to include the corresponding and needed contra-securitization ADIT entries for these amounts in the 2010 Bandwidth Filing.<sup>515</sup> Staff states the Entergy completely excluded the contra-securitization ADIT balances of Accounts 282.475 and 282.476 from the 2010 Bandwidth Filing.<sup>516</sup> However, Staff states that a portion of each of those accounts is related to contra-assets included Account 101 and liberalized depreciation included in Account 108, both of which were in fact included in the 2010 Bandwidth Filing.<sup>517</sup> Therefore, the contra-securitization ADIT balances for these two respective categories should be included in the 2010 Bandwidth Filing.<sup>518</sup>

## 2. Discussion and Conclusion

233. The issue of "contra-securitization ADIT" evolved from the application over time of a rule in the bandwidth formula that defines the "ADIT" variable of the formula. ADIT, or "accumulated deferred income taxes," for all of an Operating Company's electric plant in service (i.e., production, transmission, distribution, and general plant) is allocated between production plant in service and all other electric plant in service.<sup>519</sup>

---

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Id.*; Staff Reply Br. at 28-29.

<sup>515</sup> Staff Initial Br. at 37; Staff Reply Br. at 28-29.

<sup>516</sup> Staff Initial Br. at 39 (citing Tr. at 152-153).

<sup>517</sup> *Id.* at 42-43.

<sup>518</sup> *Id.* at 42-44.

<sup>519</sup> *Entergy Servs., Inc.*, 145 FERC ¶ 61,047, at P 22 (2013) ("Entergy must functionalize the casualty loss ADIT amounts to production based on plant ratios, in accordance with the provisions of the bandwidth formula.") (footnote omitted).

The portion of ADIT that is allocated to production plant in service is subtracted from that Operating Company's production rate base in the bandwidth formula.<sup>520</sup>

234. The "ADIT" variable is defined in the section 30.12 of the bandwidth formula as follows (with certain words emphasized for subsequent discussion):

ADIT = Net Accumulated Deferred Income Taxes (ADIT) recorded in FERC Accounts 190, 281 and 282 (**as reduced by amounts not generally and properly includable for FERC cost of service purposes**, including but not limited to, SFAS 109 ADIT amounts and ADIT amounts arising from retail ratemaking decisions) plus Accumulated Deferred Investment Tax.Credit -- 3% portion only recorded in FERC Account 255<sup>521</sup>

235. In the First Bandwidth Proceeding for the 2006 test year, Entergy interpreted this rule to permit it to remove from the "ADIT" variable certain ADIT entries of each Operating Company that it deemed not to be "generally and properly includable for FERC cost of service purposes." Several such accounts, Entergy claimed, did not figure into current taxable income of the Operating Companies and therefore were deemed not to be recoverable in customer rates.<sup>522</sup>

236. As a general rule, the deferral of payment of income taxes that are nevertheless collected currently from ratepayers tends to free up a company's current capital for financial use. For that reason, rate formulas usually subtract accumulated deferred income tax liability from rate base in order to lower the debt service costs that ratepayers would otherwise bear.<sup>523</sup> Conversely, in the years that deferred tax liabilities finally get paid, the payments are added to rate base as that capital is depleted.

---

<sup>520</sup> Ex. ESI-103 at 17-22 (bandwidth formula calculation); Ex. ESI-107 at 52-58 (System Agreement, section 30.12).

<sup>521</sup> Ex. ESI-107 at 53 (System Agreement, section 30.12, definition of "ADIT").

<sup>522</sup> Exs. MC-4 & MC-5 from Docket No. ER07-956-001.

<sup>523</sup> See FERC, *Cost of Service Rates Manual* 12 (June 1999), available at <http://ferc.gov/industries/gas/gen-info.asp> ("We deduct ADIT from rate base because we perceive these 'prepaid' dollars to be an investment by the ratepayers which is used by the pipeline to finance its capital investment. The effect of this credit is to reduce the cost of providing service to ratepayers by an amount equal to the deferred income taxes multiplied by the overall rate of return. ADIT associated with other cost and revenues affecting the cost of service are also deducted from rate base.").

