

153 FERC ¶ 61,031  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER15-1826-000

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

(Issued October 15, 2015)

1. On May 29, 2015, pursuant to section 205 of the Federal Power Act,<sup>1</sup> Entergy Services, Inc. (Entergy), as agent and on behalf of the participating Entergy Operating Companies (collectively, Participating Operating Companies)<sup>2</sup> submitted its ninth annual bandwidth filing under Service Schedule MSS-3 of the Entergy System Agreement, to implement the Commission's directives in Opinion Nos. 480 and 480-A.<sup>3</sup> The filing contains the calculation of production costs for each of the Participating Operating Companies based on calendar year 2014 data. In this order, we accept Entergy's proposed rates for filing, suspend them for a nominal period, to become effective June 1,

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> The Participating Operating Companies are those Entergy Operating Companies that participate in the Entergy System Agreement: Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Texas, Inc. and Entergy New Orleans, Inc. Entergy Arkansas, Inc. terminated its participation in the Entergy System Agreement on December 13, 2013 and is not involved in this filing.

<sup>3</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *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 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).

2015, as requested, subject to refund, and set them for hearing and settlement judge procedures.

## **I. Background**

2. In Opinion Nos. 480 and 480-A, the Commission found that the Entergy System Agreement no longer produced rough production cost equalization, and ordered modifications designed to maintain roughly equal production costs among the Operating Companies within +/- 11 percent of the system-wide average.<sup>4</sup> The Commission directed that any equalization payments between Operating Companies be made annually beginning in June 2007, after a full calendar year of data became available,<sup>5</sup> and specified that “future production cost comparisons among the Operating Companies should follow the methodology in Exhibit ETR-26.”<sup>6</sup> In its compliance filing implementing these directives, Entergy added the formulas for implementing the rough production cost equalization bandwidth remedy as provisions in Service Schedule MSS-3.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> Entergy submitted a compliance filing in response to Opinion No. 505 on March 12, 2010. On May 7, 2012, the Commission issued

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<sup>4</sup> Opinion No. 480, 111 FERC ¶ 61,311 at PP 144-145; Opinion No. 480-A, 113 FERC ¶ 61,282 at P 46.

<sup>5</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 145; Opinion No. 480-A, 113 FERC ¶ 61,282 at PP 53-55.

<sup>6</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 33. Exhibit ETR-28 provides the supporting data for Exhibit ETR-26.

<sup>7</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006) (accepting revisions to Service Schedule MSS-3 to implement the bandwidth remedy).

<sup>8</sup> *Entergy Servs., Inc.*, 120 FERC ¶ 61,094 (2007).

<sup>9</sup> *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).

Opinion No. 505-A<sup>10</sup> and also accepted Entergy's Opinion No. 505 compliance filing, subject to a further compliance filing,<sup>11</sup> which Entergy submitted on June 6, 2012. Following additional compliance filings, the Commission directed Entergy to file a comprehensive bandwidth recalculation for calendar year 2006, which the Commission accepted on May 14, 2015.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> The Presiding Judge issued an Initial Decision on the remaining issues on

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<sup>10</sup> *Entergy Servs., Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012).

<sup>11</sup> *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).

<sup>12</sup> 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 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). The Commission simultaneously accepted compliance filings in three other bandwidth proceedings, and directed Entergy to file a single comprehensive bandwidth recalculation for all related proceedings involving calendar years 2006 and 2007. *See Entergy Servs., Inc.*, 148 FERC ¶ 61,085 (2014), *Entergy Servs., Inc.*, 148 FERC ¶ 61,087 (2014) and *Entergy Ark., Inc.*, 148 FERC ¶ 61,088 (2014). The Commission accepted the comprehensive bandwidth recalculation on May 14, 2015. *Entergy Servs., Inc.*, 151 FERC ¶ 61,112 (2015).

<sup>13</sup> *Entergy Servs., Inc.*, 124 FERC ¶ 61,101 (2008).

<sup>14</sup> The Commission approved the partial uncontested settlement on August 24, 2009. *Entergy Servs., Inc.*, 128 FERC ¶ 61,181 (2009).

