

153 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Arkansas, Inc.	Docket Nos. ER12-1384-001
Entergy Gulf States Louisiana, LLC	ER12-1385-002
Entergy Louisiana, LLC	ER12-1386-001
Entergy Mississippi, Inc.	ER12-1387-001
Entergy New Orleans, Inc.	ER12-1388-001
Entergy Texas, Inc.	ER12-1390-001
Louisiana Public Service Commission	EL11-57-002 (Consolidated)

v.

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

OPINION NO. 542

ORDER ON INITIAL DECISION

(Issued November 20, 2015)

1. On March 29, 2012, Entergy Services, Inc. (Entergy) filed proposed tariff amendments pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the

¹ 16 U.S.C. § 824d (2012).

Commission's regulations.² Entergy sought to modify its rough production cost equalization bandwidth formula (bandwidth formula), which is set forth in Service Schedule MSS-3 to the Entergy System Agreement (System Agreement), to include costs associated with the cancelled Little Gypsy Repowering Project (Little Gypsy cancellation costs). On May 31, 2012, the Commission issued an order accepting and suspending Entergy's proposed tariff amendments, to be effective June 1, 2012 subject to refund, and establishing hearing and settlement judge procedures. The Commission also consolidated the instant proceeding with the ongoing proceeding in Docket No. EL11-57-000, a complaint by the Louisiana Public Service Commission (Louisiana Commission) filed under FPA section 206³ seeking to include Little Gypsy cancellation costs in the bandwidth formula, for purposes of hearing and settlement judge procedures.⁴ On June 6, 2013, the presiding Administrative Law Judge (Presiding Judge) issued an Initial Decision finding that Entergy failed to demonstrate that its FPA section 205 proposal to amend the bandwidth formula is just and reasonable and finding that the Louisiana Commission failed to meet its burden under FPA section 206 to demonstrate that the existing bandwidth formula is unjust, unreasonable, unduly discriminatory or preferential.⁵ In this order, we affirm in part and reverse in part the Initial Decision and determine the appropriate treatment of the Little Gypsy cancellation costs in the bandwidth formula.

I. Background and Procedural History

2. Entergy Corporation is a public utility holding company and the corporate parent of the six Entergy Operating Companies.⁶ The Entergy Operating Companies own and

² 18 C.F.R. pt. 35 (2015).

³ 16 U.S.C. § 824e.

⁴ The Commission consolidated Docket No. EL11-57-000 with the following docket numbers: ER12-1384-000 – Entergy Arkansas, Inc. (Entergy Arkansas); ER12-1385-000 – Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana); ER12-1386-000 – Entergy Louisiana, LLC (Entergy Louisiana); ER12-1387-000 – Entergy Mississippi, Inc. (Entergy Mississippi); ER12-1388-000 – Entergy New Orleans, Inc. (Entergy New Orleans); and ER12-1390-000 – Entergy Texas, Inc. (Entergy Texas). *Entergy Servs., Inc.*, 139 FERC ¶ 61,167 (2012) (Hearing Order).

⁵ *Entergy Servs., Inc.*, 143 FERC ¶ 63,012 (2013) (Initial Decision).

⁶ The Entergy Operating Companies became transmission owner members of the Midcontinent Independent System Operator, Inc. (MISO) on December 19, 2013 and are: Entergy Arkansas, Entergy Gulf States Louisiana, Entergy Louisiana, Entergy

(continued...)

operate generation, transmission, and distribution facilities in Arkansas, Louisiana, Mississippi, and Texas. They provide electric service to retail customers subject to state and local regulation, and transmit and sell power at wholesale, subject to regulation by the Commission. Entergy is a wholly-owned subsidiary of Entergy Corporation, providing management, administrative, accounting, legal, engineering, and other services to the subsidiaries of Entergy Corporation. Entergy and the Entergy Operating Companies are currently parties to the System Agreement.⁷ The System Agreement is a

Mississippi, Entergy New Orleans, and Entergy Texas. On December 10, 2014, Entergy Gulf States Louisiana and Entergy Louisiana filed for authorization under FPA section 203(a)(1) to combine their respective assets and liabilities into a single successor public utility operating company, Entergy Louisiana Power, LLC. Their FPA section 203(a)(1) application was accepted on April 3, 2015. *Entergy Gulf States La., L.L.C.*, Docket No. EC15-47-000 (Apr. 3, 2015) (delegated letter order). The merger was approved by the Louisiana Commission on August 26, 2015 and is expected to close later this year.

⁷ On December 19, 2005, Entergy Arkansas notified the other Entergy Operating Companies of its intent to withdraw from the System Agreement effective December 18, 2013. Entergy Mississippi similarly gave notice of its intent to withdraw on November 8, 2007, effective November 7, 2015. The Commission accepted Entergy Arkansas' and Entergy Mississippi's notices of withdrawal on November 19, 2009. *See Entergy Servs., Inc.*, 129 FERC ¶ 61,143 (2009), *reh'g denied*, 134 FERC ¶ 61,075 (2011), *aff'd sub nom. Council of the City of New Orleans v. FERC*, 692 F.3d 172 (D.C. Cir. 2012), *cert. denied*, 133 S. Ct. 2382 (2013). On October 11, 2013, Entergy made a filing to change the notice period for an Operating Company to terminate its participation in the System Agreement from 96 months to 60 months (Notice Filing). Entergy Texas submitted its notice of withdrawal on October 18, 2013, to be effective October 18, 2018, and Entergy Louisiana and Entergy Gulf States Louisiana submitted notices of withdrawal on February 14, 2014, to be effective February 14, 2019. On December 18, 2014, the Commission issued an order conditionally accepting the Notice Filing, suspending it for a nominal period to be effective October 12, 2013, subject to refund, and establishing hearing and settlement judge procedures. The Commission also conditionally accepted the withdrawal notices of Entergy Texas, Entergy Louisiana, and Entergy Gulf States Louisiana (effective October 18, 2018 for Entergy Texas and effective February 14, 2019 for Entergy Louisiana and Entergy Gulf States Louisiana), subject to the outcome of the Notice Filing proceeding. *Entergy Ark., Inc.*, 149 FERC ¶ 61,262 (2014). On August 14, 2015, Entergy filed an offer of settlement (Settlement) to resolve all outstanding issues pending in these proceedings. The Settlement provides for the System Agreement to terminate, effective August 31, 2016, if the Settlement is approved by the Commission and retail regulators.

rate schedule on file at the Commission that allows the Entergy Operating Companies to plan, construct, and operate their generation and transmission facilities as a single, integrated electric system (Entergy System).⁸ In Opinion No. 480, the Commission found that “rough production cost equalization on the Entergy system had been disrupted.”⁹ The Commission developed a “bandwidth remedy” to help keep the Entergy System in rough production cost equalization.¹⁰ The Commission also required that annual bandwidth filings be made to determine any necessary payments among the Entergy Operating Companies. In its compliance filing implementing the directives of Opinion Nos. 480 and 480-A, Entergy included in Service Schedule MSS-3¹¹ the formula for implementing the rough production cost equalization bandwidth remedy (bandwidth formula).¹²

A. Cancelled Plant Precedent

3. In Opinion No. 49,¹³ the Commission first discussed how to address cancelled plant costs. In that proceeding, the Commission rejected New England Power

⁸ Hearing Order, 139 FERC ¶ 61,167 at P 2.

⁹ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc., et al.*, 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, sub nom. La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047, *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152, and *order rejecting compliance filing*, 146 FERC ¶ 61,153 (2014).

¹⁰ Opinion No. 480, 111 FERC ¶ 61,311 at P 44.

¹¹ Exhibits ETR-26 and ETR-28 are the exhibits submitted by Entergy during the hearing that resulted in Opinion No. 480 that formed the basis for the bandwidth formula. Exhibit ETR-26 compares historical production costs of the Entergy Operating Companies for years 1983-2001 and for the 12 months ending August 31, 2002. Exhibit ETR-28 is a production cost analysis for the Entergy Operating Companies for the 12 months ending August 31, 2002, and details the numbers supporting the 2002 data in Exhibit ETR-26.

¹² *Louisiana. Pub. Serv. Comm'n. v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203, *order on reh'g*, 119 FERC ¶ 61,095.