237. As all ADIT, regardless of its source, consists of federal and state income taxes that ratepayers pay, it stands to reason that all ADIT amounts should be attributable to rate base regardless of its business source.<sup>524</sup> However, Entergy took the position in the first and all subsequent bandwidth proceedings that some ADIT amounts should not be included in the rate base of the Operating Companies for the purpose of computing bandwidth transfer payments and receipts, a position that the Commission has accepted.<sup>525</sup> For test year 2009, this exclusion has reduced the rate bases of all of the Operating Companies by almost \$702 million, a substantial saving in production costs to all Entergy ratepayers when taken as a whole.<sup>526</sup>

238. Nevertheless, the Commission has held that some ADIT entries *should be included* in the “ADIT” variable of the bandwidth formula. In particular, the Commission decided to include certain ADIT entries that were associated with storm damage costs incurred by the Operating Companies from Hurricanes Katrina and Rita in 2005. Toward this end, the Commission in the First and Third Bandwidth Proceedings required the inclusion of ADIT that was recorded in Account 190 and generated by the net operating loss carry-forwards (NOL Carry-forwards) of certain Operating Companies, and also required the inclusion of ADIT in Account 282 that was generated by casualty losses.<sup>527</sup>

---

<sup>524</sup> See *id.* (“ADIT associated with other cost and revenues affecting the cost of service are also deducted from rate base.”).

<sup>525</sup> Opinion No. 505, 130 FERC ¶ 61,023 at P 233 (holding that section 30.12 instructs Entergy to remove “amounts not generally and properly includable for FERC cost of service purposes” and that Entergy’s exclusion of ADIT amounts is fully consistent with bandwidth formula); *accord*, Opinion No. 514, 137 FERC ¶ 61,029 at P 117 n.193 (same); Opinion No. 518, 139 FERC ¶ 61,105 at P 85 (same).

<sup>526</sup> The total of all “Other” balances for Accounts 190 and 282 on the 2009 bandwidth formula workpapers of the Operating Companies equals a net debit of \$701,710,556. See Ex. ESI-103 at 95, 97 (EAI), 100, 102 (EGSL), 106, 107 (ELL), 110, 111 (EMI), 114, 115 (ENO), 117 and 119 (ETI). As a net debit, this ADIT amount would increase rate base if it were included, thereby raising overall production costs. The facts of this case do not make clear whether this excluded ADIT is borne by ratepayers or shareholders through charges other than production charges.

<sup>527</sup> Opinion No. 505, 130 FERC ¶ 61,023 at P 234; Opinion No. 518, 139 FERC ¶ 61,105 at P 88.

239. Generally, the federal tax code provides that net operating losses of a corporation may be carried back two years and carried forward twenty years to offset otherwise taxable income.<sup>528</sup> Hence, the deferred tax saving is a timing difference that generates ADIT. Casualty losses are deducted in the tax year that they are experienced and the losses reduce the basis in the affected property.<sup>529</sup> Hence, there is an ordinary income tax saving in the year of the loss and a deferred tax liability on any capital gain in a subsequent year in which the affected property is disposed of, thus creating the timing difference that results in ADIT.<sup>530</sup>

240. The Operating Companies' NOL Carry-forwards arose out of the damage that they sustained from back-to-back Hurricanes Katrina, Gustav, Ike, and Rita.<sup>531</sup> According to the Commission Opinion No. 505 concerning the First Bandwidth Proceeding:

[T]hese storm damage costs are properly recorded in Account 182.3 and must be amortized to the appropriate functional O&M expense accounts as the costs are recovered in rates. To the extent storm damage costs are amortized to expense accounts included in the bandwidth calculation (production storm damage expense), such costs are included in a Commission cost of service rate. Therefore, consistent with Service Schedule MSS-3, ADIT for NOL carryforwards associated with production storm damage expenses may not be excluded from the bandwidth calculation.<sup>532</sup>

---

<sup>528</sup> 26 U.S.C. § 172(b)(1)(A).

<sup>529</sup> *Tadych v. Rubin*, 97-C-0383, 1999 WL 1090820, at \*7 (E.D. Wis. Sept. 30, 1999) (“[W]here a casualty loss is allowed, the basis of the property must be reduced by the amount of the allowable deduction.”); *Winter v. Comm’r*, 46 T.C.M. (CCH) 1480 n.3 (1983) (Cost basis reduced by virtue of the casualty loss deduction taken for the tax year of the loss.).

