

149 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket Nos. EL10-65-000
EL10-65-001

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 DENYING REHEARING AND GRANTING MOTION TO PROCEED WITH
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 18, 2014)

1. On August 4, 2010, the Commission issued an order addressing a complaint filed by the Louisiana Public Service Commission (Louisiana Commission) under sections 206 and 306 of the Federal Power Act (FPA)¹ against Entergy Corporation, Entergy Services, Inc. and the Entergy Operating Companies (Operating Companies)² (collectively, Entergy) raising multiple issues related to the Entergy System Agreement's (System

¹ 16 U.S.C. §§ 824e, 825e (2012).

² The Entergy Operating Companies are: Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc., Entergy Texas, Inc., and Entergy New Orleans, Inc. Entergy Arkansas withdrew from the System Agreement on December 18, 2013.

Agreement) bandwidth remedy.³ The Hearing Order set four of these issues for hearing and settlement judge procedures, but held those procedures in abeyance pending the outcome of a number of related proceedings. On September 3, 2010, the Louisiana Commission filed a request for rehearing of the Hearing Order. In addition, on December 7, 2011, the Louisiana Commission filed a motion to lift two of these four matters from abeyance and proceed with hearing and settlement judge procedures (Motion to Proceed). As discussed below, we direct the following: (1) reinstatement of hearing and settlement judge procedures concerning inclusion of Waterford 3 generating plant Accumulated Deferred Income Tax (ADIT)⁴ in the bandwidth formula; (2) reinstatement of hearing and settlement judge procedures concerning direct assignment of ADIT; (3) conditional resumption of hearing and settlement judge procedures concerning exclusion of interruptible load from the bandwidth formula, should the Louisiana Commission wish to pursue it; and (4) dismissal of matters concerning inclusion of Spindletop Regulatory Asset costs in the bandwidth formula as moot.⁵ In addition, we deny the Louisiana Commission's request for rehearing of the Hearing Order.

I. Background

2. In Opinion No. 480, the Commission found that rough production cost equalization had been disrupted on the Entergy System.⁶ The Commission concluded that, if the Entergy System did not maintain rough production cost equalization among the Operating Companies, then an annual bandwidth of +/- 11 percent would be utilized

³ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 132 FERC ¶ 61,104 (2010) (Hearing Order).

⁴ ADIT reflects timing differences between when a tax liability is actually incurred and when the tax expense associated with the liability is recorded on the company books.

⁵ In an order being issued concurrently with this order, *Entergy Servs., Inc.*, 149 FERC ¶ 61,244, at Ordering Paragraph (B) (2014), the Commission consolidates the proceedings in Docket Nos. ER11-3658, ER12-1920, ER13-1595, and ER14-2085 with this proceeding for purposes of settlement, hearing, and discussion.

⁶ *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), *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 on reh'g*, 146 FERC ¶ 61,152, *order rejecting compliance*, 146 FERC ¶ 61,153 (2014).

to keep the Entergy System in rough production cost equalization.⁷ That is, if annual total production costs of one or more Operating Companies deviated from the system average total production cost by more than +/- 11 percent, as computed through annual bandwidth formula calculations by Entergy using annual Operating Company data run through the bandwidth formula contained in Service Schedule MSS-3 of the System Agreement, the bandwidth formula remedy would restore rough production cost equalization by requiring Operating Companies with low production costs to make payments to Operating Companies with high production costs. The Commission stated that the bandwidth would be implemented prospectively and directed Entergy to submit, by June 1 of each year, a compliance filing implementing the bandwidth formula using the prior calendar year's production costs.

3. In an order accepting Entergy's compliance filing to incorporate the bandwidth formula remedy into the System Agreement, the Commission stated that parties seeking changes to the bandwidth formula adopted in Opinion No. 480 must make separate filings under sections 205 or 206 of the FPA⁸ in order to implement such changes.⁹

4. On May 5, 2010, pursuant to sections 206 and 306 of the FPA, the Louisiana Commission filed the complaint that commenced this proceeding against Entergy. The Louisiana Commission sought to change the rates included in Entergy's bandwidth formula, effective no later than the 2010 bandwidth formula calculation and for future bandwidth filings, by proposing the following changes to six different cost items within the existing bandwidth formula: (1) including costs associated with the cancellation of the Little Gypsy Unit 3 Repowering Project (Little Gypsy) (cancellation costs); (2) adjusting the acquisition costs of certain Entergy generating plants; (3) directly assigning to production, rather than functionalizing, ADIT cost items; (4) including Spindletop capital lease accounting costs; (5) excluding interruptible load from cost allocators in the bandwidth formula; and (6) including capital lease ADIT costs related to the Waterford 3 generating plant. Entergy filed an answer and the Arkansas Public Service Commission (Arkansas Commission) timely intervened in the proceeding and filed a protest.

⁷ Opinion No. 480, 111 FERC ¶ 61,311 at P 144.

⁸ 16 U.S.C. §§ 824d and 824e (2012).

⁹ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 at P 69. *See also Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at P 173 (2010); *Entergy Servs., Inc.*, 130 FERC ¶ 61,170 (2010).

5. In the Hearing Order, the Commission addressed each of the six issues in turn. First, with respect to the Little Gypsy cancellation costs, which concerned costs associated with the cancellation of a conversion of the Little Gypsy facility from natural gas to a solid-fuel unit that would burn a blend of petroleum coke and coal, the Commission held that that issue was premature and not ripe for Commission consideration because the Louisiana Commission had not yet approved cancellation of Little Gypsy at the retail level.¹⁰ The Commission dismissed this issue without prejudice, allowing parties to seek a Commission determination once the Louisiana Commission issued a final decision on the cancellation of Little Gypsy.