¹³ *New England Power Co.*, Opinion No. 49, 8 FERC ¶ 61,054, at 61,161 (1979), *reh'g denied*, Opinion No. 49-A, 10 FERC ¶ 61,279 (1980), *aff'd sub nom. NEPCO Mun.*

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Company's proposal to include in its rate base the unamortized balance of costs to construct an oil-fired electric generating unit that was subsequently cancelled due to an unforeseen increase in costs. However, the Commission permitted New England Power Company to amortize 100 percent of its net loss over a five-year period. The Commission explained that recovery in rate base would be inappropriate because the costs did not result from the operation of facilities "used and useful" in providing electric service. However, because the Commission found that it would be inequitable to place on the utility the entire loss of expenditures, it allowed recovery thereof over time. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed Opinion No. 49, finding that the Commission's refusal to include project expenditures in the rate base, while allowing their recovery over time, "struck a reasonable balance between the interests of investors and ratepayers."¹⁴ The D.C. Circuit noted, however, that the Commission "may adopt any method of valuation for rate base purposes so long as the end result of the rate order cannot be said to be unjust and unreasonable" and stated that "it would be inequitable to place on the utility the entire loss of expenditures prudent when made."¹⁵

4. Subsequently, in Opinion No. 295,¹⁶ the Commission reaffirmed the policy of balancing the interests of shareholders and ratepayers as articulated in Opinion No. 49.¹⁷ In Opinion No. 295, the Commission explained that "the 'used and useful' standard is only one of several permissible tools of ratemaking" and found that application of a strict used and useful standard would be inappropriate.¹⁸ The Commission also found that the risk of abandonment or cancellation should not be borne exclusively by shareholders or ratepayers because "the competing standards of 'used and useful to the ratepayer' and 'recovery of prudent investment' are both relevant."¹⁹ The Commission stated that

Rate Comm. v. FERC, 668 F.2d 1327 (D.C. Cir. 1981) (*NEPCO MRC*), *cert. denied*, 457 U.S. 117 (1982).

¹⁴ *NEPCO MRC*, 668 F.2d 1327 at 1333.

¹⁵ *Id.*

¹⁶ *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,081-83, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285, *reh'g denied*, 44 FERC ¶ 61,092 (1988).

¹⁷ Opinion No. 295, 42 FERC at 61,068.

¹⁸ *Id.* at 61,080.

¹⁹ *Id.* at 61,081.

because both ratepayers and shareholders benefit when a successful project is completed, they should similarly share the cost when a project that was prudent at its inception is abandoned.²⁰ The Commission therefore adopted a 50/50 cost sharing policy to achieve a more “equitable balance” between ratepayers and shareholders. Under this cost sharing policy, the Commission permitted New England Power Company to amortize 50 percent of its investment over a period reflecting the life of a cancelled plant had it been completed, and to include the unamortized portion of this 50 percent in rate base, reduced by 50 percent of the total accumulated deferred income taxes. The Commission required New England Power Company to write off the remaining 50 percent of the investment below the line.²¹

B. Little Gypsy Repowering Project

5. In 2007, Entergy identified a repowering project for its Little Gypsy Unit 3 (Little Gypsy Repowering Project) as part of the Strategic Supply Resource Plan²² for the Entergy System. According to Entergy, the Little Gypsy Repowering Project was planned to diversify the Entergy System’s fuel requirements and to provide baseload capacity by converting a natural gas-fired unit to a solid-fuel unit.²³ The Entergy Operating Committee²⁴ approved the Little Gypsy Repowering Project to be completed and funded by Entergy Louisiana. The Louisiana Commission approved Entergy

²⁰ *Id.* at 61,078.

²¹ *Id.* at 61,082.

²² The Strategic Supply Resource Plan is a long-term power supply plan that includes the purchase of baseload and load-following generation for the Entergy System.

²³ Little Gypsy is a natural gas-fired steam generating unit located in the Amite South planning region of the Entergy System. The Amite South region is generally described as the region in Southeast Louisiana that is south of the Amite Substation (generally from east of the Baton Rouge, Louisiana metropolitan area to the Mississippi state line and south to the Gulf of Mexico). Upon completion of the project, the repowered unit would have provided 538 MW of baseload, solid fuel generating capacity. *See* Louisiana Commission August 4, 2011 Complaint, Attachment H (filed in Docket No. EL11-57-000).

²⁴ The Entergy Operating Committee is comprised of the presidents of each of the six Entergy Operating Companies.

Louisiana's application for the Little Gypsy Repowering Project in March 2008;²⁵ however, in 2009 a substantial decline in natural gas prices reversed the economics of the project, and repowering the Little Gypsy unit no longer represented the lowest reasonable cost alternative.²⁶ In October 2009, Entergy Louisiana filed an application with the Louisiana Commission seeking to cancel the project and to recover prudently-incurred abandoned project costs.

6. Subsequently, in 2011, the Louisiana Commission approved an uncontested settlement, for retail ratemaking, to cancel the Little Gypsy Repowering Project.²⁷ In the Louisiana Commission Settlement Order, the Louisiana Commission found that the Little Gypsy cancellation costs were prudently incurred and established the appropriate allocation of the recoverable cancellation costs among customer classes²⁸ and the levels at which carrying costs could be accrued going-forward.²⁹ Pursuant to state law,³⁰ the Louisiana Commission approved the securitization³¹ of the Little Gypsy cancellation costs and found that Entergy Louisiana could recover \$200 million of the \$207 million

²⁵ *In re: In the Matter of the Expansion of Utility Power Plant; Proposed Certification of New Plant by the LPSC*, Order No. U-30192 (Mar. 18, 2008) (Louisiana Commission Approval Order).

²⁶ Little Gypsy presently operates as a natural gas-fired unit.

²⁷ *Docket No. U-30192 Phase III, 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 Production and Cost Recovery*, Order No. U-30192-E (May 17, 2011) (Louisiana Commission Settlement Order).

²⁸ Entergy Louisiana has no wholesale ratepayers.

²⁹ Louisiana Commission Settlement Order at 5-8.

³⁰ Louisiana Electric Utility Investment Recovery Securitization Act, La. Rev. Stat. Ann. § 45:1251 (2014).

³¹ Securitization is a financing tool that takes an illiquid asset (e.g., the Little Gypsy cancellation costs) and transforms it into a security by issuing bonds. The cost of the asset is transferred to a Special Purpose Entity. The Special Purpose Entity sells bonds collateralized (securitized) by the charges imposed on the utility's customers for the recovery of the principal and interest associated with the securitized debt. Once the securitization bonds are sold, the proceeds are transferred to the utility and the asset is removed from the books of the utility.

total Little Gypsy cancellation costs that Entergy sought to recover, as well as carrying charges, over a 10-year amortization period.³² To effectuate the securitization, Entergy states that a Special Purpose Entity was created to issue the securitized bonds, the proceeds of which were used to pay Entergy Louisiana \$207.156 million, resulting in the removal of the Little Gypsy cancellation costs from Entergy Louisiana's books.³³

7. In the Louisiana Commission Settlement Order, the Louisiana Commission also approved an uncontested stipulation in which Entergy Louisiana, with the prior concurrence of the Entergy Operating Committee, committed to seek inclusion of the Little Gypsy cancellation costs as production costs in the bandwidth formula.³⁴

C. Filings

8. In May 2010, the Louisiana Commission filed an FPA section 206 complaint with the Commission seeking, as relevant here, to include the Little Gypsy cancellation costs in the bandwidth formula. The Commission dismissed the Louisiana Commission's complaint with regard to the Little Gypsy cancellation costs issue, ruling that the Little Gypsy cancellation costs issue was not ripe for consideration because the Louisiana Commission had not yet approved the cancellation of the Little Gypsy Repowering Project. The Commission further ruled that when the Louisiana Commission issued a final decision on the cancellation of the Little Gypsy Repowering Project, parties would be able to seek a Commission determination as to whether Little Gypsy cancellation costs should be included in the bandwidth formula.³⁵

9. On May 17, 2011, the Louisiana Commission approved an uncontested settlement to cancel the Little Gypsy Repowering Project.³⁶ On August 4, 2011, as amended on September 16, 2011, in Docket No. EL11-57-000, the Louisiana Commission submitted an additional complaint (2011 Complaint) seeking to include the Little Gypsy cancellation costs in the bandwidth formula. The Louisiana Commission sought either to classify the Little Gypsy cancellation costs as fixed and permanently assign them to all

³² Louisiana Commission Settlement Order at 5.

³³ Entergy March 29, 2012 Filing at 3.

³⁴ Louisiana Commission Settlement Order at 9.

³⁵ *Louisiana Pub. Serv. Comm'n v. Entergy Corp., et al.*, 132 FERC ¶ 61,104 (2010).

³⁶ *See* Louisiana Commission Settlement Order.

