

169 FERC ¶ 61,247
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Louisiana Public Service Commission

Docket No. EL01-88-022

v.

Entergy Services, Inc.

ORDER DENYING REHEARING

(Issued December 27, 2019)

1. On May 30, 2019, the Commission issued an order¹ accepting Entergy Services, Inc.'s (Entergy) July 16, 2018 compliance filing required by Opinion No. 561.² Opinion No. 561 addressed rates filed by Entergy on behalf of the Entergy Operating Companies (Operating Companies),³ implementing the Commission's bandwidth formula for a seven-month period from June 1, 2005 through December 31, 2005, as required by a prior order.⁴

¹ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 167 FERC ¶ 61,186 (2019) (Compliance Order).

² *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 561, 163 FERC ¶ 61,116 (2018), *reh'g denied*, Opinion No. 561-A, 166 FERC ¶ 61,021 (2019).

³ The five Operating Companies involved in this proceeding were, at the time of the Louisiana Public Service Commission's (Louisiana Commission) initial complaint: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Louisiana, Inc. (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc. (Entergy New Orleans); and Entergy Gulf States, Inc. (Entergy Gulf States). At the end of 2007, Entergy Gulf States was split into Entergy Texas, Inc. (Entergy Texas) and Entergy Gulf States Louisiana, LLC (Entergy Gulf States Louisiana).

⁴ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 137 FERC ¶ 61,047, at P 34 (2011). As explained below, Entergy bandwidth calculation filings are annual filings to achieve rough production cost equalization among the Operating Companies participating

2. On June 28, 2019, the Louisiana Commission filed a request for rehearing of the Compliance Order.⁵ In this order, we deny the rehearing request.

I. Background

3. This proceeding has a lengthy and complex history which is summarized in the Compliance Order.⁶ As relevant here, this proceeding arose from a complaint filed by the Louisiana Commission against Entergy and the Operating Companies concerning the Entergy System Agreement's requirement that production costs be "roughly equal" among the Entergy Operating Companies. Upon review of an initial decision,⁷ in Opinion Nos. 480 and 480-A,⁸ the Commission determined that rough production cost equalization on the Entergy system had been disrupted, and that a numerical bandwidth of +/- 11 percent was an appropriate remedy. This remedy, usually referred to as the bandwidth remedy or bandwidth formula, changes the allocation of production costs among the Operating Companies on an annual basis to maintain rough production cost equalization. Following Opinion No. 480, Entergy submitted a compliance filing to include its proposed bandwidth formula as part of the System Agreement. The Commission accepted the bandwidth formula, to be applied prospectively for production

in the Entergy System Agreement (System Agreement). The System Agreement terminated in 2016.

⁵ Louisiana Commission June 28, 2019 Rehearing Request (Rehearing Request).

⁶ Compliance Order, 167 FERC ¶ 61,186 at PP 2-7.

⁷ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 106 FERC ¶ 63,012 (2004).

⁸ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 136, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006) (November 2006 Compliance Order), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007) (April 2007 Compliance Order), *aff'd in part and remanded in part sub nom. La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008) (Louisiana Remand), *order on remand*, 137 FERC ¶ 61,047 (2011) (2011 Order on Remand), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152 (2014) (2014 Order on Rehearing), *order denying reh'g*, 153 FERC ¶ 61,034 (2015), *remanded, La. Pub. Serv. Comm'n v. FERC*, 866 F.3d 426 (D.C. Cir. 2017) (affirming 2011 Order on Remand and 2014 Order on Rehearing).

costs incurred during calendar year 2006 and all calendar years thereafter.⁹ The bandwidth remedy provided that Entergy would submit an annual bandwidth calculation of the production costs for each Operating Company for that calendar year using data from the FERC Form 1, compared to the Entergy System average, to determine if the Operating Company's production costs deviated from the average by more than 11 percent.¹⁰

4. In its remand of Opinion Nos. 480 and 480-A, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the Commission had not provided a reasonable explanation for the Commission's decision to delay implementation of the bandwidth remedy until a full year of data had become available for the 2006 test year.¹¹ In the subsequent 2011 Order on Remand, the Commission held that it would implement the bandwidth remedy on June 1, 2005, the date the Commission issued Opinion No. 480, determining that the rates were unjust and unreasonable. The Commission directed Entergy to submit a compliance filing calculating the bandwidth payments and receipts for the period June 1, 2005 through December 31, 2005 (2005 period).¹²