6. After the Louisiana Commission issued its May 17, 2011 order approving the cancellation of the Little Gypsy Repowering Project at the retail level,¹¹ on August 4, 2011, as amended on September 16, 2011, the Louisiana Commission filed a complaint in Docket No. EL11-57. Separately, on March 29, 2012, Entergy submitted a filing under section 205 of the FPA in Docket No. ER12-1384, *et al.* The filings sought to include the Little Gypsy cancellation costs in the bandwidth formula. In May 2012, the Commission issued an order accepting Entergy's proposed revisions for filing, suspending them for a nominal period by setting an effective date of June 1, 2012, subject to refund, and setting the matter for hearing and settlement judge procedures.¹² The Commission also consolidated the Louisiana Commission's section 206 complaint with Entergy's section 205 filing after determining that the actions presented "common issues of law and fact."¹³

7. In June 2013, a presiding administrative law judge issued an initial decision in that proceeding, finding that neither the Louisiana Commission nor Entergy had carried its burden to demonstrate that the cancelled plant costs should be included in the bandwidth formula.¹⁴ Parties have filed briefs on exception to the initial decision and this matter is pending before the Commission.

¹⁰ Hearing Order, 132 FERC ¶ 61,104 at P 10.

¹¹ *Application of Entergy Louisiana, LLC for Approval to Repower Little Gypsy Unit 3 Electric Generation Facility and for Authority to Commence Construction and for Certain Cost Protection and Cost Recovery*, Docket No. U-30192-E (La. Comm'n May 17, 2011).

¹² *Entergy Servs., Inc.*, 139 FERC ¶ 61,167 (2012).

¹³ *Id.* P 1.

¹⁴ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 143 FERC ¶ 63,012, at PP 1-2 (2013).

8. The second issue raised in the Louisiana Commission's complaint concerned the bandwidth formula's treatment of certain acquisition adjustments for generating plants,¹⁵ including positive acquisition adjustments associated with the Acadia generating project and negative acquisition adjustments associated with the Calcasieu and Ouachita generating plants.

9. With respect to the Acadia generating project's positive acquisition adjustments, the Commission denied the Louisiana Commission's request that these costs be included in the year 2010 bandwidth formula.¹⁶ The Commission explained that these costs could not qualify for inclusion in the year 2010 bandwidth formula because the Commission authorized acquisition of the Acadia generating project (pursuant to section 203 of the FPA) after the deadline for consideration of costs for the year 2010 bandwidth formula calculation had already passed.¹⁷ Concerning prospective inclusion of Acadia acquisition adjustment costs in subsequent years of bandwidth formula calculations, the Commission noted that Entergy had made a filing in which the Commission would address these costs prospectively, and stated that it would address the issue in that proceeding.¹⁸ In October 2012, the Commission approved a settlement agreement among Entergy and three other settling parties, the Louisiana Commission, the Arkansas Commission, and the Mississippi Public Service Commission, under which they agreed to include under Service Schedules MSS-3 and MSS-4 of the System Agreement a positive acquisition adjustment and related amortization expenses associated with the purchase of the Acadia Power Block Two generating facility.¹⁹

10. With respect to the negative acquisition adjustment costs for the Calcasieu and Ouachita units, the Commission found that there were issues of material fact concerning

¹⁵ The difference between the purchase price and the original cost of a facility is the "acquisition adjustment," as defined in the Commission's Uniform System of Accounts.

¹⁶ Hearing Order, 132 FERC ¶ 61,104 at P 18.

¹⁷ *Id.*

¹⁸ *Id.* The Commission noted that on June 30, 2010, Entergy submitted a section 205 filing in Docket No. ER10-1676 to amend Service Schedules MSS-3 and MSS-4 of the System Agreement, including a request for Commission authorization to include the positive acquisition adjustment for Acadia (and related amortization expenses) in Service Schedules MSS-3 and MSS-4.

¹⁹ *Entergy Servs., Inc.*, 141 FERC ¶ 61,018 (2012).

Entergy's proposed treatment of these units that could not be resolved based on the record before it. Consequently, the Commission set the issue of these negative acquisition adjustment costs for hearing and settlement judge procedures.²⁰ In September 2013, the Commission conditionally approved a settlement resolving this issue in a letter order in Docket No. EL10-65-002.²¹ The settlement included an agreement by the parties to revise Service Schedules MSS-3 and MSS-4 of the System Agreement to address the treatment of acquisition adjustments, both positive and negative, in the plant ratio variables, on a generic basis.

11. Regarding the remaining four issues, which are described at greater length below, the Commission established hearing and settlement judge procedures. However, because matters related to these four issues were pending before the Commission in other dockets, the Commission ordered those procedures to be held in abeyance pending the outcome of the other related pending proceedings and further Commission orders.²² Specifically, for the Waterford 3 ADIT issue, the Commission held the hearing and settlement judge procedures in abeyance pending the outcome of the proceeding in Docket No. ER08-1056; for the ADIT direct assignment issue, the Commission held those procedures in abeyance pending the outcome of the proceeding in Docket No. EL09-50; for the interruptible load issue, it held those procedures in abeyance pending the outcome of the proceedings in Docket Nos. EL07-52 and ER09-1224; and for the Spindletop capital lease issue, the Commission held those procedures in abeyance pending the outcome of the proceeding in Docket No. EL08-51-002.²³

12. The Commission stated that once it had acted to address any of these issues in these proceedings, the Louisiana Commission should file with the Commission motions with respect to each issue to indicate whether it wants the Commission to reinstate the

²⁰ *Id.* P 19.

²¹ *Entergy Servs., Inc.*, 144 FERC ¶ 61,242 (2013). In that order, the Commission approved the proposed settlement agreement subject to Entergy submitting compliance filings revising the standard of review for future challenges to the settlement agreement by third parties. *Id.* P 7. Subsequently, Entergy submitted compliance filings, which were accepted by delegated letter orders on May 29, 2014. *See, e.g., Entergy Servs., Inc.*, Docket No. ER14-210-000 (May 29, 2014) (delegated letter order). The Commission's approval of the settlement agreement did not affect the other Louisiana Commission complaint issues that were being held in abeyance pursuant to the Hearing Order.