September 9, 2009.<sup>15</sup> On October 7, 2011, the Commission issued Opinion No. 514,<sup>16</sup> which affirmed in part and reversed in part the Presiding Judge's findings, and required a compliance filing. Following additional compliance filings, the Commission directed Entergy to file a comprehensive bandwidth recalculation for calendar year 2007, which the Commission accepted on May 14, 2015.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> Entergy made the required compliance filing on July 6, 2012. On

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<sup>15</sup> *Entergy Servs., Inc.*, 128 FERC ¶ 63,015 (2009).

<sup>16</sup> *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011), *order denying reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013 (2013), *aff'd*, *La. Pub. Serv. Comm'n v. FERC*, 761 F.3d 540 (5th Cir. 2014).

<sup>17</sup> 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 sought rehearing of the Commission's order on compliance, which the Commission subsequently denied. *Entergy Servs., Inc.*, 148 FERC ¶ 61,087. The Commission simultaneously accepted compliance filings in three other bandwidth proceedings, and directed Entergy to file a single comprehensive bandwidth recalculation for all related proceedings involving calendar years 2006 and 2007. *See Entergy Servs., Inc.*, 148 FERC ¶ 61,085, *Entergy Servs., Inc.*, 148 FERC ¶ 61,086 and *Entergy Ark., Inc.*, 148 FERC ¶ 61,088. The Commission accepted the comprehensive bandwidth recalculation on May 14, 2015. *Entergy Servs., Inc.*, 151 FERC ¶ 61,112 (2015).

<sup>18</sup> *Entergy Servs., Inc.*, 128 FERC ¶ 61,091 (2009).

<sup>19</sup> *Entergy Servs., Inc.*, 132 FERC ¶ 63,005 (2010).

<sup>20</sup> *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105, *order on reh'g*, 145 FERC ¶ 61,047 (2013).

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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup>

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

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<sup>21</sup> Entergy's compliance filing was accepted by delegated letter order issued August 5, 2014. *Entergy Servs., Inc.*, Docket No. ER09-1224-006 (Aug. 5, 2014) (delegated letter order). On September 15, 2014, as amended on September 30, 2014, Entergy filed, consistent with its commitment in its initial Opinion No. 518 compliance filing made on July 6, 2012, a comprehensive bandwidth recalculation filing for all related proceedings involving calendar year 2008. The 2008 bandwidth recalculation is pending before the Commission.

<sup>22</sup> *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 (2010).

<sup>23</sup> *Id.* P 26.

issues pending before it in other bandwidth calculation and complaint proceedings.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

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 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.<sup>28</sup>

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

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<sup>24</sup> *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).

<sup>25</sup> *Entergy Servs., Inc.*, 148 FERC ¶ 63,015 (2014).

<sup>26</sup> *Entergy Servs., Inc.*, 136 FERC ¶ 61,057.

<sup>27</sup> *Id.* P 21.

<sup>28</sup> *Entergy Servs., Inc.*, 140 FERC ¶ 61,111, at P 33 (2012).

Commission also established hearing procedures, but again held them in abeyance pending Commission action on Entergy's prior annual updates.<sup>29</sup>

11. On May 30, 2014, Entergy submitted its eighth annual bandwidth implementation filing based on calendar year 2013 data (the 2014 bandwidth calculation). On December 18, 2014, the Commission accepted the proposed rates for filing, suspended them, to become effective on June 1, 2014, subject to refund, and established hearing and settlement judge procedures. The Commission also determined that, given the series of orders it had recently issued in the first, second and third annual bandwidth proceedings,<sup>30</sup> as well as the Presiding Judge's recent Initial Decision in the fourth annual bandwidth proceeding,<sup>31</sup> the time was ripe to resume hearing procedures in the fifth, sixth and seventh annual bandwidth implementation proceedings.<sup>32</sup> In addition, the Commission determined that a bandwidth-related complaint proceeding in Docket No. EL10-65-000, which the Commission had likewise held in abeyance, raised issues of law and fact in common with the fifth, sixth and seventh annual bandwidth proceedings. Accordingly, the Commission reinstated the hearing procedures it had previously established in the fifth, sixth and seventh annual bandwidth implementation proceedings, as well as the bandwidth-related complaint proceeding, and consolidated all four of these proceedings with the eighth annual bandwidth implementation proceeding for purposes of settlement, hearing and decision.<sup>33</sup>