<sup>530</sup> See 26 U.S.C. § 1016.

<sup>531</sup> Tr. at 215:4-16 (Roberts).

<sup>532</sup> Opinion No. 505, 130 FERC ¶ 61,023 at P 234.

Applying the same reasoning in the Third Bandwidth Proceeding, the Commission in Opinion No. 518 required casualty loss ADIT that was associated with storm damage to be included in the bandwidth calculation as well.<sup>533</sup>

241. Since the Commission's decisions on these ADIT entries, LPSC has sought to have more excluded ADIT entries included in the bandwidth calculation whenever doing so would boost ELL's bandwidth transfer receipts. The irony of this position, of course, is that the LPSC thus advocates the inclusion into production costs of items that ratepayers otherwise wouldn't pay at all because ELL has excluded them. Moreover, the LPSC advocates the payment of these costs by (typically) Arkansas ratepayers, whose interests the LPSC does not represent.<sup>534</sup>

242. Among the largest of such contra-securitization ADIT line items are those that are found in two sub-accounts of ADIT Account 282, "Accumulated deferred income taxes – Other property": Sub-account 282475 for "Contra-securitization – Federal" and Sub-account 282476 for "Contra-securitization -- State."<sup>535</sup> In test year 2009, these entries appear in each of the ADIT listings of EGSL, ELL, EMI, and ETI.<sup>536</sup>

243. Including these sub-accounts in the ratemaking balance of the bandwidth formula's "ADIT" variable would have the net effect of increasing the bandwidth formula rate bases of EGSL, ELL, and ETI, and generating enhanced bandwidth receipts for them at the expense of their sister Operating Companies.<sup>537</sup> By contrast, including EMI's version of these sub-accounts would decrease its rate base,<sup>538</sup> potentially reducing its bandwidth payment or even turning it into a net bandwidth payer. EAI, usually the lowest production cost Operating Company of the Entergy system, and ENO, would be

---

<sup>533</sup> Opinion No. 518, 139 FERC ¶ 61,105 at P 88.

<sup>534</sup> For a general discussion of the countervailing impact that a decrease in ELL's bandwidth production costs would have on Arkansas ratepayers, *see* Tr. at 189:21-190:21 (Peters).

<sup>535</sup> Ex. ESI-103 at 102, 107, 111, & 119 (Workpaper Nos. 4.2.4, 4.3.3, 4.4.3, and 4.6.3).

<sup>536</sup> *Id.* (Workpaper Nos. 4.2.4, 4.3.3, 4.4.3, and 4.6.3). ETI has only Sub-account 282475 for "Contra-securitization – Federal" because Texas has no state income tax. EAI and ENO have no contra-securitization sub-accounts.

<sup>537</sup> *Id.* (Workpaper Nos. 4.2.4, 4.3.3, and 4.6.3); Tr. at 204:1-2 (Peters).

<sup>538</sup> Ex. ESI-103 at 111 (Workpaper No. 4.4.3); Tr. at 204:20-22 (Peters).

required to make higher bandwidth payments because they have no contra-securitization ADIT entries.

244. In the Third Bandwidth Proceeding, after the initial decision included casualty loss ADIT in the bandwidth formula (apparently to the surprise of LPSC),<sup>539</sup> LPSC argued to the Commission on review of the initial decision that the inclusion should not have been made.<sup>540</sup> In the alternative, LPSC contended, if casualty loss ADIT was to be included in the bandwidth formula, then contra-securitization ADIT should be included as well because the latter was meant to offset the former.<sup>541</sup> The Commission demurred on this point, finding that LPSC “has not explained how [contra-securitization] ADIT amounts arise or demonstrated why they are ‘generally and properly includable for FERC cost of service purposes’.”<sup>542</sup>

245. A “securitization,” in general terms, is a financial transaction in which “an owner of a pool of receivables conveys them, directly or through an intermediary, to a trust or other legal entity, which in turn issues securities backed by those assets.”<sup>543</sup>

246. During the Third Bandwidth Proceeding, an Entergy expert explained how securitization is used by the Operating Companies as a tool for financing and recovering their extraordinary storm losses:

When [storm] costs are securitized those costs are not included in the “cost of service.” Rather the storm costs are effectively sold to another entity that thereby acquires the right to recover those costs. Consequently, those costs and related tax effects are not includable in the cost of service.<sup>544</sup>

---

<sup>539</sup> *Entergy Servs., Inc.*, 132 FERC ¶ 63,005, at P 277 (2010) (“The entire amount of the NOL ADIT is to be included in the calculations, and there is no logical argument for treating Casualty Loss ADIT any differently. Therefore, all Casualty Loss ADIT will be included in the Bandwidth formula calculation as well.”).