5. On April 29, 2014, as amended on May 7, 2014 and May 23, 2014, Entergy submitted a compliance filing calculating bandwidth payments and receipts for the 2005 bandwidth period. On October 15, 2015, the Commission issued an order stating that Entergy's compliance filing raised issues of material fact and set the matter for hearing and settlement judge procedures.¹³ As relevant here, at hearing, Trial Staff conducted discovery into the accounting source of certain regulatory asset amounts recorded in Accounts 407.3 (Regulatory debits) and 407.4 (Regulatory credits) during calendar year 2005. Trial Staff found that the Operating Companies incorrectly used Accounts 407.3 and 407.4 during calendar year 2005 to record the establishment and/or amortization of certain regulatory assets where the source of the regulatory asset is specifically identifiable. Trial Staff specifically identified three regulatory assets that

⁹ See November 2006 Compliance Order, 117 FERC ¶ 61,203; April 2007 Compliance Order, 119 FERC ¶ 61,095.

¹⁰ See System Agreement, Service Schedule MSS-3, section 30.11.

¹¹ Louisiana Remand, 522 F.3d at 400.

¹² 2011 Order on Remand, 137 FERC ¶ 61,047 at P 34.

¹³ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 153 FERC ¶ 61,032 (2015), *reh'g denied*, 155 FERC ¶ 61,118 (2016), *aff'd*, *Ark. Pub. Serv. Comm'n v. FERC*, 712 F.App'x 3 (D.C. Cir. 2018).

were incorrectly accounted for using Accounts 407.3 and 407.4, which are excluded from the bandwidth calculation. Trial Staff determined that the regulatory debits and credits related to these items should be recorded in Account 555 (Purchased Power), which is a bandwidth eligible account.¹⁴ Trial Staff explained that in Opinion No. 505, the Commission found that when the source of a regulatory asset is identifiable, the Commission's Uniform System of Accounts (USofA) requires the entries establishing and amortizing a regulatory asset to be credited and charged to the same account that would have been charged if the item had been included in income when incurred.¹⁵ Following the hearing, on November 7, 2016, the Presiding Judge issued his initial decision adopting Trial Staff's recommendation.¹⁶

A. Opinion No. 561

6. On May 17, 2018, the Commission issued Opinion No. 561, affirming the Initial Decision, including the determination to change the accounting for the three regulatory asset deferrals at issue to a bandwidth eligible account. The Commission based its decision on the Commission's holding in Opinion No. 505.¹⁷ The Commission agreed with the Louisiana Commission that once accounting errors are shown to be relevant to the 2005 bandwidth calculation, the Operating Companies should be required to correct their FERC Form 1 reports for the three regulatory assets at issue for subsequent bandwidth test years, and make corresponding corrections to the bandwidth payments and receipts for those test years, to ensure that legitimate production costs are properly accounted for on the FERC Form 1s.¹⁸ The Commission also affirmed the Presiding Judge's determination that accounting corrections should be limited to accounting adjustments that have been shown to have a bandwidth implication.¹⁹ The Commission directed Entergy to revise and refile the Operating Companies' FERC Form 1s to correct the accounting for the regulatory assets for subsequent years, to "revise and refile" the bandwidth filings in accordance with the refiled FERC Form 1s, and to "calculate the

¹⁴ Opinion No. 561, 163 FERC ¶ 61,116 at P 97.

¹⁵ *Id.* P 98 (*citing* Opinion No. 505, 130 FERC ¶ 61,023, at PP 261-63 (2010)).

¹⁶ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 157 FERC ¶ 63,018 (2016) (Initial Decision).

¹⁷ Opinion No. 561, 163 FERC ¶ 61,116 at P 119 (*citing* Opinion No. 505, 130 FERC ¶ 61,023 at PP 262-63).

¹⁸ *Id.* P 121.