## II. Entergy's Filing

12. On May 29, 2015, Entergy submitted its ninth annual bandwidth implementation filing based on calendar year 2014 data (the 2015 bandwidth calculation). Entergy states that it calculated the payments and receipts under the Service Schedule MSS-3 bandwidth formula using data reported in the Participating Operating Companies' 2014 FERC Form

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<sup>29</sup> *Entergy Servs., Inc.*, 144 FERC ¶ 61,167, at P 31 (2013).

<sup>30</sup> *Entergy Servs., Inc.*, 148 FERC ¶ 61,085; *Entergy Servs., Inc.*, 148 FERC ¶ 61,086; *Entergy Servs., Inc.*, 148 FERC ¶ 61,087; *Entergy Ark., Inc.*, 148 FERC ¶ 61,088.

<sup>31</sup> *Entergy Servs., Inc.*, 148 FERC ¶ 63,015 (2014).

<sup>32</sup> *Entergy Servs., Inc.*, 149 FERC ¶ 61,244, at PP 32-35 (2014).

<sup>33</sup> *Id.* P 36.

No. 1 or other supporting data as provided for in Service Schedule MSS-3.<sup>34</sup> Entergy states that it calculated the Actual Production Costs of each Participating Operating Company<sup>35</sup> and the Average Production Costs of the System<sup>36</sup> consistent with the terms and conditions of Service Schedule MSS-3. Entergy next allocated the System Average Production Costs to each Participating Operating Company, and then compared each Participating Operating Company's allocated Average Production Costs to the Operating Company's Actual Production Costs to determine the dollar and percentage disparity.<sup>37</sup> Based on these calculations, Entergy determined that all of the participating Operating Companies' disparities fall within +/- 11 percent of the System Average Production Costs. Therefore, Entergy states that section 30.11 of Service Schedule MSS-3 requires no 2015 bandwidth payments or receipts among the Participating Operating Companies.<sup>38</sup>

13. Entergy states that it calculated the zero-payments and receipts under Service Schedule MSS-3 using the same methodology as in the eight previous annual bandwidth proceedings, and that the instant bandwidth filing reflects all of the Service Schedule MSS-3-related amendments that the Commission previously accepted or approved. Entergy also notes that certain formula input issues await final resolution in the consolidated fifth, sixth, seventh and eighth bandwidth implementation and bandwidth-related complaint proceeding. For this reason, Entergy requests that if the Commission sets the instant filing for hearing and settlement judge procedures, that it hold the proceeding in abeyance pending final determination of the existing bandwidth filings, to ensure that the participants do not relitigate issues that are pending in prior bandwidth proceedings.

14. In particular, Entergy highlights two components of the 2015 bandwidth calculation that prior and ongoing bandwidth-related proceedings address. First, Entergy states that consistent with its 2012, 2013 and 2014 bandwidth calculations, Entergy's 2015 bandwidth calculation includes the costs associated with the cancellation of the Little Gypsy Repowering Project, which Entergy sought to recover under the Service

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<sup>34</sup> Entergy Transmittal Letter at 7 (citing Service Schedule MSS-3, section 30.12, n.1).

<sup>35</sup> Service Schedule MSS-3, section 30.12.

<sup>36</sup> Service Schedule MSS-3, section 30.13.

<sup>37</sup> Service Schedule MSS-3, section 30.11.

<sup>38</sup> Entergy Transmittal Letter at 7.