Entergy Operating Companies regardless of whether they continued to participate in the System Agreement, or, alternatively, to amend the bandwidth formula in Service Schedule MSS-3 to allow inclusion of the Little Gypsy cancellation costs. The Commission issued an order on January 19, 2012, holding the 2011 Complaint in abeyance, and noting that Entergy planned to make an FPA section 205 filing to include the Little Gypsy cancellation costs in the 2012 bandwidth formula calculation.³⁷

10. On March 29, 2012, Entergy filed, under FPA section 205, proposed tariff amendments revising section 30.12 of the bandwidth formula in Service Schedule MSS-3 to include a new variable representing the Little Gypsy cancellation costs (Variable LGCC) that would allow the annual amount of cancellation costs to flow through the bandwidth formula. Entergy further proposed to include the Variable LGCC input in the calculation effective for the 2011 test year and stated that its filing reflected the securitization authorized by the Louisiana Commission. The proposed Variable LGCC includes: (1) a return on and of the securitization bonds; (2) a credit equal to the return on the accumulated deferred income taxes associated with the Little Gypsy cancellation costs; (3) an amount equal to the fees and administrative costs associated with servicing the outstanding securitization bonds; and (4) the amortization over three years of certain Louisiana Commission costs incurred by Entergy Louisiana incident to securitization.

11. Entergy claimed that, with its filing, the bandwidth formula would be “revised to provide the exact relief originally requested by the Louisiana Commission in Docket No. EL11-57-000.”³⁸ Entergy asserted that the 2011 Complaint was unnecessary and should be dismissed.

12. On May 31, 2012, the Commission accepted and suspended the proposed revisions to the bandwidth formula, effective June 1, 2012, subject to refund, and established hearing and settlement judge procedures.³⁹ The Commission also consolidated the proceedings with the proceeding in Docket No. EL11-57-000 for purposes of hearing and settlement judge procedures.⁴⁰

³⁷ *Louisiana Pub. Serv. Comm’n v. Entergy Corp., et al.*, 138 FERC ¶ 61,031, at P 28 (2012).

³⁸ Entergy March 29, 2012 Filing at 6.

³⁹ Hearing Order, 139 FERC ¶ 61,167.

⁴⁰ *See supra* note 4.

D. Testimony

13. Testimony was filed by Entergy witnesses Donald W. Peters, Anthony P. Walz and Bruce M. Louiselle; Louisiana Commission witnesses Stephen J. Baron, Randy A. Futral, and Lane Kollen; Arkansas Public Service Commission (Arkansas Commission) witnesses Dr. S. Keith Berry and David T. Helsby; Mississippi Public Service Commission (Mississippi Commission) witnesses Hugh Larkin, Jr., Collin Cain, and J. Nicolas Puga; and Commission Trial Staff (Trial Staff) witness John K. Sammon.

1. Direct and Answering Testimony

14. Entergy presented the direct and answering testimony of Mr. Peters, Mr. Louiselle, and Mr. Walz supporting Entergy's proposal to revise the bandwidth formula in Service Schedule MSS-3 to include the Little Gypsy cancellation costs. Mr. Louiselle stated that he was unaware of any proceeding at the Commission where a utility sought recovery of cancelled plant costs that have been securitized. He stated that the securitization method of addressing recovery of plant costs differs in many respects from the Commission's traditional approach, under Opinion No. 295, from the perspective of both the shareholder and the customer. Mr. Louiselle asserted that allowing Entergy Louisiana to recover the Little Gypsy cancellation costs in the bandwidth formula would not implicate the Commission's policy set forth in Opinion No. 295 because the Little Gypsy cancellation costs were securitized.

15. The Louisiana Commission presented the direct testimony of Mr. Baron and Mr. Futral supporting Entergy's proposal to revise the bandwidth formula in Service Schedule MSS-3 to include the Little Gypsy cancellation costs. Mr. Baron stated that the Little Gypsy Repowering Project was planned to serve the needs of the entire Entergy System and asserted that the Little Gypsy cancellation costs are legitimate production costs of Entergy Louisiana. Mr. Baron noted that because the Entergy Operating Committee assigned the Little Gypsy Repowering Project to Entergy Louisiana, Entergy Louisiana ratepayers are bearing the securitized costs of the cancellation. Mr. Baron argued that it is appropriate to modify the bandwidth formula to include the Little Gypsy cancellation costs because those costs are being paid by Entergy Louisiana's retail ratepayers and are reasonably classified as production costs that were incurred to meet the joint needs of the Entergy System (including each of the Entergy Operating Companies). Mr. Futral discussed the ratemaking benefits associated with securitization compared to traditional ratemaking and asserted that the revenue requirements associated with the securitization costs are much less than they would have been with full traditional rate recovery of the investment.

16. Trial Staff presented the direct and answering testimony of Mr. Sammon supporting, with slight modification, Entergy's proposed amendment to Service Schedule MSS-3. Mr. Sammon argued that the Commission should allow Entergy Louisiana to recover from ratepayers 100 percent of the Little Gypsy cancellation costs in the

bandwidth formula on an accelerated basis. Mr. Sammon stated that the Louisiana Commission securitized the Little Gypsy cancellation costs after determining that securitization would be less costly to ratepayers over time than simply allowing the utility to recover the abandoned project costs through amortization and earning a return on its unamortized balances. He testified that the financing cost for abandoned plant investment recovery was minimized because Entergy Louisiana created a subsidiary company, a Special Purpose Entity, which performed the cancelled project cost recovery financing separate and apart from Entergy Louisiana. Mr. Sammon stated that when Entergy Louisiana received the securitization proceeds from the Special Purpose Entity, its investment in the Little Gypsy Repowering Project was written off its books. Mr. Sammon argued that because there are no longer any Little Gypsy cancellation costs on Entergy Louisiana's books to amortize, any annual amortizations following the methodology established in Opinion No. 295 would be fictitious.

17. Conversely, the Mississippi Commission presented the direct and answering testimony of Mr. Larkin, Mr. Cain and Mr. Puga opposing Entergy's proposal to revise the bandwidth formula to include the Little Gypsy cancellation costs. According to Mr. Larkin, abandoned plant costs are not properly defined as production costs and therefore it would be inappropriate to include the Little Gypsy cancellation costs in the bandwidth formula. He further argued that because the Louisiana Commission approved the Little Gypsy Repowering Project to benefit only Entergy Louisiana customers, customers of the other regulatory jurisdictions under the System Agreement are not and cannot be held responsible for the resulting costs.

18. Mr. Cain and Mr. Puga testify that the Little Gypsy Repowering Project was planned to address a significant shortage of baseload generation capacity in the Entergy Louisiana service territory, particularly with the Amite South planning region, as well as a strategic need to diversify Entergy Louisiana's reliance on natural gas-fired generation. Mr. Cain and Mr. Puga testify that Entergy Louisiana was initially allocated 100 percent ownership participation in the Little Gypsy Repowering Project, which would only have met a portion of Entergy Louisiana's baseload capacity deficit. According to Mr. Cain and Mr. Puga, the subsequent allocation of one-third ownership in participation was intended to help address Entergy Gulf States Louisiana's similar baseload capacity deficit and fuel diversification needs. They assert that the participation allocation was made to Entergy Louisiana and Entergy Gulf States Louisiana because they would be the primary, if not exclusive, beneficiaries of the generation from the Little Gypsy Repowering Project. Mr. Cain and Mr. Puga claim that the Louisiana Commission solely approved the cost recovery and cost protections afforded to Entergy Louisiana after evaluating the prudence of the Little Gypsy Repowering Project and the participation assignments to Entergy Louisiana and Entergy Gulf States Louisiana. Thus, they argued that Louisiana ratepayers should be responsible for the Little Gypsy cancellation costs because they would have been the beneficiaries of the generation.