¹⁹ *Id.* P 120.

revised tariff payments and receipts among the Operating Companies for the test years affected.”²⁰

B. Compliance Filing and Protest

7. On July 16, 2018, Entergy filed its compliance filing containing the comprehensive bandwidth recalculation report showing the payment/receipt amounts based on the 2005 period (June 1 through December 31, 2005) data, including workpapers (Entergy Compliance Filing). The Entergy Compliance Filing also contained the recalculation report showing revised payment/receipt amounts based on 2006 and 2007 data following accounting corrections directed by the Commission in Opinion No. 561.²¹

8. Entergy stated that, consistent with the Commission’s directive in Opinion No. 561, Entergy corrected the accounting for the three identified regulatory asset deferrals for the 2005 period and the associated amortization in 2006 and 2007. Entergy asserted that, beginning with the 2008 bandwidth calculation, the bandwidth formula was amended (2009 Amendment)²² to require purchased power costs to be reflected in the year in which they are incurred.²³ Entergy stated that, specifically, the definition of Purchased Power Expense (PURP) was modified to exclude “the effects, debits and credits, resulting from a regulatory decision that causes the deferral of the recovery of costs or the amortization of previously deferred costs.”²⁴ Entergy contended that, therefore, in bandwidth calculations for years subsequent to 2007, accounting changes associated with the regulatory assets identified in Opinion No. 561 were not relevant to the bandwidth calculation.²⁵

²⁰ *Id.* P 121.

²¹ Entergy Compliance Filing at 12-13.

²² The Commission accepted the 2009 Amendment with an effective date of May 31, 2009. *Entergy Servs., Inc.*, 128 FERC ¶ 61,069 (2009). Entergy filed the 2008 bandwidth calculation on May 29, 2009. Entergy, Filing of Rates to Implement Opinion Nos. 480 and 480-A, Docket No. ER09-1224-000 (filed May 29, 2009).

²³ Entergy Compliance Filing at 7 n.37.

²⁴ *Id.* (citing *Entergy Servs., Inc.*, 128 FERC ¶ 61,069 at P 6).

²⁵ *Id.*

9. On August 6, 2018, the Louisiana Commission protested the filing, explaining that, in Opinion No. 561, the Commission ordered Entergy to change the 2005 deferrals of the three regulatory assets from Accounts 407.3 and 407.4 to Account 555 and to reflect the related amortization of the deferred costs in subsequent years in Account 555 as well.²⁶ The Louisiana Commission stated that Entergy did so for 2006 and 2007, but did not do so for 2008 and 2009. The Louisiana Commission contended that this adjustment violated the Commission's instructions to reflect the changes "for any subsequent years."²⁷

II. Compliance Order and Rehearing Request

10. On May 30, 2019, the Commission issued the Compliance Order, accepting Entergy's accounting changes. The Commission agreed with Entergy that the 2009 Amendment to the bandwidth formula was directly relevant as to whether the amortizations for 2008 and 2009 should be included in the bandwidth calculations for those years. The 2009 Amendment revised the definition of variable PURP in the bandwidth formula to include the following language:

PURP = Purchased Power Expense recorded in FERC Account 555, but excluding payments made pursuant to Section 30.09(d) of this Service Schedule *and excluding the effects, debits and credits, resulting from a regulatory decision that causes the deferral of the recovery of current year costs or the amortization of previously deferred costs.*²⁸

11. The Commission found that, because the 2009 Amendment was in effect for the 2008 and 2009 bandwidth calculations, any revisions to the accounting for the 2005 regulatory asset deferrals for 2008 and 2009 would have had no effect on the bandwidth payments and receipts for those years. Accordingly, given the Commission's directive in Opinion No. 561 that accounting corrections should be limited to adjustments that have a bandwidth implication, the Commission found that Entergy was correct to revise the accounting for the 2005 regulatory assets for only the test periods in which

²⁶ Louisiana Commission August 6, 2018 Protest at 4 (*citing* Opinion No. 561, 163 FERC ¶ 61,116 at P 121).