²² Hearing Order, 132 FERC ¶ 61,104 at P 38.

²³ *Id.*

hearing and settlement judge procedures or whether the issue has been resolved by another proceeding and such procedures would no longer be needed.²⁴ The Commission stated that parties could file answers to those motions and the Commission would issue further orders.²⁵ The Commission also set the refund effective date as the May 5, 2010 date of the filing of the complaint in this docket.²⁶

13. On September 3, 2010, the Louisiana Commission filed a timely request for rehearing of the Hearing Order and on December 7, 2011, the Louisiana Commission filed its Motion to Proceed, requesting that the Commission reinstitute hearing and settlement judge procedures for the ADIT direct assignment and Waterford 3 ADIT issues.²⁷ The Louisiana Commission also stated that the Spindletop capital lease issue had been rendered provisionally moot, pending rehearing, and that the interruptible load issue was not yet ripe to proceed.²⁸ Entergy and the Arkansas Commission filed timely answers to the Motion to Proceed. The Louisiana Commission filed a motion to reply and reply to those answers.

II. Discussion

14. We first address the Louisiana Commission's request for rehearing of the Hearing Order and then address the appropriate procedural posture for the four issues that the Commission held in abeyance.

A. Request for Rehearing

1. Pleadings

15. In its request for rehearing, the Louisiana Commission argues that the Commission erred in dismissing as premature and not yet ripe its complaint regarding the Little Gypsy cancellation costs. The Louisiana Commission also contends that the Commission erred by holding the four issues in abeyance pending the outcome of future Commission orders.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* P 40.

²⁷ Motion to Proceed at 2-5.

²⁸ *Id.* at 6-7.

16. Citing Commission orders in other proceedings, the Louisiana Commission states that the Commission “provided a new statement as to the hearing scope in the bandwidth dockets.”²⁹ The Louisiana Commission states that in Opinion No. 505 the Commission ruled that the purpose of the bandwidth is “to establish the payments and receipts necessary under the bandwidth formula. . . . not about what production would have been if different depreciation rates had been in effect in 2006, but simply about applying the formula using actual 2006 data.”³⁰ The Louisiana Commission argues that if review of pending and future bandwidth dockets is limited to whether actual inputs were correctly applied, then section FPA 206 filings will be necessary to challenge the prudence, justness, and reasonableness of the cost inputs and to make any changes necessary to the bandwidth tariff to make those rates just and reasonable.³¹ The Louisiana Commission adds that, except for the limited refund period allowed by statute, the Commission has found that FPA section 206 complaint proceedings may only have effect prospectively, and as such, a remedy will be available only after the completion of a hearing and a decision is rendered.

17. The Louisiana Commission argues that dismissing the Little Gypsy cancellation cost issue until the Louisiana Commission rules in its retail docket will harm the Louisiana Commission’s interests because of the delay that it causes and will not provide the Commission with information needed to render a decision. The Louisiana Commission contends that the Commission did not need to wait until the Louisiana Commission issued a final decision on the cancellation of the Little Gypsy repowering project because state retail ratemaking decisions do not bind the Commission.³² Similarly, the Louisiana Commission argues that holding the four issues in abeyance serves no purpose other than to delay a potential effective remedy.³³

2. Determination

18. We deny the Louisiana Commission’s request for rehearing. First, as noted above, with respect to the Little Gypsy cancellation costs, the issue of including these costs in

²⁹ See Louisiana Commission Request for Rehearing at 5-6 (citing *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 (2010)).

³⁰ *Id.* (quoting Opinion No. 505, 130 FERC ¶ 61,023, at P 173 (2010)).

³¹ See *id.* at 6.

³² Louisiana Commission Request for Rehearing at 7.

³³ *Id.*

the bandwidth formula remedy is currently pending before the Commission in another docket.³⁴ Nevertheless, we disagree with the Louisiana Commission's contention that the Commission erred by waiting for the Louisiana Commission's final decision on whether to approve the cancellation of Little Gypsy before considering whether the Little Gypsy cancellation costs should be included in the bandwidth formula. The Louisiana Commission's approval of the project's cancellation was a necessary prerequisite for the existence of cancellation costs. If the Louisiana Commission had denied approval of the request to cancel Little Gypsy, there would have been no cancellation costs for the Commission to consider including in the bandwidth formula. Thus, we reaffirm the Commission's finding that the issue of including Little Gypsy cancellation costs in the bandwidth formula was premature for consideration in this proceeding.

19. Next, we also reject the Louisiana Commission's contention that the Commission unreasonably held four matters in abeyance pending hearing and settlement judge procedures. The Commission enjoys broad administrative discretion as to how it manages its proceedings.³⁵ In its complaint, the Louisiana Commission concedes that some of the matters raised in this proceeding concern issues that the Louisiana Commission was indeed already pursuing in other proceedings pending before the Commission at the time the Louisiana Commission raised them (again) in its complaint.³⁶ Allowing hearing procedures to commence in this proceeding on the same issues that were already being litigated in related pending proceedings could have resulted in duplicative and unnecessary litigation and thus inefficient use of the Commission's and parties' resources. In sum, the Louisiana Commission chose to pursue these issues in multiple proceedings and the Commission utilized its administrative discretion to

³⁴ See *supra* PP 6-7.

³⁵ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,132, at P 52 & n.85 (2011) (“[T]he Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit.”) (citing *Ameren Energy Generating Co.*, 108 FERC ¶ 61,081, at P 23 (2004) (footnotes omitted) (“The courts have repeatedly recognized that the Commission has broad discretion in managing its proceedings”)); *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003); *Telecomm. Resellers Assoc. v. FCC*, 141 F.3d 1193, 1196 (D.C. Cir. 1998) (administrative agencies enjoy broad discretion to manage their own dockets).