<sup>540</sup> Opinion No. 518, 139 FERC ¶ 61,105 at PP 68-71.

<sup>541</sup> *Id.* P 70.

<sup>542</sup> *Id.* P 89.

<sup>543</sup> James M. Peaslee and David Z. Nirenberg, *Taxation of Securitization Transactions* 1 (3d Ed. 2001) (Peaslee and Nirenberg).

<sup>544</sup> Ex. ESI-29 at 13:10-15 from Docket No. ER09-1224 (Louiselle Final Test.) (March 23, 2010).

247. A contra-securitization ADIT line item offsets ADIT that is generated by assets that are transferred to the securitizing “special purpose entity.” The contra-securitization ADIT effectively reduces that transferred ADIT to zero, thereby taking that ADIT off the company’s books to the same extent as if it were simply erased from them.<sup>545</sup>

248. According to LPSC in the present case, contra-securitization ADIT was generated by virtue of the securitization of storm costs by EGSL, ELL, and ETI. When these Operating Companies securitized their storm damage costs, they “sold” these costs, so to speak, to a “special purpose entity.”<sup>546</sup> However, instead of directly removing these costs from their accounting books when the underlying assets were transferred to the special purpose entity for securitization purposes, the Companies left the costs on their accounting books and “zeroed them out” by creating offsetting “contra” accounting entries.<sup>547</sup>

249. LPSC claims that the Operating Companies specifically created contra-plant, contra-depreciation expense, and contra-accumulated depreciation sub-accounts on its books in order to offset the plant, depreciation expense, and accumulated depreciation accounts that were sold off to the special purpose entity for securitization. The contra-plant, contra-depreciation expense, and contra-accumulated depreciation sub-accounts allowed Entergy to leave the original plant, depreciation expense, and accumulated depreciation amounts on the Operating Companies’ books even though they were now under the control of the special purpose entity.<sup>548</sup> In a similar fashion, the Operating Companies also created contra-ADIT entries called “Contra-securitization – Federal” (No. 282475) and “Contra-securitization – State” (No. 282476) in order to offset the ADIT amounts that these assets and expenses still generated on the Operating Companies’ books after they had been transferred to the special purpose entity.<sup>549</sup>

250. LPSC initially maintained here, as it did in the Third Bandwidth Proceeding, that if casualty loss ADIT continues to be included in the bandwidth calculation, then Entergy

---

<sup>545</sup> See Entergy Initial Br. at 34.

<sup>546</sup> Ex. LC-101 at 19:17-19 (Kollen Dir. and Ans. Test.).

<sup>547</sup> *Id.* at 19:20-23.

<sup>548</sup> *Id.* at 19:23-20:4; *see also* Ex. LC-115 through LC-117.

<sup>549</sup> See Tr. at 243:2-13 (Roberts).

should also include these two contra-securitization ADIT entries on the books of EGSL, ELL, and ETI in order to offset those casualty loss ADIT entries.<sup>550</sup>

251. Entergy countered that the casualty loss entries of EGSL, ELL, and ETI that are included in the bandwidth calculation were not securitized and therefore did not spawn the contra-securitization ADIT entries that LPSC points to.<sup>551</sup> Specifically, Entergy argued that the Operating Companies did not securitize casualty losses as they did the other storm restoration costs that were incurred following the hurricanes.<sup>552</sup> Entergy agreed with LPSC that there is a relationship between casualty loss ADIT and contra-securitization ADIT in that both amounts are associated with storm costs.<sup>553</sup> However, Entergy maintained, they are not the result of one another.<sup>554</sup>