²⁷ *Id.*

²⁸ Entergy, Filing to Amend the System Agreement, Docket No. ER09-1185-000, Attached First Revised Sheet No. 54 (emphasis added) (filed May 21, 2009) (2009 Filing Letter).

those adjustments would have a bandwidth implication – the 2005, 2006, and 2007 periods.²⁹

12. The Commission noted that the 2009 Amendment was the filed rate for the 2008 and 2009 bandwidth calculations and Entergy had no discretion in making accounting adjustments for 2008 and 2009.³⁰ The Commission also stated that not making accounting adjustments for 2008 and 2009 did not constitute retroactive application of the 2009 Amendment because if Entergy had, for 2008 and 2009, reclassified amortization related to the three regulatory assets deferrals from Accounts 407.3 and 407.4 to Account 555, and then recalculated bandwidth payments and receipts for 2008 and 2009 without excluding that amortization, its calculation would have violated the filed rate for those test years.³¹ The Commission also dismissed the Louisiana Commission's argument that the Commission should take into consideration the fact that if this proceeding had not been delayed, the accounting would have been corrected long before the filing of the 2008 bandwidth calculation. The Commission stated that, in a compliance proceeding, the Commission considers only whether the filing complies with the underlying order.³²

13. On June 28, 2019, the Louisiana Commission filed its rehearing request.

III. Discussion

A. Interpretation of the 2009 Amendment

14. On rehearing, the Louisiana Commission argues that the Compliance Order arbitrarily adopts an interpretation of the 2009 Amendment to the bandwidth formula that is at odds with the parties' intent, the explanatory filing by Entergy Services, and a settlement that was filed and approved by the Commission.³³ Specifically, the Louisiana Commission argues that the Compliance Order interprets the 2009 Amendment to apply prospectively to deferrals commencing in 2008, but to amortizations related to deferrals

²⁹ Compliance Order, 167 FERC ¶ 61,186 at P 25.

³⁰ *Id.* P 27.

³¹ *Id.* P 28.

³² *Id.* P 29.

³³ Rehearing Request at 4-12.

that occurred prior to 2008.³⁴ The Louisiana Commission states that the Commission's interpretation of the 2009 Amendment conflicts with statements made in the settlement that led to the 2009 Amendment (Settlement Agreement)³⁵ and Entergy's 2009 Filing Letter that accompanied the 2009 Amendment.³⁶

15. The Louisiana Commission explains that the Settlement Agreement made no mention of excluding the amortizations of prior year deferrals. The Louisiana Commission asserts that the Settlement Agreement applied to costs and deferrals going forward, beginning in the 2008 test year used for the 2009 bandwidth calculation to ensure that "all purchased power costs will be included in the bandwidth calculation in the year the costs are incurred."³⁷ The Louisiana Commission points to section 7.3 of the Settlement Agreement to support its point:

ESI will make a Section 205 filing amending MSS-3 starting with the 2009 Bandwidth Calculation (*i.e.*, effective May 31, 2009) to provide that all purchased power costs will be included in the Bandwidth Calculation in the year the costs are incurred, regardless of whether they are deferred on the individual Operating Company's books.³⁸

16. The Louisiana Commission further argues that Entergy stated in its 2009 Filing Letter that the 2009 Amendment applied only to "new deferrals beginning in 2008."³⁹ The Louisiana Commission reasons that since the 2009 Amendment applied for the first time to "2008 costs," to both the "debits and credits" resulting from each deferral decision, and did not apply to pre-2008 deferrals, it could not apply to the debits resulting

³⁴ *Id.* at 1.

³⁵ Entergy, Offer of Settlement, Docket No. ER08-1056-002 (filed May 21, 2009). The Settlement Agreement is an uncontested partial settlement concerning the 2008 and 2009 bandwidth calculations filed by Entergy on behalf of the Arkansas Public Service Commission, the Council of the City of New Orleans, the Louisiana Commission, the Mississippi Public Service Commission, East Texas Cooperatives, and the Texas Industrial Energy Consumers.

³⁶ Rehearing Request at 7-8 (*citing* 2009 Filing Letter at 5 n.15).

³⁷ *Id.* at 1-2, 5-7.

³⁸ *Id.* at 6 (*citing* Louisiana Commission August 8, 2018 Protest, Attachment 2, section 7.3 of the Settlement Agreement).

³⁹ *Id.* at 2, 4-5.

from the 2005 deferral. The Louisiana Commission maintains that the Commission adopted an imbalanced interpretation of the 2009 Amendment that disconnects the “debits” from the “credits” resulting from a regulatory decision.

