

149 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Entergy Services, Inc.	Docket Nos. ER14-2085-000
Entergy Services, Inc.	ER11-3658-000
Entergy Services, Inc.	ER12-1920-000
Entergy Services, Inc.	ER13-1595-000
Louisiana Public Service Commission	EL10-65-000 (consolidated)

v.

Entergy Corporation
Entergy Services, Inc.
Entergy Louisiana, LLC
Entergy Arkansas, Inc.
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Gulf States Louisiana, L.L.C.
Entergy Texas, Inc.

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES AND CONSOLIDATING
PROCEEDINGS

(Issued December 18, 2014)

1. On May 30, 2014, pursuant to section 205 of the Federal Power Act (FPA),¹
Entergy Services, Inc. (Entergy), as agent and on behalf of the Entergy Operating

¹ 16 U.S.C. § 824e (2012).

Companies (collectively, Operating Companies),² submitted its eighth annual bandwidth filing under Service Schedule MSS-3 of the Entergy System Agreement (System Agreement), to implement the Commission's directives in Opinion Nos. 480 and 480-A.³ In this order, we accept Entergy's proposed rates for filing, suspend them for a nominal period, to become effective June 1, 2014, as requested, subject to refund, and set them for hearing and settlement judge procedures. We also reinstitute the hearing procedures that the Commission previously held in abeyance in Entergy's three prior bandwidth proceedings in Docket Nos. ER11-3658-000, ER12-1920-000 and ER13-1595-000,⁴ and bandwidth-related complaint proceeding in Docket No. EL10-65-000,⁵ and consolidate those proceedings here. Finally, we establish settlement judge procedures to facilitate resolution of all five dockets before consolidated hearing procedures begin.

I. Background

2. In Opinion Nos. 480 and 480-A, the Commission found that the System Agreement no longer produced rough production cost equalization, and ordered

² The Operating Companies are Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Texas, Inc. (Entergy Texas) and Entergy New Orleans, Inc. (Entergy New Orleans).

³ *Louisiana. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (Opinion No. 480), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A), *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), *order on remand*, 137 FERC ¶ 61,047 (2011), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152, *order rejecting compliance filing*, 146 FERC ¶ 61,153 (2014).

⁴ *See Entergy Servs., Inc.*, 136 FERC ¶ 61,057 (2011) (Entergy's fifth annual bandwidth filing); *Entergy Servs., Inc.*, 140 FERC ¶ 61,111 (2012) (Entergy's sixth annual bandwidth filing); *Entergy Servs., Inc.*, 144 FERC ¶ 61,167 (2013) (Entergy's seventh annual bandwidth filing).

⁵ *See Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,104 at PP 38-39 (2010) (EL10-65-000 Complaint Order). The Commission is concurrently issuing separate orders in these Complaint dockets to reinstitute hearings on the issues previously held in abeyance. *Louisiana Pub. Serv. Comm'n v. Entergy Corp., et al.*, 149 FERC ¶ 61,245 (2014).

modifications designed to maintain roughly equal production costs between the Operating Companies within +/-11 percent of the system-wide average.⁶ The Commission directed that any equalization payments between Operating Companies begin in June 2007, after a full calendar year of data became available,⁷ and specified that “future production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26.”⁸ In its compliance filing implementing these directives, Entergy included the formulas for implementing the rough production cost equalization bandwidth remedy in Service Schedule MSS-3.⁹

3. On May 27, 2007, in Docket No. ER07-956-000, Entergy submitted its first annual bandwidth implementation filing under Service Schedule MSS-3, based on calendar year 2006 data (the 2007 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2007, subject to refund.¹⁰ The Commission also established hearing and settlement judge procedures, which produced an initial decision that the Commission affirmed in part and reversed in part in Opinion No. 505.¹¹ Entergy submitted a compliance filing in response

⁶ Opinion No. 480, 111 FERC ¶ 61,311 at PP 144-145; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 46.

⁷ Opinion No. 480, 111 FERC ¶ 61,311 at P 145; Opinion No. 480-A, 113 FERC ¶ 61,282 at PP 53-55.