252. According to Entergy, the casualty loss ADIT arising from storm costs is associated with the investment on the Operating Company's books *at the time of* the storm, whereas the contra-securitization ADIT entries arising from storm costs are associated with costs that were incurred *after* the storm, and thus constitute different types of costs that do not offset the casualty loss ADIT.<sup>555</sup> Entergy claimed that the contra-securitization ADIT entries represent "financed storm restoration costs," and as such are not "generally and properly includable for FERC cost of service purposes."<sup>556</sup> Therefore, Entergy does not include them in the bandwidth calculation.<sup>557</sup>

253. At the post-hearing briefing stage of this proceeding, LPSC changed course away from casualty loss ADIT as its means for incorporating contra-securitization ADIT into the bandwidth calculation. LPSC turned its attention instead to "liberalized depreciation" ADIT, which is also included in the bandwidth calculation, as the vehicle for introducing contra-securitization ADIT into the mix. "Liberalized depreciation" represents the

---

<sup>550</sup> See Ex. LC-101 at 18:16-22 (Kollen Dir. and Ans. Test.).

<sup>551</sup> Entergy Initial Br. at 33-34.

<sup>552</sup> *Id.* at 33; Ex. ESI-125 at 5:13-20 (Roberts Reb. Test.).

<sup>553</sup> Entergy Initial Br. at 33; Ex. ESI-113 at 4:9-13 (Peters Reb. Test.).

<sup>554</sup> Ex. ESI-113 at 4:20-22.

<sup>555</sup> Entergy Initial Br. at 33; Ex. ESI-113 at 4:18-5:13.

<sup>556</sup> Entergy Initial Br. at 33; Ex. ESI-113 at 4:18-5:13.

<sup>557</sup> Entergy Initial Br. at 33; Ex. ESI-113 at 4:18-5:13.

difference between accelerated depreciation that is taken for tax purposes and straight-line depreciation that is charged to ratepayers.<sup>558</sup>

254. Relying on the cross-examination testimony of Entergy's tax expert, Roberts, LPSC now argues that Account No. 282475 should be included in the bandwidth calculation for the purpose of offsetting ADIT entries for liberalized depreciation; specifically, Sub-account No. 282111, representing the amount of liberalized depreciation that is applied to federal taxes.<sup>559</sup> Although Staff took no position on any aspect of the contra-securitization issue in its pre-hearing brief and asked Roberts no questions on this issue,<sup>560</sup> it supports LPSC's new position on liberalized depreciation in its Post-hearing Brief.<sup>561</sup>

255. LPSC and Staff point to Entergy responses to data requests and the cross-examination of Roberts to show that certain liberalized depreciation ADIT amounts relate to securitized assets of certain Operating Companies, yet remained in Account 282 of these Companies at the end of 2009 even though the underlying assets were securitized.<sup>562</sup> These ADIT amounts were \$8,566,189 for EGSL, \$68,434,702 for ELL, and \$41,624,310 for ETI.<sup>563</sup> According to LPSC, the contra-securitization accounts should be included in the bandwidth calculation in order to offset these securitized ADIT amounts.

256. Entergy's exclusion of contra-securitization ADIT has been the *status quo* of the past three annual bandwidth proceedings.<sup>564</sup> Consequently, as explained earlier in this Initial Decision, Entergy bears no burden of proving that the continued exclusion of

---

<sup>558</sup> See Tr. at 233:8-24 (Roberts).

<sup>559</sup> LPSC Initial Br. at 42-46; *see also* Ex. ESI-103 at 102, 107, & 119; Ex. LC-160, 161, & 162; Tr. at 235:3-243:13 (Roberts).

<sup>560</sup> Tr. at 243:21-22 (Staff).

<sup>561</sup> Staff Initial Br. at 37-44.

<sup>562</sup> See Ex. LC-160 (ELL), Ex. LC-161 (EGSL), and Ex. LC-162 (ETI); Tr. at 240:16-243:13 (Roberts).