Schedule MSS-3 bandwidth formula filed in Docket No. ER12-1384-000, *et al.*<sup>39</sup> Entergy recognizes that its instant filing is subject to the final outcome of Docket No. ER12-1384-000, *et al.*

15. Second, 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 outcome of hearing and settlement judge procedures.<sup>40</sup> On January 13, 2015, Entergy filed a contested settlement agreement in the proceeding. Entergy states that, as with the 2014 bandwidth calculation, it has included the two power purchase agreements in the bandwidth formula at a price equal to the average annual Service Schedule MSS-3 Exchange Energy rate paid by Entergy Gulf States Louisiana, subject to the outcome of the contested settlement proceeding.

16. Finally, Entergy requests that the Commission waive the filing requirements contained in section 35.13(a)(2)(iii) of its regulations,<sup>41</sup> as well as the 60-day notice requirements contained in section 35.11 of its regulations,<sup>42</sup> to permit the proposed rates to take effect on June 1, 2015. 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.<sup>43</sup>

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<sup>39</sup> On May 31, 2012, the Commission issued an order accepting and suspending Entergy's proposed tariff amendments and establishing hearing and settlement judge procedures. *Entergy Servs., Inc.*, 139 FERC ¶ 61,167 (2012). Following hearings on the issue, the Presiding Judge issued his Initial Decision on June 6, 2013. *Entergy Servs., Inc.*, 143 FERC ¶ 63,012 (2013).

<sup>40</sup> *Entergy Gulf States La., L.L.C.*, 147 FERC ¶ 61,165 (2014).

<sup>41</sup> 18 C.F.R. § 35.13(a)(iii) (2015).

<sup>42</sup> 18 C.F.R. § 35.11 (2015).

<sup>43</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 119 FERC ¶ 61,095 at P 20.

### **III. Notice and Responsive Pleadings**

17. Notice of Entergy's filing was published in the *Federal Register*, 80 Fed. Reg. 32,554 (2015), with interventions and protests due on or before June 19, 2015. 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 comments. The Public Utility Commission of Texas (Texas Commission) filed a notice of intervention. Entergy filed a motion for leave to answer and an answer.

18. The New Orleans Council urges the Commission to set the 2015 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, but supports Entergy's request that the Commission hold the hearing in abeyance, to preclude relitigation of matters already pending before the Commission.

19. The Louisiana Commission requests that the Commission set the 2015 bandwidth filing for hearing. The Louisiana Commission notes that because the Participating Operating Companies' disparities are well within the +/- 11 percent bandwidth, the correction of any additional accounting or calculation errors, beyond those awaiting final resolution in pending dockets, would not likely require bandwidth payments for 2015. However, the Louisiana Commission states that the Commission should set the 2015 bandwidth calculation for hearing to permit discovery as to whether Entergy's inputs are unjust and unreasonable due to imprudence.<sup>44</sup>

### **IV. Commission Determination**

#### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), 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.

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<sup>44</sup> Louisiana Commission Comments at 1-2.

## **B. Commission Determination**

22. 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.

23. 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, 2015, as requested, subject to refund and to the outcome of the pending bandwidth-related proceedings, and set them for hearing and settlement judge procedures.

24. While we are setting the ninth annual bandwidth filing for hearing, we encourage the participants to make every effort to settle their disputes before hearing procedures are commenced. To aid the participants in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>45</sup> 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.<sup>46</sup> 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.

25. We leave to the discretion of the Chief Administrative Law Judge whether it is appropriate to consolidate this proceeding with that involving the fifth, sixth, seventh and eighth bandwidth implementations, as well as the bandwidth-related complaint that are pending in Docket No. EL10-65-000, *et al.*, for purposes of hearing and decision.<sup>47</sup>

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<sup>45</sup> 18 C.F.R. § 385.603 (2015).

<sup>46</sup> 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>).

<sup>47</sup> *See* 18 C.F.R. § 385.503(a) (2015).

26. Should the ninth annual bandwidth implementation filing proceed to trial, we leave it to the Presiding Judge to ensure that no participant relitigates matters that the Commission has already determined.

The Commission orders:

(A) Entergy's proposed rates in Docket No. ER15-1826-000 are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2015, as requested, subject to refund, as discussed in the body of this order.

(B) 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.

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

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), 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.

(E) 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.

(F) 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. Commissioner Honorable is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.