⁸ Opinion No. 480, 111 FERC ¶ 61,311 at P 33. Exhibit ETR-28 provides the back-up data for Exhibit ETR-26.

⁹ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006).

¹⁰ *Entergy Servs., Inc.*, 120 FERC ¶ 61,094 (2007).

¹¹ *Entergy Servs., Inc.*, 124 FERC ¶ 63,026 (2008), *aff'd in part and rev'd in part*, Opinion No. 505, 130 FERC ¶ 61,023 (2010).

to Opinion No. 505 on March 12, 2010. On May 7, 2012, the Commission issued Opinion No. 505-A¹² and also accepted Entergy's Opinion No. 505 compliance filing, subject to a further compliance filing,¹³ which Entergy submitted on June 6, 2012.¹⁴

4. On May 30, 2008, in Docket No. ER08-1056-000, Entergy submitted its second annual bandwidth implementation filing based on calendar year 2007 data (the 2008 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2008, subject to refund.¹⁵ The Commission also established hearing and settlement judge procedures. The parties submitted a partial uncontested settlement that the Presiding Judge certified on June 19, 2009.¹⁶ The Presiding Judge issued an initial decision on the remaining issues on September 9, 2009.¹⁷ On October 7, 2011, the Commission issued Opinion No. 514, which affirmed in part and reversed in part the Presiding Judge's findings, and required a compliance filing.¹⁸

¹² *Entergy Servs., Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

¹³ *Entergy Servs., Inc.*, 139 FERC ¶ 61,104 (2012). Entergy sought rehearing of the Commission's order on compliance, which the Commission subsequently addressed in an order on rehearing. *Entergy Servs., Inc.*, 145 FERC ¶ 61,046 (2013).

¹⁴ By letter order issued October 16, 2013, the Commission accepted the portion of Entergy's June 6, 2012 Opinion No. 505 compliance filing that revised Entergy's accounting for the Spindletop gas storage facility, but directed a further compliance filing regarding the accumulated deferred income taxes (ADIT) associated with net operating loss carry-forwards. Entergy made the required compliance filing on November 15, 2013. The Commission accepted Entergy's compliance filing by letter order issued July 31, 2014. *Entergy Servs., Inc.*, 148 FERC ¶ 61,086 (2014).

¹⁵ *Entergy Servs., Inc.*, 124 FERC ¶ 61,101 (2008).

¹⁶ The Commission approved the partial uncontested settlement on August 24, 2009. *Entergy Servs., Inc.*, 128 FERC ¶ 61,181 (2009).

¹⁷ *Entergy Servs., Inc.*, 128 FERC ¶ 63,015 (2009).

¹⁸ *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011), *order on reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013 (2013), *aff'd, La. Pub. Serv. Commn. v. FERC*, 761 F.3d 540 (5th Cir. 2014). Entergy submitted its Opinion No. 514 compliance filing on December 6, 2011, and the Commission accepted the compliance filing on January 3, 2013. *Entergy Servs., Inc.*, 142 FERC ¶ 61,011 (2013). Entergy

(continued...)

5. On May 29, 2009, in Docket No. ER09-1224-000, Entergy submitted its third annual bandwidth implementation filing based on calendar year 2008 data (the 2009 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2009, subject to refund.¹⁹ The Commission also established hearing and settlement judge procedures. Following a hearing in April 2010, the Presiding Judge issued an initial decision on August 5, 2010.²⁰ On May 7, 2012, the Commission issued Opinion No. 518, which affirmed the Presiding Judge's findings in part, found that others had been rendered moot, and required a compliance filing.²¹ Entergy made the required compliance filing on July 6, 2012. On October 16, 2013, the Commission issued an order on the compliance filing and directed Entergy to make a subsequent compliance filing, which it did on November 15, 2013.²²

6. On May 27, 2010, in Docket No. ER10-1350-000, Entergy submitted its fourth annual bandwidth implementation filing based on calendar year 2009 data (the 2010 bandwidth calculation). The Commission accepted the rates for filing, suspended them for a nominal period and made them effective June 1, 2010, subject to refund.²³ The Commission also established hearing and settlement judge procedures and, noting the other pending bandwidth-related cases, directed the Presiding Judge not to allow relitigation of issues that are the subject of other proceedings pending before the Commission.²⁴

sought rehearing of the Commission's order on compliance, which the Commission subsequently addressed in an order on rehearing. *Entergy Servs., Inc.*, 148 FERC ¶ 61,087 (2014).