19. The Arkansas Commission presented the direct testimony of Dr. Berry stating that the Entergy Operating Committee did not approve the cancellation of the Little Gypsy Repowering Project. According to Dr. Berry, the Entergy Operating Committee approved the Little Gypsy Repowering Project in 2007, more than a year after Entergy Arkansas gave notice of its intention to exit the System Agreement effective on December 19, 2013. Dr. Berry claimed that the costs associated with the Little Gypsy Repowering Project were incurred by Entergy Louisiana after Entergy Arkansas issued its exit notice in December 2005. The Arkansas Commission also presented the direct and answering testimony of David T. Helsby. Mr. Helsby opposed the Variable LGCC amendment to the bandwidth formula as a policy matter. Mr. Helsby argued that Entergy's proposed amendment is a departure from the rate policy embedded in and underlying the bandwidth formula.⁴¹ Mr. Helsby testified that the addition of such a specific item as the Variable LGCC circumvents the consideration of broader matters with respect to the bandwidth formula, such as whether or not other costs associated with plant that is not used and useful, such as cancellation costs in general or Construction Work in Progress (CWIP), should be part of the bandwidth calculations. Further, he argued that allowing the addition of a specific *ad hoc* item to the bandwidth formula such as the proposed Variable LGCC amendment could open the gates to a multitude of requests for specific *ad hoc* treatments in the bandwidth calculations that would benefit the ratepayers of one Operating Company at the expense of ratepayers of other Operating Companies.⁴²

2. Cross-Answering Testimony and Rebuttal Testimony

20. Entergy presented the rebuttal testimony of Bruce M. Louiselle. Mr. Louiselle rejected the contention by Mr. Helsby that the Little Gypsy cancellation costs are not used and useful. Mr. Louiselle asserted that the standard applied to the inclusion of costs in the bandwidth is not whether a cost is used and useful but rather whether the cost was prudently incurred and properly recorded in a bandwidth eligible account. Mr. Louiselle asserted that the Little Gypsy cancellation costs have been subject to a prudence investigation and have been found to be prudent, and neither Mr. Helsby nor any other witness has challenged that determination. He also rejected arguments by Dr. Berry that because the Entergy Operating Committee only approved suspension of the project, the costs are not really cancellation costs but are instead CWIP, and Entergy did not request inclusion of CWIP in the bandwidth formula. Mr. Louiselle stated that the Entergy Operating Committee approved the Little Gypsy Repowering Project, and the lack of a

⁴¹ Ex. AC-27 at 9.

⁴² *Id.* at 10.

formal statement approving the cancellation of the project does not change that fact or support the notion that these costs remain CWIP as opposed to cancellation costs.

21. Mr. Louiselle also rejected the contention by Mr. Larkin that including the Little Gypsy cancellation costs in the bandwidth formula would produce a mismatch with the Commission's decisions to reject full cost equalization. Mr. Louiselle argued there is no mismatch, and under the Variable LGCC amendment the Little Gypsy cancellation costs would be treated no differently in the bandwidth formula than any other production cost included in that calculation. Mr. Louiselle also rejected the contention of Mr. Cain and Mr. Puga that because no other retail regulator evaluated the prudence of the project, it would be inappropriate to pass those costs on to the customers of the other Entergy Operating Companies in those jurisdictions. Mr. Louiselle stated that whether other retail jurisdictions approved the Little Gypsy cancellation costs is not relevant to a determination as to what costs are eligible to be included in the bandwidth formula. Mr. Louiselle also responded to Mr. Sammon's contentions that the assumptions he used in presenting cancellation costs recovery scenarios were faulty. Mr. Louiselle supported the assumptions he used to present a comparison of the securitized recovery amount to the traditional recovery amount in the context of Opinion No. 295.

22. The Louisiana Commission presented the rebuttal testimony of Mr. Baron, who responded to the direct and cross-answering testimony of witnesses for the Arkansas Commission and the Mississippi Commission. Mr. Baron asserted that each of these witnesses oppose the proposal to include the Little Gypsy cancellation costs based on the erroneous grounds that the Little Gypsy Repowering Project only provided benefits to Entergy Louisiana and was not designed to meet Entergy System needs. According to Mr. Baron, the System Agreement requires Entergy to optimally serve the loads of all of the Entergy Operating Companies, including Entergy Arkansas and Entergy Mississippi. Mr. Baron argued that Entergy Arkansas' and Entergy Mississippi's withdrawal notices do not exempt them from legitimate System costs. Rather, Mr. Baron asserted that Entergy Arkansas and Entergy Mississippi are currently full participants in the System Agreement and are therefore responsible for their share of System production costs.

23. The Louisiana Commission presented the rebuttal testimony of Mr. Kollen, who similarly recommended that the Commission reject arguments made by witnesses for the Arkansas Commission and Mississippi Commission that Entergy's proposed amendment should be rejected because the bandwidth formula does not presently include the Little Gypsy cancellation costs, abandonment costs, or any other assets that are not used and useful. Mr. Kollen asserted that Commission policy does not preclude abandoned plant costs in rates, and witnesses for the Arkansas Commission and the Mississippi Commission have not provided any authority for the complete exclusion of these costs. Mr. Kollen stated that the Commission has not adopted a policy in any of the bandwidth proceedings to exclude abandonment costs or the costs of plant that is not used and useful. Rather, Mr. Kollen argued that the current bandwidth formula includes a return

on and recovery of abandonment losses for plant that is removed from service and retired. Mr. Kollen stated that the bandwidth formula includes the abandonment costs and removal costs for retired plant because the costs are included in several of the bandwidth formula accounts pursuant to the accounting requirements set forth in the Commission's Uniform System of Accounts.⁴³ Mr. Kollen therefore asserted that the Little Gypsy cancellation costs should be included in the bandwidth formula as a matter of consistency.

24. The Mississippi Commission presented the cross-answering testimony of Mr. Larkin, which refuted the testimony of Mr. Sammon. Specifically, Mr. Larkin claimed that: (1) Mr. Sammon's conclusions are not supported by past Commission decisions; (2) equalization of the abandonment loss would be inconsistent with the terms and logic of the System Agreement; and (3) it is just and reasonable to leave the abandonment loss costs with the company that incurred such a loss. Mr. Larkin stated that Mr. Sammon failed to take into account that in past decisions, the Commission has only included costs associated with actual production in bandwidth formula calculations. According to Mr. Larkin, there have only been two instances where the Commission has allowed other costs unrelated to production to be included in the formula. Mr. Larkin stated that one adjustment addressed the extent to which the high cost of operating the Vidalia unit⁴⁴

⁴³ Mr. Kollen stated that these accounts include Account 108 (Accumulated Provision for Depreciation); Account 403 (Depreciation Expense); Account 190 (Accumulated Deferred Income Taxes); and Account 282 (Accumulated Deferred Income Taxes – Other Property).

⁴⁴ The Vidalia Hydroelectric Power Plant (Vidalia) was built 40 miles below the town of Vidalia, Louisiana, to harness the power of the water that overflows from the confluence of the Mississippi and Red Rivers into the Atchafalaya River through a series of channels. Failing to independently obtain financing for the construction of the plant, the Town of Vidalia entered into an agreement with Catalyst Energy Development Corporation to form the Catalyst Old River Hydroelectric Limited Partnership. Entergy Louisiana (then Louisiana Power & Light) entered into a contract with Catalyst Old River Hydroelectric Limited Partnership whereby Entergy Louisiana would purchase up to 94 percent of the output of Vidalia, with the Town of Vidalia purchasing the remaining six percent of the output. *See* Opinion No. 480, 111 FERC ¶ 61,311 at n.14. In Opinion No. 480, the Commission rejected the Louisiana Commission's proposal to distribute the contract costs among all the Entergy Operating Companies after finding that Vidalia was not a system resource. *See id.* P 182. The Commission re-priced the Vidalia output only to establish a rate that reflected, to the extent possible, what Entergy Louisiana would have paid for the purchase of power from all other Entergy resources had it not purchased energy from Vidalia. *See Louisiana Pub. Serv. Comm'n v. Entergy Corp., et al.*,

(continued...)

exceeded its used and useful cost of actual production and another addressed the timing of the pay down of capacity costs of actually operating the Grand Gulf unit by Entergy Mississippi and Entergy Arkansas.

25. Trial Staff presented the cross-answering testimony of Mr. Sammon who responded that, absent unusual circumstances, such as those surrounding the Vidalia project, all Entergy power plants are assumed to have been built or acquired primarily for the Entergy System. Mr. Sammon testified that if the Little Gypsy Repowering Project had been completed and gone into service producing energy, it is unlikely that any of the Entergy Operating Companies would have questioned whether the project benefited the entire Entergy System. Mr. Sammon argued that no witness for the Arkansas Commission or Mississippi Commission has pointed to any Little Gypsy Repowering Project characteristic that makes it different from other Entergy production assets that are presumed to be primarily built for the system.⁴⁵ Mr. Sammon noted that when the Entergy Operating Committee approved the Little Gypsy Repowering Project, it was expected to serve Entergy Arkansas for the last two years of Entergy Arkansas' membership in the System Agreement. Mr. Sammon asserted that until Entergy Arkansas formally withdraws from the System Agreement, it should be assessed its portion of the Little Gypsy cancellation costs in accordance with the bandwidth formula.