17. The Louisiana Commission also asserts that extrinsic evidence demonstrates that the 2009 Amendment was never intended to apply to the amortization of past deferrals.⁴⁰ In addition to its own witness, the Louisiana Commission points to testimony of Trial Staff witness John Sammon to argue that no one contemplated that the 2009 Amendment might be used to exclude the amortization of a past deferral.⁴¹ The Louisiana Commission also references testimony of Entergy witness Bruce Louiselle who stated that, “if the Commission were to accept [Trial Staff witness’] accounting recommendation for purposes of the June 1, 2005 through December 31, 2005 test period used in this proceeding, it should be necessary to recalculate the compliance filing for at least the Bandwidth test years 2006, 2007, and 2008.”⁴²

18. We deny rehearing. We are not persuaded that statements in the Settlement Agreement and the 2009 Filing Letter are dispositive of our determination here, nor are we persuaded by the statements made at the hearing regarding the parties’ intent. In the 2009 Amendment, Entergy modified the definition of variable PURP in the bandwidth formula to exclude current year deferrals as well as amortization associated with prior period deferrals from variable PURP. In accordance with this amendment, in its compliance filing, Entergy excluded amortization associated with the 2005 regulatory asset deferrals that occurred in the 2008 and 2009 bandwidth periods because doing so allowed Entergy to follow the applicable filed rate. While the Louisiana Commission claims that the Settlement Agreement made no mention of excluding amortization of prior years’ deferrals and the 2009 Filing Letter indicated the amendment would only apply to “new deferrals beginning in 2008,” the 2009 Amendment expressly states that PURP excludes “the *amortization of previously deferred costs*.”⁴³

19. The Louisiana Commission is now taking issue with the language of the filed rate that it previously supported,⁴⁴ pointing to isolated statements in the record to reinterpret that language. The Commission is cognizant that, when the 2009 Amendment was

⁴⁰ *Id.* at 9-10.

⁴¹ *Id.* at 10 (*citing* Tr. 357-58).

⁴² *Id.* at 9 (*citing* ESI-28 at 14-15).

⁴³ *See supra* P 10 (quoting 2009 Filing Letter, First Revised Sheet No. 54).

⁴⁴ *Entergy Servs., Inc.*, 128 FERC ¶ 61,069 at P 4.

introduced, parties may not have anticipated that accounting corrections stemming from a bandwidth calculation for the 2005 period would impact bandwidth test years for which the 2009 Amendment was applicable, and that this possibility was not addressed in the 2009 Filing Letter or Settlement Agreement. However, we cannot ignore the express language of the filed rate. That language – which no party protested⁴⁵ – excludes the amortization of previously deferred costs. The statements at hearing do not persuade us to interpret the language differently, and as the Commission has stated previously, in the event of a conflict between pleadings and proposed tariff language, the tariff language controls.⁴⁶

20. We also disagree with the Louisiana Commission’s contention that the Commission’s interpretation of the 2009 Amendment disconnects the “debits” from the “credits” resulting from a regulatory decision.⁴⁷ The Commission correctly interpreted the 2009 Amendment to apply both prospectively to newly established deferrals beginning in 2008 as well as amortizations that occurred in the 2008 and 2009 bandwidth periods, stemming from a previously established deferral. We recognize that, due to the express language of the 2009 Amendment, amortized amounts relating to the 2005 deferral were not fully captured in the bandwidth formula. However, as the Commission explained in the Compliance Order, to the extent any costs were not fully captured, that is the result of the application of the filed rate in effect in 2008 and 2009.⁴⁸ The Louisiana Commission has provided no argument on rehearing to persuade us that the 2009 Amendment, the filed rate, should not be followed.

B. Compliance Requirements

21. On rehearing, the Louisiana Commission argues again that Entergy did not comply with the requirement in Opinion No. 561 to include amortization for any subsequent

⁴⁵ *Id.*

⁴⁶ See *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,253, at P 6 (2018) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,149, at P 25 (2013); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,154, at P 10 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,268, at n.8 (2009); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,095, at P 22 (2008)).

⁴⁷ Rehearing Request at 8.