¹⁹ *Entergy Servs., Inc.*, 128 FERC ¶ 61,091 (2009).

²⁰ *Entergy Servs., Inc.*, 132 FERC ¶ 63,005 (2010).

²¹ *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012), *order on reh'g*, 145 FERC ¶ 61,047 (2013).

²² Entergy's compliance filing was accepted by delegated letter order issued August 5, 2014. *Entergy Services, Inc.*, Docket No. ER09-1224-006 (Aug. 5, 2014) (delegated letter order).

²³ *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 (2010).

²⁴ *Id.* P 26.

7. On January 20, 2011, as supplemented on February 7, 2011, Entergy moved to strike testimony filed by the Louisiana Public Service Commission (Louisiana Commission) witnesses in the 2010 bandwidth calculation proceeding in Docket No. ER10-1350-000, on grounds that their testimony relitigated issues already being considered in other proceedings. On January 28, 2011, the Presiding Judge issued an order to show cause why the proceeding should not be stayed, pending the issuance of Commission decisions on the previous bandwidth calculation cases. Following initial and reply briefs, the Presiding Judge issued an order on March 3, 2011 holding the hearing in Docket No. ER10-1350-000 in abeyance until the Commission rules on the issues pending before it in other bandwidth calculation and complaint proceedings.²⁵ On September 18, 2013, the active parties filed a joint motion to lift the stay and establish a procedural schedule. The Presiding Judge lifted the stay on October 18, 2013, held hearings from March 26, 2014 through March 28, 2014, and issued his Initial Decision on September 19, 2014.²⁶

8. On May 27, 2011, in Docket No. ER11-3658-000, Entergy submitted its fifth annual bandwidth implementation filing based on calendar year 2010 data (the 2011 bandwidth calculation). On July 26, 2011, the Commission accepted the proposed rates for filing and suspended them to become effective on June 1, 2011, subject to refund.²⁷ The Commission also established hearing procedures, but held the hearing in abeyance pending action on the annual updates from prior years in order to prevent the relitigation of issues that are the subject of other proceedings pending before the Commission.²⁸

9. On May 31, 2012, in Docket No. ER12-1920-000, Entergy submitted its sixth annual bandwidth implementation filing based on calendar year 2011 data (the 2012 bandwidth calculation). On August 6, 2012, the Commission accepted the proposed rates

²⁵ *Entergy Servs., Inc.*, 134 FERC ¶ 63,018 (2011) (Stay Order). On March 21, 2011, the Louisiana Commission filed a motion to permit interlocutory appeal of the Stay Order with the Presiding Judge, which was denied. *Entergy Servs. Inc.*, 134 FERC ¶ 63,025 (2011). On April 7, 2011, the Louisiana Commission filed an appeal to the Commission, arguing that the Stay Order will likely cause future bandwidth filings also to be stayed. On April 13, 2011, the Chairman, acting as Motions Commissioner, declined to refer the interlocutory appeal to the full Commission. *Entergy Servs., Inc.*, Notice of Determination by the Chairman, Docket No. ER10-1350-001 (Apr. 13, 2011).

²⁶ *Entergy Servs., Inc.*, 148 FERC ¶ 63,015 (2014).

²⁷ *Entergy Servs., Inc.*, 136 FERC ¶ 61,057.