26. Further, Mr. Sammon challenged Mr. Helsby's claim that it would be wrong to accept Entergy's proposed amendment in this proceeding because the amendment applies only to the Little Gypsy cancellation costs. Mr. Sammon explained that it is not practical to amend the bandwidth calculation to provide for a generic inclusion of cancelled plant costs, but argued that it would be unjust to Entergy Louisiana ratepayers not to roughly equalize project abandonment costs simply because doing so cannot be done on a generic basis. Mr. Sammon further noted that the Commission no longer strictly applies the used and useful standard and argued that there are compelling reasons in this proceeding not to apply that standard. Finally, Mr. Sammon disputed Mr. Larkin's claim that abandoned plant costs should be excluded from the bandwidth formula because such costs are not "actual production" costs as defined by accounting and the utility industry. According to Mr. Sammon, Mr. Larkin is defining production costs too narrowly.

139 FERC ¶ 61,100, at P 34 (2012) (affirming on rehearing the re-pricing of Vidalia output established in Order No. 480).

⁴⁵ See Ex. S-7 at 4-5.

E. Initial Decision

27. A hearing commenced on February 19, 2013, which resulted in the Initial Decision. In reaching his findings of fact and conclusions of law, the Presiding Judge noted that the parties in this case do not dispute most of the salient facts. Specifically, he found that the parties do not dispute that the Entergy Operating Committee acted prudently when it determined the need to seek diversification of fuel resources.⁴⁶ He also found that the parties do not dispute that the study and cancellation of the Little Gypsy Repowering Project was prudent and that they do not dispute that the dollar amount for inclusion in the bandwidth formula is approximately \$194,237,888 over a 10-year period.⁴⁷ The Presiding Judge also found that the parties do not dispute that, had the project been completed and had it gone into operation, these costs would have flowed into the bandwidth formula. The Presiding Judge also found that the securitization of the Little Gypsy cancellation costs was prudent. The Presiding Judge noted, however, that the parties are disputing two points: (1) whether the purpose of the Little Gypsy Repowering Project was to primarily serve the Entergy System's needs or the local needs of the Amite South region; and (2) whether the securitized cancellation costs are the type of production costs that should be allocated among the Entergy Operating Companies under the bandwidth formula.⁴⁸

28. As to the first question, the Presiding Judge found that the record demonstrated that the decision of the Entergy Operating Committee to diversify the fuel resources on the Entergy System would inure to the benefit of all members of the Entergy system.⁴⁹ With regard to the second question, however, the Presiding Judge found that Entergy failed to prove that the securitized Little Gypsy cancellation costs were the type of production costs that should be allocated among the Operating Companies under the bandwidth formula. The Presiding Judge also found that the Louisiana Commission

⁴⁶ Initial Decision, 143 FERC ¶ 63,012 at P 11 (citing February 13, 2013 Joint Statement of Stipulated and Contested Issues, Stipulated and Contested Facts, Joint Witness List and Index of Exhibits at 8-12).

⁴⁷ The \$194 million amount represents the authorized total of \$207.156 million, less the accumulated deferred income taxes associated with the Little Gypsy cancellation costs. *Id.* (citing Ex. ESI-11 at 1).

⁴⁸ *Id.* P 12.

⁴⁹ *Id.* P 13.

failed to demonstrate that the current bandwidth formula is unjust, unreasonable, unduly discriminatory or preferential.⁵⁰

29. Briefs on exceptions were filed by Entergy, the Louisiana Commission, and Trial Staff on July 8, 2013. Briefs opposing exceptions were filed by the Mississippi Commission, the Arkansas Commission and the Council of the City of New Orleans Council (New Orleans Council) on July 29, 2013.

II. Discussion

30. Having fully evaluated the Initial Decision, the briefs on and opposing exceptions, and the record before us, we affirm, in part, and reverse, in part, the determinations of the Presiding Judge for the reasons set forth below.

A. Entergy's FPA Section 205 Filing

1. Was the Purpose of The Little Gypsy Repowering Project Primarily to Serve the Entergy System's Needs or the Local Needs of the Amite South Region?

a. Initial Decision

31. The Presiding Judge found that the Little Gypsy Repowering Project was designed to meet the needs of the Entergy System and that the Entergy Operating Committee's decision to diversify the fuel resources on the Entergy System "would inure to the benefit of all members of the [Entergy System]."⁵¹ The Presiding Judge stated that the record indicates that the Little Gypsy Repowering Project "was designed to achieve the benefit of diversifying the system's 'current portfolio of fuel sources and delivery modes.'"⁵² The Presiding Judge referenced Entergy System planning documents as demonstrating that the Little Gypsy Repowering Project was intended to benefit the entire Entergy System. For example, the Presiding Judge referenced the July 5, 2007 Entergy Operating Committee meeting minutes approving the project and testimony of Mr. Walz, Entergy's Director of Planning Analysis.

⁵⁰ *See id.* P 44.

⁵¹ *Id.* P 13.

⁵² *Id.* (citing Ex. LC-10 at 13).

b. Briefs on Exceptions

32. Entergy, the Louisiana Commission, and Trial Staff do not take exception to the finding in the Initial Decision that the purpose of the Little Gypsy Repowering Project was to benefit the entire Entergy System.

c. Briefs Opposing Exceptions

33. The Mississippi Commission states that the pre-bandwidth System Agreement assigned new generation projects to the Entergy Operating Companies on a rotating basis and made each Operating Company bear the cancellation risk for the resources it undertook, or was assigned, to build and own when its turn came.⁵³

34. The Mississippi Commission argues that the Louisiana Commission's approval of the Little Gypsy Repowering Project, and its decision to guarantee securitized cost recovery, was each a but-for cause of Entergy Louisiana incurring the costs now in dispute. According to the Mississippi Commission, Entergy originally planned to internalize the Little Gypsy cancellation costs within Louisiana, but filed the present case because a settlement reached before the Louisiana Commission required it to do so.⁵⁴ The Mississippi Commission contends that the Louisiana Commission approved the Little Gypsy Repowering Project largely because it would provide more efficient and fuel-diverse generation located inside the Amite South region and thereby focused primarily on the interests of Louisiana ratepayers.⁵⁵

35. The Mississippi Commission asserts that had Entergy wanted to spread the benefits and risks of ownership of the Little Gypsy Repowering Project, it could have done so "through a variety of sharing arrangements."⁵⁶ For example, the Mississippi Commission notes that the Ouachita plant "has more than one [Entergy] Operating Company participating in it" and is owned by both Entergy Arkansas and Entergy Louisiana.⁵⁷ The Mississippi Commission argues that costs should only be allocated to

⁵³ Mississippi Commission Brief Opposing Exceptions at 18.

⁵⁴ *Id.* at 48 (referencing Ex. AC-31 at 10:12:3; Ex. AC-33 at 2).

⁵⁵ *Id.* at 48-49.

⁵⁶ *Id.* at 50.

⁵⁷ *Id.*

those jurisdictions that had a say in the decision to embark on the project, and placing the cancellation risk on the Entergy Operating Companies that will benefit from a resource “aligns the distribution of risk with the distribution of benefits.”⁵⁸ The Mississippi Commission further argues that a state regulator may require a different distribution if deemed necessary. According to the Mississippi Commission, determining cancellation risk upfront, before it is known whether the resource will successfully enter into service, is appropriate because it avoids belated disputes and allocates project risk according to the projected project benefits.⁵⁹

36. The Mississippi Commission contends that the Louisiana Commission “effectively was a partner in the incurrence of [the Little Gypsy cancellation costs] that ultimately provided no ratepayer benefit.”⁶⁰ The Mississippi Commission argues that, in contrast, the Mississippi Commission had no role or responsibility, and therefore its ratepayers should not have to pick up the tab for wasted expenditures. The Mississippi Commission further claims that although the date a completed plant enters service may be constrained by real-world events, the date on which securitized costs begin being collected through retail rates is largely a matter of regulatory convenience. The Mississippi Commission argues that the “timing difference may coincide with an [Operating Company’s] departure from the System Agreement, as can be seen in the case of the [Little Gypsy Repowering Project] and Arkansas.”⁶¹ The Mississippi Commission argues that a jurisdiction may avoid cost responsibility by approving project cancellation, and subjecting the costs to bandwidth spreading, rather than requiring a project’s completion.

37. The Mississippi Commission asserts that the Commission opted only for *partial* production cost equalization to avoid creating a situation where each state commission would regularly have to intervene in other states’ certification proceedings. The Mississippi Commission argues that by keeping cancelled plant costs out of the bandwidth formula, “a state commission whose ratepayers are on the receiving end of the bandwidth formula allocation can assure them that if they are paying for production costs incurred elsewhere, it is because they are understood to receive at least some benefit of that production.”⁶²

⁵⁸ *Id.* at 51-52.

⁵⁹ *Id.* at 52-53.

⁶⁰ *Id.* at 55.

⁶¹ *Id.* at 56-57 (referencing Tr. 1258-59 (Sammon)).