<sup>563</sup> *Id.*

<sup>564</sup> See *Entergy Servs., Inc.*, Second Bandwidth Filing, Workpapers 4.2.4, 4.3.3, and 4.4.3 (May 30, 2008); Third Bandwidth Filing, Workpapers 4.2.4, 4.3.3, 4.4.3, and 4.6.3 (May 29, 2009).

contra-securitization ADIT is just and reasonable.<sup>565</sup> Instead, it is LPSC and Staff's burden to prove here that Entergy's existing practice of excluding contra-securitization ADIT from the bandwidth calculation is unjust and unreasonable, and that including it in whole or in part would be just and reasonable. LPSC and Staff's contention toward this end is that contra-securitization ADIT must be included in the bandwidth calculation in order to offset ADIT that is also included in that calculation but has been securitized, or that securitized ADIT should not be in the bandwidth calculation at all.

257. There are certain accounts—No. 101 for Plant in Service, No. 108 for Accumulated Depreciation, and No. 403 for Depreciation Expense—that contain contra-entries for assets and expenses that were securitized. Those contra-entries, in effect, zeroed out those assets and expenses from the summations in each of these accounts. Hence, the securitized entries have no impact on the bandwidth calculation. For this to be so, the securitized entries *and* their corresponding contra-entries must be included as line items that make up components of those summations.<sup>566</sup>

258. By contrast, in ADIT Account 282, the contra-entries for securitized ADIT-sub-account No. 282475 for “Contra-securitization – Federal” and No. 282476 for “Contra-securitization – State”—are *not* included in the bottom-line summations of EGSL, ELL, and ETI that form components of the bandwidth calculation.<sup>567</sup> Entergy has insisted without dispute that the casualty loss ADIT entries that LPSC originally pointed to are not, in fact, the securitized assets that correspond to the contra-securitization ADIT entries in Account 282 at all.<sup>568</sup> Entergy's tax expert, Roberts, testified at the hearing that casualty loss tax deductions are not securitized.<sup>569</sup> Thus, the casualty loss ADIT that is included in the bandwidth calculation *cannot* be the corresponding entry to the contra-securitization ADIT amounts in question.

259. According to LPSC and Staff, bandwidth entries for liberalized depreciation ADIT for EGSL, ELL, EMI, and ETI in Account No. 282111<sup>570</sup> *do* mirror at least a part of

---

<sup>565</sup> *City of Winnfield, La. v. FERC*, 744 F.2d 871, 877 (D.C. Cir. 1984).

<sup>566</sup> *See* Tr. at 156:19-160:11 (Peters).

<sup>567</sup> *Id.* at 160:12-161:14 (Peters).

<sup>568</sup> *See* Entergy Initial Br. at 33-34; Ex. ESI-113 at 4:9-5:13 (Peters Reb. Test.).

<sup>569</sup> Tr. at 225:9-15 (Roberts).

<sup>570</sup> *See* Ex. ESI-103 at 102, 107, & 119.

contra-securitization ADIT accounts 282475.<sup>571</sup> On the ADIT workpapers of each Operating Company, the line item for “Liberalized Depreciation – Federal,” Account 282111, appears as a credit balance in the bandwidth calculation (that is, it is negative).<sup>572</sup> These credit balances, therefore, lower income taxes in 2009 by deferring them to future years.<sup>573</sup> For bandwidth calculation purposes, these credit balances are included in the bandwidth calculation, lower production rate base for each Operating Company, and thereby increase its bandwidth payment to sister Companies.

260. EAI, EMI, and ENO also have 2009 credit balances in Account 282111 on their ADIT workpapers.<sup>574</sup> They, too, are included in the bandwidth calculation, lower income taxes in 2009 by deferring them to future years, and lower production rate base with the effect of increasing bandwidth payments to sister Companies. EAI and ENO, however, have no contra-securitization ADIT Account 282475 in 2009.<sup>575</sup> This means, of course, that EAI, EMI, and ENO had no underlying assets that were securitized.

261. In its reply brief, Entergy attempted to explain why Entergy does not apply contra-securitization ADIT to offset the ADIT entries in Account 282111 for EGSL, ELL, and ETI for liberalized depreciation on securitized assets.<sup>576</sup> According to Entergy, the reason why there is no offset is because, in Entergy’s words:

The contra-asset has no tax basis—it cost nothing to create. On the other hand, the restoration asset does quite clearly have a tax basis—that physical asset quite clearly has a cost. Contra-securitization ADIT was not established to offset other ADIT... [c]ontra-securitization ADIT is

---

<sup>571</sup> LPSC Initial Br. at 44-45; Staff Initial Br. at 41-42.