²⁸ *Id.* P 21.

for filing and suspended them, to become effective on June 1, 2012, subject to refund. The Commission also established hearing procedures, but again held them in abeyance pending Commission action on Entergy's prior annual updates.²⁹

10. On May 30, 2013, Entergy submitted its seventh annual bandwidth implementation filing based on calendar year 2012 data (the 2013 bandwidth calculation). On August 30, 2013, the Commission accepted the proposed rates for filing and suspended them, to become effective on June 1, 2013, subject to refund. The Commission also established hearing procedures, but again held them in abeyance pending Commission action on Entergy's prior annual updates.³⁰

II. Docket No. ER14-2085-000

A. Entergy's Filing

11. On May 30, 2014, Entergy submitted its eighth annual bandwidth implementation filing based on calendar year 2013 data (the 2014 bandwidth calculation). Entergy states that it calculated the payments and receipts under the Service Schedule MSS-3 bandwidth formula using data reported in the Operating Companies' 2013 FERC Form No. 1 or other supporting data as provided for in Service Schedule MSS-3.³¹ Entergy notes, however, that it excluded Entergy Arkansas, Inc. (Entergy Arkansas) from the bandwidth payment and receipts calculation because Entergy Arkansas terminated its participation in the System Agreement on December 18, 2013.³² For the remaining Operating Companies, Entergy states that it calculated the Actual Production Costs of each Operating Company³³ and the Average Production Costs of the System³⁴ consistent with the terms and conditions of Service Schedule MSS-3. Entergy next allocated the System Average Production Costs to each Operating Company, and then compared each Operating Company's allocated Average Production Costs to the Operating Company's

²⁹ *Entergy Servs., Inc.*, 140 FERC ¶ 61,111, at P 33 (2012).

³⁰ *Entergy Servs., Inc.*, 144 FERC ¶ 61,167, at P 31 (2013).

³¹ Entergy Transmittal Letter at 7 (citing Service Schedule MSS-3, section 30.12, n.1).

³² *Id.* at 1, n.1.

³³ Service Schedule MSS-3, section 30.12.

³⁴ Service Schedule MSS-3, section 30.13.

Actual Production Costs to determine the dollar and percentage disparity.³⁵ Based on these calculations, Entergy determined that Entergy Texas will pay Entergy New Orleans \$15.3 million.³⁶

12. Entergy states that it has calculated the payments and receipts under Service Schedule MSS-3 using the same methodology as in the seven previous annual bandwidth proceedings. In addition, Entergy notes that while certain formula input issues in the first, second, third and fourth annual bandwidth implementation filings await final Commission resolution, and that hearings in the fifth, sixth and seventh annual bandwidth implementation proceedings are being held in abeyance, the instant bandwidth filing reflects all of the Service Schedule MSS-3-related amendments that the Commission has previously accepted or approved.

13. Further, Entergy highlights six components of the 2014 bandwidth calculation that prior and ongoing bandwidth-related proceedings address, and notes that these issues will be subject to final Commission determinations in the existing dockets. For this reason, should the Commission set the instant filing for hearing and settlement judge procedures, Entergy requests that the Commission hold the proceeding in abeyance pending final determination of the existing bandwidth filings, to ensure that: (1) the Commission does not hear the current bandwidth filing before it hears the prior bandwidth dockets that have been stayed; and (2) the participants do not relitigate issues that are pending in prior bandwidth proceedings.

14. The first item that Entergy highlights is its efforts to comply with Opinion No. 505-A's guidance on how to functionalize the ADIT associated with production-related net operating loss carry-forwards attributable to Hurricanes Katrina and Rita.³⁷ In its 2012 and 2013 bandwidth filings, Entergy calculated the amount of net operating loss carry-forwards by using the ratio of Net Utility Operating Expenses to Total Expenses incurred during the period the net operating loss was recognized. Because Entergy was unclear whether this is the ratio the Commission intended Entergy to use, however, it sought rehearing and clarification on June 26, 2012 in Docket No. ER07-956-004. Following the Commission's October 16, 2013 order, which provided additional guidance on how to derive the inputs for the numerator and denominator in functionalizing the net operating loss carry-forwards,³⁸ Entergy submitted a compliance

³⁵ Service Schedule MSS-3, section 30.11.

³⁶ Entergy Transmittal Letter at 7.

³⁷ Opinion No. 505-A, 139 FERC ¶ 61,103 at PP 54-60.