⁴⁸ Compliance Order, 167 FERC ¶ 61,186 at P 26.

years after the 2005 deferral.⁴⁹ The Louisiana Commission asserts that the Commission misinterpreted Opinion No. 561 in finding Entergy in compliance because the 2009 Amendment was not even discussed in Opinion No. 561.⁵⁰ We are not persuaded by this argument. As the Commission stated in the Compliance Order, Opinion No. 561 directed that changes in accounting with regard to the three regulatory assets should be reflected in rates under the filed formula.⁵¹ For 2008 and 2009, the filed formula includes the 2009 Amendment. We maintain that it is appropriate to follow the filed rate, regardless of whether the Commission specifically identified the 2009 Amendment in its compliance directive.

22. Similarly, we are not persuaded by the Louisiana Commission's contention that the Compliance Order erred in stating that there was a "directive in Opinion No. 561 that accounting corrections should be limited to adjustments that have a bandwidth implication."⁵² Pointing to the Commission's directive concerning Entergy Arkansas' Grand Gulf purchased power energy regulatory asset, the Louisiana Commission explains that while the Commission held that accounting corrections were unnecessary for accounts not in the bandwidth formula, the Commission also held that accounting corrections "are necessary for accounts in the formula even if the tariff excludes the

⁴⁹ Rehearing Request at 19-21. The Louisiana Commission points to the following passage in Opinion No. 561 to support its point:

However, we agree with the Louisiana Commission that once accounting errors are shown to be relevant to the 2005 bandwidth calculation, the Operating Companies should be required to correct their FERC Form 1 reports for the three regulatory assets at issue for subsequent bandwidth test years, and make corresponding corrections to the bandwidth payments and receipts for those test years, to ensure that legitimate production costs are properly accounted for on the FERC Form 1 reports and reflected in rates under the filed formula.

Opinion No. 561, 163 FERC ¶ 61,116 at P 121.

⁵⁰ Rehearing Request at 19-20.

⁵¹ Compliance Order, 167 FERC ¶ 61,186 at P 26 (*citing* Opinion No. 561, 163 FERC ¶ 61,116 at P 123) ("We also affirm the Presiding Judge's determination that accounting corrections should be limited to accounting adjustments that have been shown to have a bandwidth implication.")).

⁵² Rehearing Request at 21 (*citing* Compliance Order, 167 FERC ¶ 61,186 at P 25).

costs at issue.”⁵³ Specifically, in Opinion No. 561, the Commission stated, in reference to Grand Gulf, “[a]lthough this accounting change will not change the results of the bandwidth calculation, because Account 555 is a bandwidth-eligible account, Entergy must nevertheless correct its accounting to help ensure that the bandwidth calculation will be populated with the correct inputs.”⁵⁴

23. We recognize that the correction required for Grand Gulf differs from the Commission’s directive to limit accounting corrections to those adjustments that have a bandwidth implication. In hindsight, the Commission did not need to require the correction as to Grand Gulf because such correction did not impact the bandwidth payments and receipts.⁵⁵ In any event, this point is irrelevant to the Louisiana Commission’s request that amortization associated with the 2005 regulatory asset deferrals that occurred in the 2008 and 2009 bandwidth periods be included in the compliance filing at issue here. The 2009 Amendment required Entergy to exclude current year deferrals as well as amortization associated with prior period deferrals from variable PURP. Because the 2009 Amendment was in effect for the 2008 and 2009 bandwidth calculations, any revisions to the accounting for the 2005 regulatory asset deferrals for 2008 and 2009 would have had no effect on the bandwidth payments and receipts for those years. Thus, we affirm that it was appropriate for Entergy to follow the filed rate in effect and to limit its accounting revisions, for purposes of its compliance filing, to the 2005, 2006 and 2007 bandwidth periods.

C. Nature of the Proceeding

24. On rehearing, the Louisiana Commission asserts that any unjust results in the bandwidth calculation in this proceeding result from the Commission’s unlawful delay of the bandwidth remedy.⁵⁶ The Louisiana Commission explains that had this proceeding not been delayed, it would have preceded other bandwidth proceedings, particularly the 2008 bandwidth calculation proceeding. The Louisiana Commission argues that, when

⁵³ *Id.* (citing Opinion No. 561, 163 FERC ¶ 61,116 at P 123).