<sup>572</sup> See Ex. ESI-103 at 102 (EGSL Workpaper 4.2.4), 107 (ELL Workpaper 4.3.3) and 119 (ETI Workpaper 4.6.3); Tr. at 204:1-2 (Peters) (“[I]n our accounting system, debits are positive and credits are negative.”).

<sup>573</sup> 18 C.F.R. Pt. 101, USofA Account 282 (“This account shall be credited . . . where taxable income is lower than pretax accounting income due to [timing differences].”).

<sup>574</sup> Ex. ESI-103 at 96 (EAI Workpaper 4.1.3), 111 (EMI Workpaper 4.4.3), and 115 (ENO Workpaper 4.5.3).

<sup>575</sup> *Id.* at 96 (EAI Workpaper 4.1.3) and 115 (ENO Workpaper 4.5.3).

<sup>576</sup> Entergy Reply Br. at 36-38.

calculated directly on the contra-asset itself.... The contra-asset is not really an asset. It's an entry to remove the asset.<sup>577</sup>

262. Perhaps the best way to sort out both sides' tortured thinking is to parse the phrase "contra-securitization ADIT" into its component parts as each side sees it. According to Entergy, the entries in Accounts 282475 and 282476 for contra-securitization ADIT are *ADIT* computations on *contra entries* that were input to Entergy's accounts in order to zero-out *securitized assets* as a way to effectively remove them from the books. By contrast, according to LPSC and Staff, these entries are *contra* computations on *ADIT entries* that are derived from *securitized assets* that have been removed from the books by the application of yet other contra entries.

263. Looking first at Entergy's spin on it, contra entries are artificial constructs; they represent no real cost. It is a mystery, then, as to why Entergy would calculate tax on contra entries at all, much less deferred tax. Entergy fails to explain why the entries in Accounts 282475 and 282476 even exist. Entergy does not suggest that Entergy ratepayers as a whole should be saddled with paying these additional production costs by including them in the bandwidth calculation.

264. Looking next at LPSC and Staff's spin, securitized assets are *not* artificial constructs; they are real, tangible objects. According to Entergy, they have been zeroed out on Entergy's books, and therefore no ADIT generated by them should appear in the bandwidth calculation. Nevertheless, Entergy includes in the bandwidth calculation ADIT computations on securitized assets from Account 282111 for EGSL, ELL and ETI.<sup>578</sup> Entergy's explanation for this contradiction is opaque at best.

265. At the end of the day, the only dispositive criterion for including or excluding an ADIT item from the bandwidth calculation is whether that ADIT item is "generally and properly includable for FERC cost of service purposes."<sup>579</sup> LPSC and Staff have shown that Entergy's own methodology requires ADIT generated by securitized assets, including the liberalized depreciation ADIT entries, to be "zeroed out" by contra-entries. Hence, liberalized depreciation ADIT entries for securitized assets are not "generally and properly includable" in the bandwidth calculation. The just and reasonable solution, then, is to offset those liberalized depreciation ADIT inputs from Account 282111 by equal

---

<sup>577</sup> *Id.* at 37 (internal punctuation omitted).

<sup>578</sup> Tr. at 240:10-242:9 (Roberts); Ex. LC-160; Ex. LC-161; Ex. LC-162.

<sup>579</sup> Opinion No. 518, 139 FERC ¶ 61,105 at P 85; Opinion No. 514, 137 FERC ¶ 61,029 at P 117 n.193; Opinion No. 505, 130 FERC ¶ 61,023 at P 233.

contra inputs that are deducted from “Contra-securitization – Federal” ADIT in Account 282475 of each Company, and to include that contra-amount in the bandwidth calculation for the 2009 test year.<sup>580</sup>