³⁸ *Entergy Servs., Inc.*, 145 FERC ¶ 61,045, at PP 11-19 (2013).

filing on November 15, 2013.³⁹ Entergy states that its 2014 bandwidth calculation reflects the Commission's October 16, 2013 guidance.

15. Second, Entergy states that, consistent with its 2012 and 2013 bandwidth calculations, the 2014 bandwidth calculation includes the costs associated with the cancellation of the Little Gypsy Repowering Project, which Entergy sought to recover under the Service Schedule MSS-3 bandwidth formula filed in Docket No. ER12-1384-000, *et al.*⁴⁰

16. Third, in Opinion No. 518, the Commission affirmed the Presiding Judge's determination that Entergy should include in the bandwidth calculation Casualty Loss ADIT recorded in Account No. 282, Accumulated Deferred Income Taxes - Other Property.⁴¹ On July 6, 2012, Entergy submitted its Opinion No. 518 compliance filing. On October 16, 2013, the Commission accepted Entergy's inclusion of casualty loss ADIT in the bandwidth formula, rejected the portion of the compliance filing related to ADIT associated with net operating loss carry-forwards, and directed Entergy to make a subsequent compliance filing.⁴² Entergy submitted the subsequent compliance filing on November 15, 2013.⁴³ Entergy states that its 2014 bandwidth calculation reflects Opinion No. 518's directive, as implemented in Entergy's November 15, 2013 compliance filing.

³⁹ The Commission addressed Entergy's November 15, 2013 compliance filing by letter order issued July 31, 2014. *Entergy Servs., Inc.*, 148 FERC ¶ 61,086 (2014).

⁴⁰ On May 31, 2012, the Commission issued an order accepting and suspending Entergy's proposed tariff amendments and establishing hearing and settlement judge procedures. On June 6, 2013, the Presiding Judge issued an Initial Decision concerning the cancellation costs of the Little Gypsy Repowering Project. *Entergy Servs., Inc.*, 143 FERC ¶ 63,012 (2013).

⁴¹ Opinion No. 518, 139 FERC ¶ 61,105 at P 84, *aff'g Entergy Servs., Inc.*, 132 FERC ¶ 63,005 at P 277.

⁴² *Entergy Servs., Inc.*, 145 FERC ¶ 61,048 (2013).

⁴³ Entergy's November 15, 2013 compliance filing was accepted by delegated letter order on August 5, 2014. *Entergy Servs., Inc.*, Docket No. ER09-1224-006 (Aug. 5, 2014) (delegated letter order).

17. Fourth, in Opinion No. 505-A,⁴⁴ the Commission directed Entergy to use the methodology contained in Exhibits ETR-26 and ETR-28 to remove the administrative and general expense (A&G) and other taxes associated with Entergy Gulf States'⁴⁵ 30 percent share of River Bend nuclear facility capacity (River Bend 30) when functionalizing those costs in the 2006 bandwidth calculation. On May 31, 2013, Entergy submitted a compliance filing which the Commission rejected on October 29, 2013.⁴⁶ Entergy submitted a revised compliance filing on November 29, 2013.⁴⁷ Entergy states that the 2014 bandwidth calculation excludes River Bend 30 A&G and other taxes, consistent with the Commission's direction.

18. Fifth, on May 13, 2013, in Docket No. ER07-682-004, the Commission granted rehearing in part of Opinion No. 506,⁴⁸ and required Entergy to functionalize and allocate its Account No. 924, Property Insurance, expense based on plant ratios rather than on labor ratios.⁴⁹ Entergy states that it reflected this directive in the 2014 bandwidth calculation, submitted its compliance filing on June 12, 2013, and its compliance refund report on July 12, 2013, in Docket Nos. ER07-682-000 and ER13-1673-000, *et al.*⁵⁰

19. Sixth, on April 1, 2014, in Docket No. ER14-1640-000, *et al.*, Entergy filed proposed tariff amendments with the Commission that would include in the bandwidth formula two power purchase agreements at a price equal to the price of the average annual Service Schedule MSS-3 Exchange Energy rate paid by Entergy Gulf States Louisiana, rather than at the price paid under the power purchase agreements. On May 30, 2014, the Commission accepted the proposed amendments for filing, suspended them for a nominal period, to become effective May 31, 2014, subject to refund and to the

⁴⁴ Opinion No. 505-A, 139 FERC ¶ 61,103 at P 72, n.126.