⁵⁴ Opinion No. 561, 163 FERC ¶ 61,116 at P 123.

⁵⁵ As noted by the Louisiana Commission, the System Agreement explicitly excludes the costs at issue from the bandwidth formula. *See* System Agreement, Service Schedule MSS-3, section 30.12, n.1 (excluding from the bandwidth formula “the [Entergy Arkansas] and [Entergy Mississippi] retail approved Grand Gulf Accelerated Recovery Tariff effects on purchased power on [Entergy Arkansas] and [Entergy Mississippi] production cost”).

⁵⁶ Rehearing Request at 13.

the accounting for the deferral was corrected, the accounting for subsequent years would have been as well. The Louisiana Commission contends that, therefore, there would be no possibility of an “incomplete” correction because the 2009 Amendment would have explicitly provided for the recognition of the amortization of past deferrals.⁵⁷

25. The Louisiana Commission also argues that the Compliance Order fails to consider the Commission’s power to correct the unjust consequences of its own legal error by relying on the fact that this is a compliance proceeding.⁵⁸ The Louisiana Commission asserts that the Commission’s Federal Power Act (FPA) section 309⁵⁹ power is not constrained by the nature of the proceeding because “[t]he Commission is obligated to correct the unjust consequences of its delay of the remedy in any proceeding in which the consequence arises.”⁶⁰

26. We are not persuaded by these arguments. As the Commission previously stated, in a compliance proceeding, the Commission considers only whether the filing complies with the underlying order.⁶¹ Based on the Commission’s directive in Opinion No. 561, affirming the Presiding Judge’s determination that accounting corrections should be limited to accounting adjustments that have been shown to have a bandwidth implication,⁶² the parties reasonably should have and could have anticipated that Entergy would prepare – and Entergy did, in fact, prepare – its compliance filing in accordance with the applicable bandwidth formula which, for 2008 and 2009, includes the 2009 Amendment. However, even if this proceeding were not limited to only compliance-related issues, we cannot presume – as the Louisiana Commission asks – that the text of the 2009 Amendment would have been different if the 2005 bandwidth calculation at issue in Opinion No. 561 had been conducted at an earlier date. The 2009 Amendment

⁵⁷ *Id.* at 14.

⁵⁸ *Id.* at 12-21.

⁵⁹ 16 U.S.C. § 825h (2018).

⁶⁰ Rehearing Request at 12; *see also id.* at 14-16 (citing *TNA Merch. Products, Inc. v. FERC*, 857 F.3d 354 (D.C. Cir. 2017); *Xcel Energy Servs. v. FERC*, 815 F.3d 947 (D.C. Cir. 2016)).

⁶¹ Compliance Order, 167 FERC ¶ 61,186 at P 29 (citing *ISO New England Inc.*, 133 FERC ¶ 61,013, at P 22 (2010)).

⁶² Opinion No. 561, 163 FERC ¶ 61,116 at P 120.

is part of the filed rate for 2008 and 2009, and Entergy was required to comply with its terms when preparing its compliance filing.

27. In addition, we find the Louisiana Commission's arguments regarding FPA section 309 to be misplaced. Even assuming that Entergy was not required to adhere to the 2009 Amendment, we are not persuaded that FPA section 309 requires a different result here.⁶³ The decision whether to direct remedial relief is discretionary,⁶⁴ based on the Commission's evaluation of the relevant equities.⁶⁵ As noted above, the Commission is cognizant that, when the 2009 Amendment was introduced, parties may not have expected that accounting corrections stemming from a bandwidth calculation for the 2005 period would impact bandwidth test years for which the 2009 Amendment was applicable, and that this possibility was not addressed in the 2009 Filing Letter or Settlement Agreement. That said, there is no suggestion that the parties lacked adequate notice of the 2009 Amendment. Nor do we agree with the Louisiana Commission that the timing of this proceeding warrants additional remedial relief. As explained above, the Louisiana Commission's arguments concerning delay incorrectly presume that the 2009 Amendment would have been different if the 2005 bandwidth calculation required by Opinion No. 561 had been conducted at an earlier date.