³⁶ See, e.g., Complaint at 5 (“[The interruptible load issue] . . . was litigated in Docket ER09-1224. . . . in an abundance of caution, the [Louisiana Commission] raises the issue through this complaint, to ensure that it is resolved in some forum.”).

organize these proceedings so that they could be resolved appropriately and efficiently. Therefore, we deny the Louisiana Commission's request for rehearing.³⁷

B. Motion to Proceed

1. Procedural Matters

20. 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 an answer unless otherwise ordered by the decisional authority. We will accept the Louisiana Commission's reply because it has provided information that assisted us in our decision-making process.

2. Substantive Matters

a. Waterford 3 Capital Lease ADIT

i. Background

21. In its complaint, the Louisiana Commission contended that the bandwidth formula is unjust and unreasonable because it excludes the ADIT associated with the Waterford 3 sale-leaseback transaction. As noted above, the Commission set this issue for hearing and settlement judge procedures but held the hearing and settlement judge procedures in abeyance pending the outcome of the proceeding in Docket No. ER08-1056, which concerned the calculation of the second year of bandwidth remedy payments among the Operating Companies. In that proceeding, the Louisiana Commission contended that the bandwidth formula should be changed to include this particular ADIT in the bandwidth formula.

22. In Opinion No. 514, which addressed an initial decision in Docket No. ER08-1056, the Commission ruled that the exclusion of the ADIT related to the Waterford 3 sale-leaseback from the 2007 bandwidth calculation could not be relitigated in that proceeding. In reaching this determination, the Commission noted that the parties had entered into a Joint Stipulation agreeing not to relitigate issues that were the subject of

³⁷ To the extent that the Louisiana Commission's objection goes to the length of the refund period allowed by the statute itself, this argument is not appropriately before the Commission.

other proceedings, and that the exclusion of ADIT was one of the issues included in the Joint Stipulation.³⁸

23. The Commission disagreed with the Louisiana Commission's argument that ADIT related to Waterford 3 was not litigated in the prior proceeding. The Commission found that the record evidence demonstrated that the Waterford 3 capital lease issue was litigated in Docket No. ER07-956³⁹ and that the initial decision in that proceeding explicitly ruled on that issue.⁴⁰ The Commission also found that there was no new evidence or changed circumstances presented in the Docket No. ER08-1056 proceeding to justify re-litigation and prevent doctrines of *res judicata* and collateral estoppel from applying and precluding further consideration of the Waterford 3 ADIT issue.⁴¹

24. On rehearing of Opinion No. 514, the Commission upheld its ruling, finding that the parties had filed a stipulation not to relitigate this issue and that the Louisiana Commission had provided no new arguments to persuade the Commission that the Waterford 3 ADIT issue was not covered by the Joint Stipulation.⁴² The Commission found that, while the initial decision addressed in Opinion No. 514 may have excluded the Waterford 3 ADIT from the bandwidth formula based on an incorrect premise in the Docket No. ER07-956 proceeding, this was not a sufficient justification for setting aside the Joint Stipulation with regard to ADIT. The Commission also found that the Louisiana Commission's remedy was to raise the issue on exceptions in the Docket No. ER07-956 proceeding.⁴³

25. In addition, the Commission found that, despite the Louisiana Commission's arguments to the contrary, no Commission statements in other proceedings overrode the parties' agreement in the Joint Stipulation. The Commission also found that the

³⁸ *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029, at P 117 (2011), *order denying reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013 (2013), *aff'd sub nom. La. Pub. Serv. Comm'n v. FERC*, 761 F.3d 540 (5th Cir. 2014).

³⁹ Docket No. ER07-956-000 addressed Entergy's first annual bandwidth implementation filing.

⁴⁰ Opinion No. 514, 137 FERC ¶ 61,029 at PP 117-119.

⁴¹ *Id.* P 120.

⁴² Opinion No. 514-A, 142 FERC ¶ 61,013 at PP 23-24.

⁴³ *Id.* P 25.

enforceability of the Joint Stipulation was not affected by its order denying Entergy's request for clarification of the scope of the hearing concerning Entergy's second annual bandwidth implementation filing.⁴⁴ The Commission noted that, in denying Entergy's request for clarification, the Commission had explained its approach to *res judicata* and collateral estoppel, stating that "this policy only applies where the issues presented have been fully litigated and decided on the merits, and no new circumstances would justify relitigation."⁴⁵

ii. Motion to Proceed and Answers

26. In its Motion to Proceed, the Louisiana Commission states that it disagrees with Commission statements in Opinion No. 514 that this issue was resolved in Docket No. ER07-956.⁴⁶ It states, however, that even if this issue was decided on the ground cited in Opinion No. 514, the Commission has now decided that retail ratemaking treatment is not a basis to exclude costs from the bandwidth formula and that the law has been changed or clarified after the issuance of Opinion No. 505 in Docket No. ER07-956⁴⁷ establishing that the cited ground is not a basis for the exclusion of costs by the Commission.⁴⁸

⁴⁴ *Entergy Servs., Inc.*, 124 FERC ¶ 63,026 (2008) (Order Denying Clarification).

⁴⁵ Opinion No. 514-A, 142 FERC ¶ 61,013 at P 26 (citing Order Denying Clarification, 127 FERC ¶ 61,226 at P 10).

⁴⁶ Louisiana Commission Motion to Proceed at 3.

⁴⁷ *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010); *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

⁴⁸ Louisiana Commission Motion to Proceed at 4. The Louisiana Commission states that in Opinion No. 514, in deciding a different issue concerning whether the bandwidth formula calculation should re-price an Evangeline gas contract (Evangeline Contract) to mimic retail rate treatment, the Commission ruled that retail ratemaking treatment is not a relevant basis for determining whether costs may be excluded from the bandwidth calculation. *Id.* (citing Opinion No. 514, 137 FERC ¶ 61,029 at P 90). The Evangeline Contract is a long-term natural gas commodity and transportation agreement between Entergy Louisiana and the Evangeline Gas Pipeline Company (Evangeline). Entergy included the actual contract price for the Evangeline Contract as recorded in Account 501 in Entergy Louisiana's books and reported on its FERC Form 1 in Entergy's bandwidth formula calculation based on 2007 data. Opinion No. 514, 137 FERC ¶ 61,029 at PP 79-80. In that proceeding, a protestor argued that the contract price for the

(continued ...)