⁴⁵ In 2007, Entergy Gulf States split into Entergy Texas and Entergy Gulf States Louisiana, which serve load in their respective states.

⁴⁶ *Entergy Arkansas, Inc.*, 145 FERC ¶ 61,081 (2013).

⁴⁷ The Commission accepted the compliance filing on July 31, 2014. *Entergy Ark., Inc.*, 148 FERC ¶ 61,088 (2014).

⁴⁸ *Entergy Servs., Inc.*, Opinion No. 506, 130 FERC ¶ 61,026 (2010).

⁴⁹ *Entergy Servs., Inc.*, 143 FERC ¶ 61,120, at P 53 (2013).

⁵⁰ The Commission accepted Entergy's compliance filing and refund report on July 31, 2014. *Entergy Servs., Inc.*, 148 FERC ¶ 61,085 (2014).

outcome of hearing and settlement judge procedures.⁵¹ Entergy states that it has implemented these tariff amendments in the 2014 bandwidth calculation, subject to the outcome of the pending docket.

20. Further, Entergy requests that if the Commission sets the eighth bandwidth filing for hearing and settlement judge procedures, that it hold the hearing in abeyance pending the Commission's resolution of the issues outstanding in prior bandwidth proceedings, so as to preclude their relitigation, as the Commission did in the fifth, sixth, and seventh annual bandwidth proceedings.

21. Finally, Entergy requests that the Commission waive the filing requirements contained in section 35.13(a)(2)(iii) of its regulations,⁵² as well as the 60-day notice requirements contained in section 35.11 of its regulations,⁵³ to permit the proposed rates to take effect on June 1, 2014. In support, Entergy states that the filing does not involve a rate increase within the meaning of section 35.13(a)(2)(iii) of the Commission's regulations, and that the requested effective date implements the Commission's directive that the bandwidth remedy billing commence annually in June.⁵⁴

B. Notice and Responsive Pleadings

22. Notice of Entergy's filing was published in the *Federal Register*, 79 Fed. Reg. 32,934 (2014), with interventions and protests due on or before June 20, 2014. The Arkansas Public Service Commission filed a notice of intervention. The Council of the City of New Orleans (New Orleans Council) filed a notice of intervention and comments. The Louisiana Commission filed a notice of intervention and a protest. The Public Utility Commission of Texas (Texas Commission) filed a motion to intervene out-of-time. Entergy filed a motion for leave to answer and an answer.

23. The New Orleans Council urges the Commission to set the 2014 bandwidth filing for hearing to allow the parties to conduct sufficient discovery to ascertain whether Entergy's rate calculations and accounting practices comport with the bandwidth formula and related Commission orders. The New Orleans Council also notes that, as with the 2013 bandwidth calculation, the instant filing includes Little Gypsy cancellation costs

⁵¹ *Entergy Gulf States Louisiana, L.L.C.*, 147 FERC ¶ 61,165 (2014).

⁵² 18 C.F.R. § 35.13(a)(iii) (2014).

⁵³ 18 C.F.R. § 35.11 (2014).

⁵⁴ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,095 at P 20.

that the Presiding Judge's initial decision in Docket No. ER12-1384-000, *et al.*, excluded from the bandwidth calculation.⁵⁵ The New Orleans Council urges the Commission to set the 2014 bandwidth calculation for hearing, but supports Entergy's request that the Commission hold the hearing in abeyance, to preclude relitigation of matters already pending before the Commission.