⁶² *Id.* at 58-59.

38. The Mississippi Commission argues that the System Agreement requires each Operating Company to be in a position to be self-sufficient. According to the Mississippi Commission, when an Operating Company withdraws from the System Agreement, it is left owning the completed generators for which it was the assigned owner and builder. The Mississippi Commission asserts that if the risk of project cancellation were spread across all of the Entergy Operating Companies through the bandwidth formula, retail regulators “would have perverse incentives to gamble with other jurisdictions’ funds.” Specifically, the Mississippi Commission claims that a retail regulator could direct its jurisdictional Entergy Operating Company to build projects with high cancellation risk, such as baseload resources, but which offer special advantages, such as especially low energy costs, if they enter service. The Mississippi Commission argues that an Entergy Operating Company could then withdraw from the System Agreement to keep any benefits or elect to stay in the System Agreement and spread its “downside detriment” to other jurisdictions.

d. Commission Determination

39. We affirm the Presiding Judge’s determination that the Little Gypsy Repowering Project was designed to meet the needs of the Entergy System. Contrary to the allegations of the Mississippi Commission, the record demonstrates that the Little Gypsy Repowering Project was not intended only to meet the needs of the Amite South region, but to meet the needs of the Entergy System as a whole. As the Presiding Judge found, the parties agree that in 2002 the Entergy Operating Companies determined a need to diversify their fuels for generation, a committee was formed to review possible sources of solid fuels, and after reviewing competing proposals, the Entergy Operating Committee selected the Little Gypsy Repowering Project. The Presiding Judge also noted that the Entergy Operating Committee assigned the Little Gypsy Repowering Project to Entergy Louisiana. In approving the project, the Entergy Operating Committee stated that the Little Gypsy Repowering Project would serve the needs of the Entergy System.⁶³ We also agree with the Presiding Judge that testimony regarding the overall Entergy System planning process, which was responsible for initiating the Little Gypsy Repowering Project, reinforces his finding that the project was designed to meet system needs.⁶⁴

⁶³ For instance, as the Presiding Judge points out, the minutes for the July 5, 2007 Entergy Operating Committee meeting approving the project provided that “the Little Gypsy Solid Fuel Project is an appropriate resource for the Entergy System to meet the System’s baseload resource requirements...[and for] serving System load.” Initial Decision, 143 FERC ¶ 63,012 at P 13 (citing Ex. LC-8 at 4).

⁶⁴ Entergy’s witness, Mr. Walz, the Director of Planning Analysis for Entergy explained the Entergy System planning process as follows:

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40. Furthermore, we find the Mississippi Commission's assertion that Entergy could have spread the benefits and risks of ownership of the Little Gypsy Repowering Project "through a variety of sharing arrangements" to be inconsequential. The Mississippi Commission and Entergy both recognize that rotational assignment of the responsibility to construct new generation projects was the method traditionally employed under the System Agreement.⁶⁵ Additionally, we find no support in the record for the Mississippi Commission's claim that "the risk of project cancellation was part of the bundle of ownership responsibilities that was assigned rotationally."⁶⁶ The fact that Entergy Louisiana bore the burden for constructing the Little Gypsy Repowering Project is irrelevant because, as the Presiding Judge found:

With respect to whether the project was designed to meet system needs, this Initial Decision finds that the project study was initiated to meet system needs. The decision of the Entergy Operating Committee to diversify the fuel resources on the system would inure to the benefit of all members of the system. The record clearly indicates that the Little Gypsy project was designed to achieve the benefit of diversifying the system's "current portfolio of fuel sources and delivery modes."⁶⁷

41. We also reject the Mississippi Commission's allegation that the Louisiana Commission "effectively was a partner in the incurrence of [the Little Gypsy cancellation costs] that ultimately provided no ratepayer benefit,"⁶⁸ that Mississippi ratepayers

The System Planning follows this sequence. First, resource needs for the System are determined. Second, resource additions are identified. Third, resources are allocated among the Operating Companies. In other words, resources are planned to meet the needs of the System and then allocated among the Operating Companies.

See Ex. ESI-13 at 9.

⁶⁵ *See* Mississippi Commission Brief Opposing Exceptions at 18; Entergy Brief on Exceptions at 20.

⁶⁶ Mississippi Commission Brief Opposing Exceptions at 18.

⁶⁷ Initial Decision, 143 FERC ¶ 63,012 at P 13 (citing Ex. LC-10 at 13).

⁶⁸ Mississippi Commission Brief Opposing Exceptions at 50.

“should not have to pick up the tab for wasted expenditures,” and that decisions of the Louisiana Commission are the but-for causes of the costs in dispute. While the Little Gypsy Repowering Project did not come to fruition, it was, as we have found, planned for the benefit of the entire Entergy System. Further, we find no support for implications that the Louisiana Commission avoided cost responsibility for its ratepayers by approving the project’s cancellation rather than requiring the Little Gypsy Repowering Project to be completed. Accordingly, the Initial Decision is affirmed as to the purpose of the Little Gypsy Repowering Project.

2. **Are the Little Gypsy Cancellation Costs the Kinds of Costs that are Appropriate for Inclusion in the Bandwidth Formula?**

42. After finding that the purpose of the Little Gypsy Repowering Project was to benefit the entire Entergy System, the Presiding Judge stated:

The factual findings above, including that Little Gypsy was planned to provide a benefit to the Entergy System, may seem to support a determination that the costs at issue should be included in the bandwidth formula. However, to resolve the question in this case, the factual findings are not evaluated in a vacuum, but must be considered in the context of the FPA, Opinion No. 480, and the unique governing rules that the Commission and federal courts have established for the Entergy System.⁶⁹

43. To address whether to include the Little Gypsy cancellation costs in the bandwidth formula, the Presiding Judge considered two issues: (1) the requirements of section 3.01 of the System Agreement and the scope of rough production cost equalization; and (2) the purpose of the bandwidth remedy as established by Opinion No. 480 and the history of the Entergy System.

a. **The Requirements of Section 3.01 of the System Agreement and the Scope of Rough Production Cost Equalization**

i. **Initial Decision**

44. In addressing whether Entergy’s proposal was just and reasonable under FPA section 205, the Presiding Judge first reviewed the requirements of section 3.01 of the

⁶⁹ Initial Decision, 143 FERC ¶ 63,012 at P 17.

System Agreement. The Presiding Judge noted that section 3.01 of the System Agreement states: “This Agreement also provides a basis for equalizing among the [Entergy Operating] Companies any imbalance of costs associated with the construction, ownership and operation of such facilities as are used for the mutual benefit of all the [Entergy Operating] Companies.”⁷⁰ The Presiding Judge found that the language of this provision and the use of the conjunction “and” make clear that costs are only subject to equalization when a project is (1) constructed; (2) owned; and (3) operated, and then at one time or another is “used” by the Entergy System. The Presiding Judge thus found that the “used” language in section 3.01 is in accord with the used and useful standard that he stated is a fundamental principle of public utility law. The Presiding Judge also noted that:

[T]he “used and useful” principle is more often associated with traditional utility ratemaking issues and not allocation issues. Therefore, to include such language as part of an allocation concept would seem to indicate the intent that it would have some function and should not be overlooked or ignored.^[71]

45. The Presiding Judge added the Commission has relied on the used and useful principle to resolve matters pertaining to cancelled plant costs, such as in Opinion No. 49.⁷²

46. The Presiding Judge also addressed the Louisiana Commission’s argument that, notwithstanding section 3.01, the used and useful principle does not apply in this case because the Commission has allowed the costs of retired generation plants and generating units that remain in extended reserve shutdown to be included in the bandwidth formula even though they are not used and useful.⁷³ The Presiding Judge found that this

⁷⁰ *Id.* P 19.

⁷¹ *Id.* P 21.

⁷² *Id.* P 22 (citing *NEPCO MRC*, 668 F.2d at 1333).