27. The Louisiana Commission also states that, although the Commission has now held that the Waterford 3 ADIT issue was litigated in Docket No. ER07-956 and excluded by Opinion No. 505, the ground for exclusion cited by the Commission—retail ratemaking treatment—has now been deemed irrelevant to the bandwidth formula calculation. The Louisiana Commission contends that the Waterford 3 ADIT arose from the sale-leaseback transaction and subsequent differences between Commission ratemaking and Entergy’s accounting. It states that the administrative law judge in Docket No. ER08-1056 found that the Entergy, Commission Trial Staff, and Louisiana Commission witnesses testified that the Waterford 3 ADIT “is not the result of a retail ratemaking order”⁴⁹ and that the Commission did not disturb that finding. It further contends that in Opinion No. 514 the Commission found that the retail ratemaking treatment of costs is irrelevant to the bandwidth formula calculation. Thus, it argues that there has been a change in the governing law—the Commission has established a rule that would have required the inclusion of the Waterford 3 ADIT in the formula in Docket No. ER07-956, had the rule been announced prior to the issuance of Opinion No. 505.

28. The Louisiana Commission also contends that, as noted in its complaint, there is new evidence that was not available in Docket No. ER07-956 concerning the cause of the Waterford 3 ADIT. It states that in Docket No. ER08-1056, Entergy itself either misunderstood or incorrectly described the circumstances that caused the ADIT. The Louisiana Commission contends that, in that docket, Entergy stated that the Waterford 3 ADIT arose from the sale-leaseback transaction because the recording of a tax gain also caused the recording of Account 190 ADIT, the Commission account used for accrued deferred income taxes. The Louisiana Commission states that this is only partially true and that Entergy in Docket No. EL09-50 revealed that most of the Waterford 3 ADIT results from the difference between the timing for tax purposes and for book purposes of the amortization of the capital lease, which is included in the bandwidth formula. It argues that the ADIT created by this book/tax timing difference is a classic example of ADIT that is properly includable for Commission cost-of-service purposes.

29. In its answer to the Motion to Proceed, Entergy disagrees that the issues related to the inclusion of Waterford 3 ADIT should be set for hearing and settlement judge

Evangeline Contract should be modified in the bandwidth proceeding to include only the amount of Evangeline contract costs actually paid by retail ratepayers (Evangeline Contract issue).

⁴⁹ Louisiana Commission Motion to Proceed at 4 (citing *Entergy Servs., Inc.*, 128 FERC ¶ 63,015, at P 323 (2009) (Initial Decision).

procedures and maintains that those issues were resolved in Opinion Nos. 505⁵⁰ and 514, and should be dismissed from this proceeding as well. Entergy states that the Commission expressly barred inclusion of Waterford 3 ADIT in Opinion No. 514; therefore, to relitigate the exact same Waterford 3 ADIT issue in this proceeding, the Louisiana Commission must demonstrate changed circumstances. Entergy contends, however, that the principal changed circumstance that the Louisiana Commission alleges in its Motion to Proceed is a ruling that the Commission made on an unrelated issue in the same Opinion No. 514 in which the Commission ruled against the Louisiana Commission on the Waterford 3 ADIT issue. Entergy states that, by definition, changed circumstances must consist of a change that occurs *after* the time a ruling is made. Consequently, even if the Louisiana Commission were correct that the two rulings in the same order are inconsistent, the Louisiana Commission's remedy is to file a request for rehearing of Order No. 514. Entergy adds that the Louisiana Commission filed a request for rehearing, making the same arguments it raises here.⁵¹ Entergy further argues that the Louisiana Commission's contentions of new evidence were considered and rejected in Opinion No. 514 and the Louisiana Commission's claims of new evidence in Docket No. EL09-50 are unfounded because these claims express truisms that are true of all ADIT.⁵² Entergy also argues that the Louisiana Commission's request to include Waterford 3 ADIT in the bandwidth formula should be barred by *res judicata* and collateral estoppel.

30. In its answer, the Arkansas Commission claims that the Louisiana Commission's assertions of changed circumstances and changed law are evasive and that the Commission in Opinion No. 514 rejected the Louisiana Commission's claims of changed circumstances.⁵³ The Arkansas Commission contends that the Louisiana Commission's reference to the Evangeline Contract⁵⁴ issue to support its Motion to Proceed is strained, given that the Evangeline Contract issue did not concern ADIT. It contends that the

⁵⁰ Opinion No. 505, 130 FERC ¶ 61,023.

⁵¹ See Entergy Answer at 2-3, 9.

⁵² *Id.* at 8, 10-11.

⁵³ Arkansas Commission Answer at 3-4 (quoting the Commission's statement in Opinion 514, 137 FERC ¶ 61,029 at P 120, that "this alleged new evidence and arguments were available during the Docket No. ER07-956-001 proceeding and could have been raised by the Louisiana Commission at that time.").

⁵⁴ For background on the Evangeline Contract, see *supra* n.51.

Louisiana Commission's strained argument regarding the Evangeline Contract decision is nothing more than an attempt to justify collateral attacks on Opinion Nos. 505 and 514.

b. ADIT Direct Assignments

i. Background

31. In its complaint, the Louisiana Commission argued that the bandwidth formula is unjust and unreasonable because it includes several subaccount balances for ADIT that are functionalized through plant allocators, rather than directly assigned to particular functions. It noted that in its earlier complaint in Docket No. EL09-50, the Louisiana Commission sought the direct assignment of ADIT for the Waterford 3 capital lease, rather than the functionalization of that ADIT to the production function using plant ratios, because this ADIT is 100 percent related to the production function.⁵⁵ As noted above, in the Hearing Order, on this issue, the Commission held the hearing and settlement judge procedures in abeyance pending the outcome of the proceeding in Docket No. EL09-50.⁵⁶

32. As noted, in Opinion No. 515 the Commission affirmed an initial decision denying the Louisiana Commission's request for direct assignment of ADIT for the Waterford 3 ADIT to the production function using plant ratios.⁵⁷ The Commission found that determinations in the Commission's orders on Entergy's first bandwidth formula filing⁵⁸ and second bandwidth formula filing,⁵⁹ which found that the Waterford 3 sale-leaseback Account 190 ADIT should not be included in the bandwidth calculation for cost-of-service purposes for those two bandwidth calculation years, rendered the Louisiana Commission's complaint moot.⁶⁰ The Commission noted that, even were the matter not

⁵⁵ Complaint at 16.