24. The Louisiana Commission states that it adopts and re-urges all issues it previously raised in the first seven bandwidth proceedings, as well as those it raised in complaint dockets related to the bandwidth calculations to the extent that they relate to Entergy's instant bandwidth filing. In addition, the Louisiana Commission requests that the Commission set the 2014 bandwidth filing for hearing to permit discovery of Entergy's bandwidth accounting as well as whether Entergy's inputs are unjust and unreasonable due to incorrect data or calculations, misapplications of the formula rate, or imprudence.⁵⁶

25. The Louisiana Commission states that it does not seek to relitigate issues that have been litigated in other Commission proceedings. However, the Louisiana Commission opposes holding the instant hearing in abeyance. The Louisiana Commission contends that because the Commission has held the fifth, sixth and seventh annual bandwidth filings in abeyance, consumers already face potential irreparable harm from three years of annual bandwidth filings that are currently in effect without any justification. According to the Louisiana Commission, it would be inconsistent with the Commission's responsibilities under the FPA to add a fourth year of potential irreparable injury to ratepayers by holding the instant docket in abeyance as well. As a result, the Louisiana Commission contends that to preclude relitigation of pending issues, the Commission should simply reflect in this proceeding all of its final determinations regarding the bandwidth and bandwidth-related issues that are pending in other dockets, while allowing hearings on the instant bandwidth to proceed.⁵⁷

26. Finally, the Louisiana Commission urges the Commission to set for hearing the issue of ADIT related to the Waterford 3 sale-leaseback. The Louisiana Commission contends that while the Commission, in Opinion No. 514,⁵⁸ stated that it had approved

⁵⁵ *Entergy Servs., Inc.*, 143 FERC ¶ 63,012.

⁵⁶ Louisiana Commission Protest at 2-4.

⁵⁷ *Id.* at 1-2.

⁵⁸ Opinion No. 514, 137 FERC ¶ 61,029 at PP 117-120.

the exclusion of Waterford 3 sale-leaseback ADIT in Opinion No. 505,⁵⁹ it later held, on rehearing of Opinion No. 514, that it may have based its ruling in Opinion No. 505 “on an incorrect premise,” but regardless, the participants had stipulated the issue out of the proceeding that gave rise to Opinion No. 514.⁶⁰ According to the Louisiana Commission, because the Commission declined to rule whether the doctrines of *res judicata* or collateral estoppel bar the issue in other dockets, the Commission should set the issue for hearing here.⁶¹

27. The Texas Commission urges the Commission to set the 2014 bandwidth filing for hearing, but hold the hearing in abeyance to permit resolution of the fifth, sixth, and seventh bandwidth filings first.

C. Discussion

1. Procedural Matters

28. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we will grant the Texas Commission’s late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay.

29. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy’s answer, and will, therefore, reject it.

2. Commission Determination

30. Entergy’s proposed rates raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing we order below.

⁵⁹ Opinion No. 505, 130 FERC ¶ 61,023 at PP 133-236; Opinion No. 505-A, 139 FERC ¶ 61,103 at PP 58-60.

⁶⁰ Opinion No. 514-A, 142 FERC ¶ 61,013 at PP 23-27.

⁶¹ Louisiana Commission Protest at 4.

31. Our preliminary analysis indicates that Entergy's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's proposed rates for filing, suspend them for a nominal period, and make them effective June 1, 2014, as requested,⁶² subject to refund and to the outcome of the pending bandwidth-related proceedings, and set them for hearing.

III. Docket Nos. ER11-3658-000, ER12-1920-000, ER13-1595-000 and EL10-65-000

A. Background

32. As noted, the Commission has held in abeyance proceedings on Entergy's fifth, sixth and seventh annual bandwidth filings (Docket Nos. ER11-3658-000, ER12-1920-000 and ER13-1595-000, respectively), as well as certain issues on complaint concerning the bandwidth remedy in Docket No. EL10-65-000, pending future Commission orders.⁶³

33. The Commission recently issued a series of orders that made numerous determinations governing the first, second and third annual bandwidth proceedings and associated compliance filings.⁶⁴ In addition, hearings concluded in the fourth annual bandwidth proceeding, and the Presiding Judge recently issued his Initial Decision.⁶⁵

34. As a result, the time is ripe to address Entergy's fifth, sixth and seventh annual bandwidth filings and the related complaint. In each of these bandwidth proceedings, the Commission accepted Entergy's proposed rates for filing and suspended them for nominal periods, but held the proceedings in abeyance pending further Commission

⁶² We find that Entergy has demonstrated good cause to waive the filing and 60-day notice requirements contained in sections 35.13(a)(2)(iii) and 35.11 of the Commission's regulations. *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203, at P 10 (2006). *See also Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

⁶³ *See* P 1, nn.4-5, *supra*.