⁷³ *Id.* P 23 (citing Louisiana Commission Reply Brief at 12-13). The Louisiana Commission argued that prior to the adoption of the bandwidth formula, the Commission determined that facilities do not have to be “used” to be subject to the System Agreement’s equalization provisions. For example, in the extended reserve shutdown case, the Louisiana Commission argued that Entergy had placed a number of generating units in storage and that it planned to bring some back into service, but not others. The Louisiana Commission states that although the units were not “available” to the Entergy

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argument failed, however, because extended reserve shutdown units were both used and useful at one time and produced electricity for the Entergy System. The Presiding Judge found that rough production cost equalization was designed to equalize costs that have a direct nexus to generation projects that actually produced electricity at one time or another. However, the Presiding Judge found that the Little Gypsy Repowering Project was planned, subsequently cancelled, and never produced any service to the Entergy System. The Presiding Judge found that, unlike the Little Gypsy Repowering Project, the retired plants and extended reserve shutdown plants have a disparate used and useful status that thereby justifies their different treatment under the bandwidth formula. The Presiding Judge stated that, conversely, the Commission has disallowed the recovery of CWIP costs in rate base in a host of settings, because to do otherwise would subject ratepayers to the cost of a resource from which they had realized no benefits.⁷⁴ Thus, the Presiding Judge found that it would be inappropriate to include the Little Gypsy cancellation costs in the bandwidth formula because the Little Gypsy Repowering Project was planned, subsequently cancelled, and never put into service.⁷⁵

ii. Briefs on Exceptions

47. The Louisiana Commission, Entergy, and Trial Staff disagree with the Presiding Judge's interpretation of section 3.01 of the System Agreement.⁷⁶ According to Entergy, the System Agreement allocates production costs through the rotating assignment of responsibility to construct new generation resources. If the Presiding Judge's narrow interpretation of "used" is correct, Entergy argues, the terms of the System Agreement would only apply to facilities after they are placed in service and would not be applicable to the costs associated with "the very essence of the [System] Agreement . . . the rotational assignment of the responsibility of the construction of a new generation unit."⁷⁷

System and could not be used, the Commission found that including them in Service Schedule MSS-1 was just and reasonable. Louisiana Commission Reply Brief at 12-13 (citing *Louisiana Pub. Serv. Comm'n v. FERC*, 174 F.3d 218 (D.C. Cir. 1999); *Entergy Servs., Inc. and Gulf States Utils. Co.*, Opinion No. 415, 80 FERC ¶ 61,197 (1997)).

⁷⁴ Initial Decision, 143 FERC ¶ 63,012 at P 22 (referencing Louisiana Commission Reply Brief at 12-13).

⁷⁵ *Id.* P 23.

⁷⁶ Louisiana Commission Brief on Exceptions at 30-31; Entergy Brief on Exceptions at 21-22; Trial Staff Brief on Exceptions at 17.

⁷⁷ Entergy Brief on Exceptions at 20-21.

48. The Louisiana Commission and Trial Staff assert that costs of generation projects acquired by the Entergy Operating Companies are subject to rough production cost equalization under the bandwidth formula even if an Entergy Operating Company did not construct the projects.⁷⁸ Specifically, they claim that the Commission allowed costs associated with the Spindletop Regulatory Asset,⁷⁹ which was not constructed by Entergy, to be included within the bandwidth formula. According to Trial Staff, the included costs represented actual costs incurred to acquire the Spindletop facility and did not reflect ongoing operational costs.⁸⁰

⁷⁸ Louisiana Commission Brief on Exceptions at 49-50 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp., et al.*, Opinion No. 509, 132 FERC ¶ 61,253, at PP 37-40 (2010), *reh'g denied*, 139 FERC ¶ 61,101 (2012)); Trial Staff Brief on Exceptions at 19-20 (referencing the Hot Spring generating facility and the Ouachita generating facility acquired by Entergy Arkansas, and the Hinds generating facility acquired by Entergy Mississippi). *See also* Joint Statement of Stipulated and Contested Issues, Stipulated and Contested Facts, Joint Witness List and Index of Exhibits: Stipulated Facts Nos. 19-28 at 10-11.

⁷⁹ The Spindletop Regulatory Asset was associated with the Spindletop gas storage facility that provided 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. Opinion No. 509, 132 FERC ¶ 61,253 at PP 4-7. In an Initial Decision addressing the issue of whether costs associated with the Spindletop Regulatory Asset were bandwidth formula-eligible, the Presiding Judge found that the Spindletop Regulatory Asset was merely an accounting construct that did not produce electricity and was distinguishable from the Spindletop facility, which was the tangible, physical asset that provided gas and storage services and incurred costs in the production of electricity. However, the Commission reversed the Presiding Judge after finding that, in relevant part, the Spindletop Regulatory Asset represents deferred actual costs of providing storage and transportation services necessary for the production of electricity. *Id.* P 37. *See also* Trial Staff Brief on Exceptions at 21.

⁸⁰ Trial Staff Brief on Exceptions at 20-22.

49. Trial Staff further asserts that to the extent that the Initial Decision stands for the proposition that a cost is only subject to equalization when it constitutes a “project,” this proposition should be rejected by the Commission. Trial Staff notes that there are many “non-project costs” that can flow through the bandwidth formula that are not directly associated with construction or ownership of a facility or a direct cost of operating a facility or constructing a production asset.⁸¹ For example, Trial Staff states that the Commission previously allowed Entergy to modify the bandwidth formula to change the allocation process for determining overhead allocations.⁸²

50. Entergy states that to be included in the bandwidth formula, “costs must be: (1) production-related costs; (2) correctly accounted for in a bandwidth-eligible account; and (3) must be prudently-incurred.”⁸³ Entergy states that the Presiding Judge concluded that the Little Gypsy cancellation costs were production-related costs and were prudently-incurred.⁸⁴ Further, Entergy states that it is undisputed that although the securitized Little Gypsy cancellation costs are no longer recorded on Entergy Louisiana’s books, the costs would be in an eligible account if the proposed amendment were approved. Entergy therefore argues that it was improper for the Presiding Judge to conclude that a production-related cost must also be used and useful to be included in the bandwidth formula.⁸⁵ According to Entergy, nothing in Opinion No. 480 suggests that certain production-related costs should be considered for rough production cost equalization purposes and others should not.⁸⁶ Entergy further states that the Presiding Judge

⁸¹ *Id.* at 18-19 (citing Ex. LC-3 at 56, 58 (referencing Bandwidth Formula Accounts GP = General Plant in Service recorded in FERC Plant Accounts 389 through 398 excluding Asset Retirement Obligation, if any; IP = Intangible Plant in Service recorded in FERC Plant Accounts 301 through 303; AG = Administrative and General O&M Expense recorded in FERC Accounts 920 through 935 excluding Storm Accrual Expense recorded in FERC Account 924; OT = Other Tax Expense recorded in FERC Account 408)).

⁸² *Id.* at 19 (citing Ex. LC-27 at 1; Tr. 252). *See also Entergy Servs., Inc.*, Opinion No. 506, 130 FERC ¶ 61,026 (2010); *Entergy Servs., Inc.*, 131 FERC ¶ 61,216 (2010).

⁸³ Entergy Brief on Exceptions at 27 (citing Tr. 251-252, 308).

⁸⁴ *Id.* at 27-28 (referencing Initial Decision, 143 FERC ¶ 63,012 at PP 11, 14).

⁸⁵ Entergy claims that an allocation of expenses recorded in Account 925 Employee Pensions and Benefits is included in the bandwidth formula despite not being used and useful. *See id.* at 28-29.

⁸⁶ *Id.*

acknowledged that the Little Gypsy cancellation costs would have been included in the bandwidth formula if the Little Gypsy Repowering Project had been completed and placed into service.⁸⁷ Entergy argues that the cancellation and securitization do not change the character of the costs to make them something other than production-related, and therefore the Little Gypsy cancellation costs should be included in the bandwidth formula.

51. The Louisiana Commission and Trial Staff provide examples of costs that they assert the Commission has allowed in the bandwidth formula that were not used and useful as described by the Presiding Judge.⁸⁸ Specifically, the Louisiana Commission and Trial Staff note that the Commission previously allowed the costs of retired generation plants and generating units that remain in extended reserve shutdown to be included in the bandwidth formula even though they are not used and useful.⁸⁹

52. The Louisiana Commission similarly notes that plants and equipment that are prematurely retired and are not used and useful for the production of electricity remain in the bandwidth formula. For example, the Louisiana Commission states that Entergy Arkansas retired steam generators at a cost of approximately \$160 million.⁹⁰ The Louisiana Commission asserts that although the generators were retired before the bandwidth formula was adopted, the costs stayed in Accounts 101 and 108 and therefore were included in the bandwidth formula. The Louisiana Commission argues that many of the extended reserve shutdown units and all of the retired units will never provide service again whereas Little Gypsy Unit 3 is currently in operation.

53. The Louisiana Commission, Entergy, and Trial Staff argue that the Presiding Judge's narrow interpretation of the word "used" would prohibit the System Agreement from taking into account the costs of generation units that are retired or in extended reserve shutdown.⁹¹ In addition, Entergy argues that under the Initial Decision's

⁸⁷ *Id.* at 29-30 (referencing Initial Decision, 143 FERC ¶ 63,012 at P 12).

⁸⁸ Louisiana Commission Brief on Exceptions at 31-32; Trial Staff Brief on Exceptions at 24.