⁵⁶ *See supra* P 11; Hearing Order, 132 FERC ¶ 61,104 at P 38.

⁵⁷ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 515, 137 FERC ¶ 61,070 (2011) (affirming an initial decision that denied the Louisiana Commission's request for direct assignment of ADIT for the Waterford 3 ADIT to the production function using plant ratios).

⁵⁸ Opinion No. 505, 130 FERC ¶ 61,023.

⁵⁹ Opinion No. 514, 137 FERC ¶ 61,029.

⁶⁰ Opinion No. 515, 137 FERC ¶ 61,070 at P 9.

moot, it concurred with the presiding judge's finding that, although Waterford 3 capital lease is 100 percent-related to the production function, it would nevertheless be unjust and unreasonable to directly assign this ADIT without also directly assigning other ADIT amounts that are 100 percent related to particular functions.

33. In the Hearing Order, the Commission held the hearing and settlement judge procedures for this issue in abeyance pending the outcome of the proceeding in Docket No. EL09-50.⁶¹

ii. Motion to Proceed and Answers

34. In its Motion to Proceed, the Louisiana Commission states that the issue it raised in its complaint is the direct assignment of all similar ADIT amounts, consistent with the Commission's holding in Opinion No. 515. It contends that the Commission should therefore lift the abeyance to allow the Louisiana Commission to advocate this issue.

35. In its answer, Entergy urges rejection of the Louisiana Commission's request for comprehensive direct assignment of ADIT and continuance of hearing and settlement judge procedures. It contends that *res judicata* prohibits the relitigation of all claims that were raised, or that could have been raised, in a prior proceeding, and that this claim could have been raised in the Docket No. EL09-50 proceeding.⁶²

36. Entergy states there are three valid reasons for dismissing the Louisiana Commission's complaint on this issue: (1) the Commission's Opinion No. 514 ruling against the Louisiana Commission means that there is no Waterford 3 ADIT to be directly assigned to the production function; (2) the Louisiana Commission failed to timely present evidence regarding whether other items of ADIT should also be directly assigned; and (3) the Louisiana Commission provides no reason as to how it could prevail in its claim that multiple items of ADIT should be directly assigned for purposes of the bandwidth formula calculation, in light of the Commission's holding in Opinion No. 515.⁶³

37. In addition, Entergy contends that the Louisiana Commission fails to address a finding in an initial decision that it would not be feasible or appropriate to directly assign every item of ADIT, that this decision was upheld in its entirety in Opinion No. 515, and

⁶¹ Hearing Order, 132 FERC ¶ 61,104 at P 38.

⁶² Entergy Answer at 11-12.

⁶³ *Id.* at 3.

that this represents another *res judicata* bar to the relitigation of the Louisiana Commission's ADIT direct assignment claim.⁶⁴

38. Entergy contends that the Louisiana Commission's assertions regarding why Waterford 3 ADIT should be directly assigned to production are moot because the Commission has disallowed the inclusion of such ADIT in the bandwidth formula altogether. Entergy adds that *res judicata* and collateral estoppel should similarly bar the Louisiana Commission as to matters that it could have raised in earlier proceedings and that are contrary to the Commission's holding in Opinion No. 515.⁶⁵ Entergy adds that it would not be feasible to directly assign each item of ADIT in performing the bandwidth formula calculation. Entergy urges the Commission to hold the resolution of the ADIT issues in abeyance pending its rulings on rehearing requests of Opinion Nos. 514 and 515.

39. In its answer, the Arkansas Commission also urges rejection of the Motion to Proceed on this issue, arguing that the Louisiana Commission has not demonstrated that the existing functionalization methodology was unjust and unreasonable. The Arkansas Commission states that the Louisiana Commission is engaging in an improper collateral attack by attempting to relitigate and upset the finality of the Commission's determination in Opinion No. 515.⁶⁶ The Arkansas Commission contends that the Louisiana Commission's Motion to Proceed mischaracterizes Opinion No. 515, which, in the Arkansas Commission's view, did not invite the Louisiana Commission to put forth a more comprehensive analysis to support a direct assignment approach to ADIT. It further contends that the Louisiana Commission has not met its burden of proof on these issues to justify a hearing by showing that the existing functionalization method was unjust and unreasonable. Should the Commission reach the merits, it urges rejection of the Louisiana Commission's claim as inappropriately "cherry-picking" ADIT for direct assignment, contrary to the dictates of Opinion No. 515.

c. Interruptible Load

i. Background

40. In its complaint, the Louisiana Commission contended that the bandwidth formula is unjust and unreasonable because it reverses the production cost equalization cost credit

⁶⁴ *Id.* at 12-13 (citing Opinion No. 515, 137 FERC ¶ 61,070 at P 39).

⁶⁵ Opinion No. 515, 137 FERC ¶ 61,070.

⁶⁶ Arkansas Commission Answer at 3.

for interruptible load required by the Commission in Opinion Nos. 468 and 468-A⁶⁷ by including interruptible load in the allocation of fixed production costs in section 30.13 of the bandwidth formula in Service Schedule MSS-3. The Louisiana Commission argued that in Docket No. ER09-1224 (the third annual bandwidth filing), Commission Trial Staff testified that inconsistency between the bandwidth formula and the reserve equalization cost credit for interruptible load (provided in Opinion Nos. 468 and 468-A) is a problem in the tariff that requires correction, but Commission Trial Staff opposed correcting the problem in a bandwidth proceeding.