⁶⁴ *Entergy Servs., Inc.*, 148 FERC ¶ 61,085; *Entergy Servs., Inc.*, 148 FERC ¶ 61,086; *Entergy Servs., Inc.*, 148 FERC ¶ 61,087 (2014); *Entergy Ark., Inc.*, 148 FERC ¶ 61,088.

⁶⁵ *Entergy Servs., Inc.*, 148 FERC ¶ 63,015 (2014).

orders to prevent relitigation of issues that were pending before the Commission in dockets related to the first three annual bandwidth filings.⁶⁶ In the complaint proceeding, the Commission likewise held certain issues in abeyance pending future orders.⁶⁷

B. Commission Determination

35. Given the Commission's determinations in the first three annual bandwidth proceedings, and the conclusion of hearings in the fourth annual bandwidth proceeding, we find that it is an appropriate time to resume hearing procedures in the fifth, sixth and seventh annual bandwidth proceedings. Accordingly, we will reinstitute the hearing procedures we previously established in these dockets.

36. Furthermore, we find that the fifth, sixth, seventh and eighth annual bandwidth proceedings raise common issues of law and fact. In addition, as we state in the order being issued concurrently in the complaint proceeding concerning the bandwidth remedy in Docket No. EL10-65-000⁶⁸ we find that the complaint also raises issues of law and fact in common with the fifth, sixth, seventh and eighth annual bandwidth proceedings. Accordingly, we will consolidate all five proceedings for purposes of settlement, hearing and decision. We leave it to the Presiding Judge to ensure that no participant relitigates matters that the Commission has already determined.

37. While we are setting the eighth annual bandwidth filing for hearing, lifting the abeyance orders and permitting hearing procedures to move forward in these consolidated proceedings, we encourage the participants to make every effort to settle their disputes before hearing begins. To aid the participants in their settlement efforts, we will direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure,⁶⁹ and will defer the hearing procedures in

⁶⁶ Entergy's rates took effect in the fifth annual bandwidth proceeding on June 1, 2011, subject to refund. *Entergy Servs., Inc.*, 136 FERC ¶ 61,057 at P 22. Entergy's rates in the sixth annual bandwidth proceeding took effect on June 1, 2012, subject to refund. *Entergy Servs., Inc.*, 140 FERC ¶ 61,111 at P 33. Entergy's rates in the seventh annual bandwidth proceeding took effect on June 1, 2013, subject to refund. *Entergy Servs., Inc.*, 144 FERC ¶ 61,167 at P 31.

⁶⁷ See EL10-65 Complaint Order, 132 FERC ¶ 61,104 at PP 38-39.

⁶⁸ *Louisiana Pub. Serv. Comm'n v. Entergy Corp., et al.*, 149 FERC ¶ 61,245 (2014).

⁶⁹ 18 C.F.R. § 385.603 (2014).

these consolidated proceedings, pending the outcome of settlement negotiations. If the participants desire, they may, by mutual agreement, request a specific judge as the settlement judge; otherwise, the Chief Judge will select a judge for this purpose.⁷⁰ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Entergy's proposed rates in Docket No. ER14-2085-000 are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2014, as requested, subject to refund, as discussed in the body of this order.

(B) The Commission hereby consolidates Docket Nos. ER11-3658-000, ER12-1920-000, ER13-1595-000, ER14-2085-000 and EL10-65-000 for purposes of settlement, hearing and decision, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Entergy's proposed rates pursuant to Service Schedule MSS-3 of the Entergy System Agreement implementing the Commission's decisions in Opinion Nos. 480 and 480-A.

(D) The hearing procedures Ordered in Paragraph (C) shall be deferred, to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

⁷⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

(G) If settlement judge procedures fail in any of the instant bandwidth proceedings and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.