266. Of course, the total amount of contra-securitization ADIT that must be moved into the bandwidth calculation of each affected Operating Company does not turn out to be the entirety of the amount in Account 282475. Only enough contra-ADIT to offset the liberalized depreciation ADIT that is now in the bandwidth calculation must be transferred into the bandwidth calculation for each affected Operating Company. Accordingly, \$8,566,189 for EGSL, \$68,434,702 for ELL, and \$41,624,310 for ETI are all that are needed in order to offset<sup>581</sup> their respective ADIT amounts in Account 282111 that are included in the bandwidth calculation, and those amounts should be correspondingly deducted<sup>582</sup> from the contra-securitization ADIT amounts in Account 282475 that are not included in the bandwidth calculation for each Operating Company.<sup>583</sup>

## V. CONCLUSIONS

267. As to Issue One, it is found and concluded that while Entergy included the proper fuel inventory balance as an input to the bandwidth formula on a substantive basis, procedural modifications are required to the underlying accounts of EAI’s 2009 FERC Form 1 that are used in Entergy’s 2010 Bandwidth Filing. Accordingly, either of Staff’s alternative proposals that are detailed in this Initial Decision, as modified by Entergy’s recommendation to substitute Account 253 for Account 186, may be adopted. This adopted methodology for the preparation of EAI’s 2009 FERC Form 1 will result in a fuel inventory balance that shall serve as the direct input for the corresponding “FI” variable contained in Entergy’s 2010 Bandwidth Filing, eliminating the need for the prior adjustment represented by Workpaper 3.1.1., albeit reaching the same quantitative result.

---

<sup>580</sup> See Tr. at 156:19-160:11 (Peters).

<sup>581</sup> These offsets are accomplished by recording debits to Account 282111 in the stated amounts.

<sup>582</sup> These deductions are accomplished by recording credits to Account 282475 in the stated amounts.

<sup>583</sup> See Tr. at 156:19-160:11 (Peters).

268. As to Issue Two, it is found and concluded that even though Entergy did not obtain FERC approval prior to its transfer of casualty loss ADIT from Account 283 to Account 282, the transferred amounts are eligible as an ADIT input to the bandwidth formula and this treatment is in accord with the correct accounting and ratemaking result.

269. As to Issue Three, it is found and concluded that Entergy did not properly account for the amortization period for the Waterford 3 sale/leaseback. For years 2005 through 2009 ELL was required to use a 60 year amortization period for the Waterford 3 sale/leaseback, and its failure to do so constitutes an accounting error that is required to be corrected under the relevant Commission precedent cited in the body of this Initial Decision. To implement the necessary correction, the adopted methodology is the proposal presented by Staff, as modified by LPSC's year-by-year approach. Pursuant to the adopted methodology: 1) ELL must revise and refile its FERC Form 1s for test years 2005 through 2009; 2) Entergy must revise and refile its 2010 Bandwidth Filing in accordance with the refiled test year 2009 FERC Form 1; 3) Entergy must calculate the revised transfer payments and receipts among the Operating Companies for test years 2005 through 2008, in accordance with the refiled FERC Form 1s for those years, so that the appropriate refunds can be made to correct the excess amortization that ELL recorded for the Waterford 3 sale/leaseback expense in years 2005 through 2008.

270. As to Issue Four, it is found and concluded that Entergy must include certain amounts of contra-securitization ADIT in the bandwidth calculation. Specifically, contra-securitization ADIT must be included in the bandwidth calculation that suffices to offset liberalized depreciation ADIT that is included in the bandwidth calculation even though it is attributable to securitized assets. The respective amounts of contra-securitization ADIT that is to be included in the bandwidth formula are found to be \$8,566,189 for EGSL, \$68,434,702 for ELL, and \$41,624,310 for ETI. These amounts should be applied as offsets to the respective liberalized-depreciation ADIT entries in Account 282111 that are included in the bandwidth calculation, along with corresponding deductions to the contra-securitization ADIT amounts in Account 282475 that are not included in the bandwidth calculation.

## VI. ORDER

271. IT IS ORDERED, subject to review by the Commission on exceptions or on its own motion, as provided by the Commission Rules of Practice and Procedure,<sup>584</sup> that within 30 days of the issuance of the final Commission order in this proceeding, the

---

<sup>584</sup> See generally 18 C.F.R. §§ 385.708(d), 711(a).

participants shall comply with the findings and conclusions reflected in this Initial Decision, as adopted or modified by the Commission.

**SO ORDERED.**

Steven A. Glazer  
Presiding Administrative Law Judge