41. In the Hearing Order, the Commission held hearing and settlement judge procedures for this issue in abeyance pending the outcome of the proceedings in Docket Nos. EL07-52 and ER09-1224.⁶⁸

ii. Motion to Proceed and Answer

42. In its Motion to Proceed, the Louisiana Commission states that the remaining interruptible load issues have not yet been determined by the Commission in Docket No. ER09-1224 or in Docket No. EL07-52, and that, therefore, the required basis for lifting the abeyance order has not yet occurred. In its answer, Entergy states that it agrees with the Louisiana Commission that the interruptible load issue has not been finally resolved in other proceedings and the Commission should continue to hold its ruling on this issue in abeyance.

43. Subsequent to those pleadings, in an order on rehearing in Docket No. EL07-52,⁶⁹ the Commission reversed its earlier holding, and found that interruptible load should be

⁶⁷ *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 468, 106 FERC ¶ 61,228 (2004), *order on reh'g*, Opinion No. 468-A, 111 FERC ¶ 61,080 (2005), *aff'd in part, denied in part and remanded*, *Louisiana Pub. Serv. Comm'n v. FERC*, 482 F.3d 510 (D.C. Cir. 2007), *order on remand*, 120 FERC ¶ 61,241 (2007), *order on reh'g*, 124 FERC ¶ 61,275 (2008) (among other things, finding that interruptible load should not be included in the peak loads used to allocate production capacity costs in Service Schedule MSS-1 (Reserve Equalization) because Entergy can interrupt service for interruptible load customers at system peak and therefore avoid incurring production capacity costs to serve the interruptible loads), *amended order on remand*, 132 FERC ¶ 61,133 (2010), *granting in part and denying in part reh'g*, 135 FERC ¶ 61,218 (2011), *reh'g denied*, 142 FERC ¶ 61,211, *remanded on other grounds*, No. 13-1155 (D.C. Cir. Dec. 5, 2014).

⁶⁸ Hearing Order, 132 FERC ¶ 61,104 at P 38.

⁶⁹ *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 139 FERC ¶ 61,100 (2012) (Interruptible Load Rehearing Order).

excluded from the demand allocators in the bandwidth formula in Service Schedule MSS-3. Accordingly, the Commission directed Entergy to remove interruptible load from the system 12 CP⁷⁰ demand ratio to allocate system average production costs in section 30.13 of Service Schedule MSS-3, and to identify and make all related changes to the bandwidth formula and the System Agreement, including the definitions.⁷¹

44. Further, in Opinion No. 518, issued in Docket No. ER09-1224-001, the Commission found that the Interruptible Load Rehearing Order, which was issued concurrently with Opinion No. 518, had rendered moot the question in that proceeding related to interruptible load—i.e., whether the actual cost calculation for each Operating Company should include interruptible load in the costs attributable to various provisions of the System Agreement.⁷² In an October 16, 2013 order on rehearing and clarification of Opinion 518, the Commission held that, because the Interruptible Load Rehearing Order was only effective prospectively (commencing May 7, 2012) and for the refund effective period, April 3, 2007 through July 3, 2008, the findings in the Interruptible Load Rehearing Order did not render the interruptible load issue addressed in Opinion 518 moot.⁷³ However, the Commission found that the Louisiana Commission’s proposed adjustments regarding interruptible load would require a modification to the bandwidth formula itself, which was outside the scope of the proceeding in Docket No. ER09-1224. Instead, the Commission found that the Louisiana Commission would need to seek such modifications to the bandwidth formula in a section 206 proceeding and noted the Louisiana Commission’s complaint in this docket.⁷⁴

⁷⁰ The term “12 CP” refers to 12 monthly Entergy System Coincident Peaks (CP). Each Entergy Operating Company’s load responsibility is based on the 12 CP average for an Operating Company for the prior 12 months. *See generally La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 144 FERC ¶ 63,021, at P 221 (2013).

⁷¹ Interruptible Load Rehearing Order, 139 FERC ¶ 61,100 at PP 23-27.

⁷² Opinion No. 518, 139 FERC ¶ 61,105 at P 12 (citing Interruptible Load Rehearing Order, 139 FERC ¶ 61,100 at PP 23-27).

⁷³ *Entergy Servs., Inc.*, 145 FERC ¶ 61,047, at P 15 (2013).

⁷⁴ *Id.* P 16 n.37.

d. Spindletop Capital Lease Accounting

i. Background

45. In its complaint, the Louisiana Commission argued that the bandwidth formula is unjust and unreasonable because it does not include costs associated with the Spindletop Regulatory Asset.⁷⁵

46. In the Hearing Order, the Commission held this matter in abeyance, pending the outcome of the proceeding in Docket No. EL08-51-002. In Opinion No. 509, subsequently issued in that docket, the Commission found that Spindletop Regulatory Asset costs should be included in the bandwidth formula calculations.⁷⁶

ii. Motion to Proceed and Answer

47. In its Motion to Proceed, the Louisiana Commission contends that this issue has been rendered moot by the Commission's decision in Docket No. EL08-51-002. In its answer, Entergy agrees that the Spindletop issue was resolved and should be dismissed.⁷⁷

⁷⁵ Spindletop is a gas storage facility that provides services to customers in Texas and Louisiana through Gulf States Utilities. Gulf States Utilities passed through costs associated with the facility to its retail and wholesale customers through retail fuel adjustment clauses. However, the Louisiana Commission later directed Gulf States Utilities to defer recovery of the costs from Louisiana retail ratepayers and permitted Gulf States Utilities to collect those costs over a 40-year period, which the Louisiana Commission determined to be the useful life of the Spindletop facility. Gulf States Utilities later recorded the unamortized portion of the deferred payments as a regulatory asset, which created the Spindletop Regulatory Asset. *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 509, 132 FERC ¶ 61,253, at PP 4-7 (2010), *reh'g denied*, 139 FERC ¶ 61,101 (2012). Gulf States Utilities is the corporate predecessor to Entergy Gulf States. Entergy completed its merger with Gulf States Utilities in 1993. *Id.* at 4 & n.7. Entergy Gulf States split into Entergy Texas, Inc. and Entergy Gulf States Louisiana in 2007. *See id.* at 4 & n.5.