D. Retroactive Ratemaking

28. Finally, we disagree with the Louisiana Commission's argument that applying the 2009 Amendment to debits resulting from the 2005 deferral constitutes retroactive ratemaking.⁶⁶ The Louisiana Commission argues that it is impermissibly retroactive to apply the 2009 Amendment to some debits resulting from a 2005 deferral, but none of the credits.⁶⁷ The Louisiana Commission also states that the 2009 Amendment applies to deferral *decisions* because the 2009 Amendment excludes the effects "resulting from a

⁶³ 16 U.S.C. § 825h ("to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate *to carry out the provisions of this [Act]*") (emphasis added).

⁶⁴ The Louisiana Commission is incorrect that FPA section 309 "obligates" the Commission to provide its requested relief. *See La. Pub. Serv. Comm'n v. FERC*, 772 F.3d 1297, 1302-03 (D.C. Cir. 2014).

⁶⁵ *See Xcel Energy Servs. Inc. v. FERC*, 815 F.3d at 955 (remanding for the Commission to consider the relevant equities in deciding whether to order refunds).

⁶⁶ Rehearing Request at 22-23.

⁶⁷ *Id.* at 22.

regulatory decision that causes the deferral of the recovery of current years costs or the amortization of previously deferred costs.”⁶⁸ The Louisiana Commission asserts that applying the 2009 Amendment to a decision made prior to the amendment is retroactive ratemaking.⁶⁹

29. As noted above, we disagree with the Louisiana Commission’s interpretation of the 2009 Amendment and reiterate that the 2009 Amendment applies both prospectively to newly established deferrals beginning in 2008 as well as amortizations that occurred in the 2008 and 2009 bandwidth periods, stemming from a previously established deferral.⁷⁰ We do not view this as retroactive ratemaking. Instead, application of the 2009 Amendment is a straightforward recognition of the bandwidth formula rate, the applicable rate, in effect for 2008 and 2009. As the Commission explained in the Compliance Order:

If, for 2008 and 2009, Entergy had reclassified amortization related to the three regulatory assets deferrals from Accounts 407.3 and 407.4 to Account 555, and then recalculated bandwidth payments and receipts for 2008 and 2009 without excluding that amortization, its calculation would have violated the filed rate for those test years. No party at hearing argued that the effective date or application of the 2009 Amendment should be reopened or altered, and the Commission did not direct Entergy to disregard the 2009 Amendment when following the Commission’s directives in Opinion No. 561.⁷¹

30. The Louisiana Commission’s citation to *Transwestern Pipeline Co. v. FERC* to support its retroactive ratemaking argument is similarly unpersuasive.⁷² In that case, the court ruled that the Commission could not adopt a new rate imposing liability for rate undercollections accrued prior to the notice of the new rate.⁷³ However, here, there is no notice issue with regard to the 2009 Amendment because the Louisiana Commission, as

⁶⁸ *Id.* at 23 (emphasis in pleading).

⁶⁹ *Id.*

⁷⁰ *See supra* P 20.

⁷¹ Compliance Order, 167 FERC ¶ 61,186 at P 28.

⁷² Rehearing Request at 23 (citing *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570 (D.C. Cir. 1990) (*Transwestern Pipeline*)).

⁷³ *Transwestern Pipeline*, 897 F.2d at 580.

a timely intervenor in the proceeding,⁷⁴ was aware of both the 2009 Amendment and its effective date as early as June 11, 2009. In fact, the 2009 Amendment and its effective date were supported by all parties in the proceeding, including the Louisiana Commission.⁷⁵ The fact that parties may not have been able to predict that the 2009 Amendment would eventually prevent accounting corrections from the 2005 test period from being included in subsequent-year bandwidth calculations does not allow us to ignore the filed rate for test years 2008 and 2009. Accordingly, the Louisiana Commission has not persuaded us to alter the Commission's previous findings.

The Commission orders:

The rehearing request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁴ Louisiana Public Service Commission, Notice of Intervention and Comments, Docket No. ER09-1185-000, at 2 (filed June 11, 2009).

⁷⁵ *Entergy Servs., Inc.*, 128 FERC ¶ 61,069 at P 4.