⁷⁶ *Id.* P 34.

⁷⁷ Entergy Answer at 1.

3. Determination

48. At the outset, we briefly recap the status of the four issues the Louisiana Commission raised in its complaint in this proceeding that are still pending before us: (1) inclusion of Waterford 3 generating plant ADIT in the bandwidth formula; (2) direct assignment of ADIT; (3) exclusion of interruptible load from the bandwidth formula; and (4) inclusion of Spindletop Regulatory Asset costs in the bandwidth formula. In the Hearing Order, the Commission set these matters for hearing and settlement judge procedures, held those procedures in abeyance pending the outcome of a number of related proceedings, and stated that it would allow the Louisiana Commission to request reinstatement of these procedures for each issue upon issuance of orders in the related proceedings.

49. With respect to the Waterford 3 ADIT and ADIT direct assignment, we find that there are no developments since issuance of the Hearing Order that would persuade us to change our decision to institute hearing and settlement judge procedures for these issues, and so we direct that the hearing and settlement judge procedures proceed.

50. We reject Entergy's and the Arkansas Commission's contentions that the Waterford 3 Capital Lease ADIT issue should be dismissed from the Louisiana Commission's complaint. While the Louisiana Commission has raised this issue in multiple proceedings, and while the Commission has addressed the inclusion of Waterford 3 ADIT costs in the bandwidth formula for the first two years of the bandwidth remedy in Docket Nos. ER07-956 and ER08-1056, whether these costs should be included in the bandwidth for later periods has not been determined.

51. We find that the doctrines of *res judicata* and collateral estoppel do not bar the Louisiana Commission's claims with respect to this issue. Notably, while the Commission cited *res judicata* in Opinion No. 514 as barring reconsideration of holdings in Docket No. ER07-956,⁷⁸ on rehearing, the Commission limited its rejection of the Louisiana Commission's Waterford 3 ADIT challenge to the stipulation filed by the parties to not relitigate that issue in the Docket No. ER08-1056 (second bandwidth year) proceeding. We find that the stipulation among the parties, which is limited to the second bandwidth year proceeding, but not subsequent years, does not preclude challenges to the inclusion of Waterford 3 ADIT costs in the bandwidth formula.

52. Likewise, with respect to the ADIT direct assignment issue, we find that the Docket No. EL09-50 proceeding, which primarily concerned assignment of a single ADIT item, does not contain preclusive claim or issue findings applicable to the issue in

⁷⁸ See Opinion No. 514, 137 FERC ¶ 61,029 at P 120.

the Louisiana Commission's complaint seeking to assign ADIT on a much wider basis. Indeed, our order in Docket No. ER09-1224-003 specifically noted that the instant docket was the proceeding in which the Louisiana Commission should pursue that claim.⁷⁹ Entergy and the Arkansas Commission will have an opportunity to pursue their arguments as to the merits of the Louisiana Commission's claims in the reinstated proceeding.

53. With respect to the interruptible load issue, while the Motion to Proceed did not ask the Commission to resume hearing and settlement judge procedures as to this issue, we will address it here. We find that the orders issued in Docket Nos. ER07-52 and ER09-1224 have resulted in final determinations concerning this issue in those proceedings that eliminate the need for continuing to hold this matter in abeyance. Because the Louisiana Commission has not moved to lift the abeyance on this matter, we direct the Louisiana Commission to inform the Chief Judge within 30 days of the date of this order as to whether it wants to pursue adjudication of this issue.

54. With respect to the Spindletop capital lease issue, we agree with the Louisiana Commission and Entergy that the Commission's determinations in Docket No. EL08-51-002 have rendered this issue moot. We therefore dismiss it.

4. Hearing and Settlement Judge Procedures

55. While we are reinstating a trial-type evidentiary hearing concerning Waterford 3 ADIT, ADIT direct assignment, and the interruptible load issues, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁸¹ 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,

⁷⁹ *Entergy Servs., Inc.*, 145 FERC ¶ 61,047 at P 16 n.37.

⁸⁰ 18 C.F.R. § 385.603 (2014).

⁸¹ 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 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>).

concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

56. Finally, we find that the fifth, sixth, seventh, and eighth annual bandwidth proceedings in Docket Nos. ER11-3658, ER12-1920, ER13-1595, and ER14-2085, respectively, raise common issues of law and fact with the instant proceeding. Accordingly, in an order being issued concurrently with this order,⁸² the Commission consolidates the proceedings in Docket Nos. ER11-3658, ER12-1920, ER13-1595, and ER14-2085 with this proceeding for purposes of settlement, hearing and decision.

The Commission orders:

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

(B) The Louisiana Commission's complaint with respect to the Spindletop capital lease issue is hereby dismissed, 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 FPA, particularly sections 205, 206 and 306 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I) the hearing and settlement judge procedures for the ADIT direct assignment and Waterford 3 ADIT issues, and, consistent with the Louisiana Commission's instruction, the interruptible load issue, are reinstated, as discussed in the body of this order, and a public hearing shall be held concerning the reinstated issues. The Louisiana Commission shall inform the Chief Judge on whether it wants the interruptible load issue to be reinstated within 30 days of the date of this order.

(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.

(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 in this proceeding within fifteen (15) days of the date of this

⁸² *Entergy Servs., Inc.*, 149 FERC ¶ 61,244, at Ordering Paragraph (B).

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 parties 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 parties 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 parties' progress toward settlement.

(G) If settlement judge procedures fail 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.