⁸⁹ Louisiana Commission Brief on Exceptions at 30-31 (citing *La. Pub. Serv. Comm'n v. FERC*, 174 F.3d 218; *Entergy Servs., Inc. and Gulf States Utils. Co.*, Opinion No. 415, 80 FERC ¶ 61,197). *See also* Trial Staff Brief on Exceptions at 24.

⁹⁰ Louisiana Commission Brief on Exceptions at 33 (referencing Ex. LC-25 at 15).

⁹¹ Entergy Brief on Exceptions at 21-22; Louisiana Commission Brief on Exceptions at 36; Trial Staff Brief on Exceptions at 18.

interpretation of section 3.01, the terms of the System Agreement would be applicable to facilities only after they are placed in service but not to “costs associated with implementation of the very essence of the Agreement, *to wit*, the rotational assignment of the responsibility of the construction of a new generation unit, which results in the allocation of all the costs associated with the unit, including costs incurred before the unit is used and useful.”⁹²

54. Entergy asserts that the relevant language of section 3.01 provides that the Entergy Operating Companies can balance costs “associated with the construction, ownership and operation of such facilities *as are used*,” not *were used*. Thus, Entergy argues that the literal meaning of section 3.01 requires the present use of facilities, not the past use.⁹³ The Louisiana Commission similarly argues that the word “used” has never been applied literally, and even if it were, the Little Gypsy cancellation costs would qualify. The Louisiana Commission explains that the Little Gypsy cancellation costs are associated with a planned repowering of Unit 3 of the existing Little Gypsy plant, which it claims is a unit that is currently in service and providing electricity for the Entergy System.⁹⁴

55. The Louisiana Commission and Trial Staff further argue that the Presiding Judge modifies the word “used” in section 3.01 to mean “at one time or another is ‘used’ by the Entergy System” as a means to block legitimate prudent production costs from being included in the bandwidth formula.⁹⁵ Trial Staff argues that if the proposed amendment to the bandwidth formula can be decided merely on the operational status of the Little Gypsy Repowering Project and on section 3.01 of the System Agreement, then the Commission could have summarily dismissed Entergy’s (and the Louisiana Commission’s) proposed amendment to the bandwidth formula without a hearing.⁹⁶

56. Further, Entergy and Trial Staff argue that interpreting the bandwidth formula in light of a provision that predates it by 30 years is erroneous.⁹⁷ Specifically, Entergy asserts that the bandwidth formula need not be construed in light of section 3.01 because

⁹² See Entergy Brief on Exceptions at 20-21.

⁹³ *Id.* at 22.

⁹⁴ Louisiana Commission Brief on Exceptions at 30-31.

⁹⁵ *Id.* at 36; Trial Staff Brief on Exceptions at 18.

⁹⁶ Trial Staff Brief on Exceptions at 18.

⁹⁷ *Id.* at 30; Entergy Brief on Exceptions at 22-23.

the bandwidth formula was added to Service Schedule MSS-3 through a compliance filing in 2006, whereas section 3.01 was a part of the 1982 version of the System Agreement. Entergy argues that, unlike the System Agreement, the bandwidth formula has a self-correcting mechanism operating on an annual basis to assure rough production cost equalization.

57. Finally, Entergy argues that if the parties to the System Agreement intended the term “used” to invoke the used and useful standard, then they would have written “used and useful.”⁹⁸ Entergy states that none of the Commission’s major decisions regarding rough production cost equalization on the Entergy System find that the phrase “used for the mutual benefit of the [Entergy Operating] Companies” forecloses consideration of cancellation costs and other costs related to plant that is not used and useful in determining rough production cost equalization.⁹⁹ Trial Staff similarly argues that, whatever intent the Entergy Operating Companies held with respect to the application of the Commission’s used and useful ratemaking principle with respect to section 3.01 and cancelled plant costs, they did not and could not have contemplated that the Commission would require the development of the bandwidth formula and bandwidth payments as a remedy.¹⁰⁰ Trial Staff states that the Initial Decision does not and cannot point to any language in the System Agreement regarding the intent of the Entergy Operating Companies with respect to their perception of the outcome of the Commission’s application of the used and useful ratemaking principle to determine cost responsibilities under the System Agreement. Trial Staff also claims that, although the System Agreement is among the Entergy Operating Companies and Entergy, the Initial Decision fails to consider the intention of Entergy.¹⁰¹ Trial Staff states that Entergy, which provides legal services for the Entergy Operating Companies, has proposed to modify

⁹⁸ Entergy Brief on Exceptions at 22.

⁹⁹ *Id.* at 23 (referencing *Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305 (1985), *reh’g denied*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985), *aff’d sub nom. Miss. Indus. v. FERC*, 808 F.2d 1525 (D.C. Cir.), *vacated and rev’d in part and remanded*, 822 F.2d 1104 (D.C. Cir. 1987) (per curiam), *cert. denied*, 484 U.S. 985 (1987); *Sys. Energy Res., Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh’g denied*, Opinion No. 292-A, 42 FERC ¶ 61,091 (1988), *aff’d sub nom. City of New Orleans v. FERC*, 875 F.2d 903 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990)).

¹⁰⁰ Trial Staff Brief on Exceptions at 30.

¹⁰¹ *Id.* at 29 (citing Ex. LC-3 at 4).

section 30.12 of the System Agreement to include the Little Gypsy cancellation costs in the bandwidth formula.¹⁰²

iii. Briefs Opposing Exceptions

58. The Mississippi Commission and the Arkansas Commission argue that section 3.01 of the System Agreement firmly limits cost-spreading (among the Entergy Operating Companies) to generators that are “used” for the non-owning Entergy Operating Companies’ benefit.¹⁰³ For example, the Mississippi Commission asserts that although the Commission was considering allowing partial rate base inclusion of CWIP at the same time that the System Agreement was formed, neither the bandwidth formula nor any other System Agreement section provides for CWIP to be spread among the Entergy Operating Companies.¹⁰⁴ The Mississippi Commission asserts that had the Little Gypsy Repowering Project not been cancelled, it would have remained under construction at the time of trial and not yet been operating. Under that scenario, the Mississippi Commission contends that all of the Little Gypsy cancellation costs would have properly remained in Account 107 and not been included in any bandwidth formula calculation updates. The Mississippi Commission argues that “[t]he cancellation [of the Little Gypsy Repowering Project] amounted to a recognition that what had been intended as potentially useful costs had turned out to be a waste.”¹⁰⁵

59. The Mississippi Commission states that Entergy maintains a three-part test for bandwidth formula eligibility: “the costs must be: (1) production-related costs; (2) correctly accounted for in a bandwidth-eligible account; and (3) must be prudently incurred.”¹⁰⁶ Further, the Mississippi Commission asserts that section 3.01 of the System Agreement requires production costs to meet two qualitative requirements before an Entergy Operating Company can include them in the bandwidth formula: (1) the costs must be prudent; and (2) the costs must turn out to result in mutually beneficial use.¹⁰⁷ In

¹⁰² *Id.* at 29-30.

¹⁰³ Mississippi Commission Brief Opposing Exceptions at 13; Arkansas Commission Brief Opposing Exceptions at 6.

¹⁰⁴ Mississippi Commission Brief Opposing Exceptions at 13.

¹⁰⁵ *Id.* at 13-14.

¹⁰⁶ *Id.* at 21-22.

¹⁰⁷ *Id.* at 22-23.

response to Trial Staff witness Mr. Sammon's testimony concerning the Commission's treatment of the Vidalia plant, the Mississippi Commission argues that although the Commission found that the plant in Vidalia was planned for Louisiana alone, it allowed costs to be included in the bandwidth formula to the limited extent that output from the plant provided value to the Entergy System. Conversely, the Mississippi Commission argues that because the Little Gypsy Repowering Project can never produce energy, it fails the "used" test of section 3.01 of the System Agreement.¹⁰⁸

60. The Mississippi Commission asserts that certain administrative and general overheads are "indirect costs" that are necessary to produce electricity. For example, the Mississippi Commission argues that "[n]obody would dispute . . . that Entergy needs to incur and honor pension obligations in order to hire the employees who staff its plants."¹⁰⁹

61. The Mississippi Commission and the Arkansas Commission argue that although section 3.01 of the System Agreement uses the verb tense "are used," a production facility need not be currently in operation for its costs to be included in the bandwidth formula.¹¹⁰ Rather, the Arkansas Commission argues that the fact that a plant was once capable of actual operation and use is a sufficient condition for inclusion in the bandwidth formula.¹¹¹

62. The Mississippi Commission asserts that extended reserve shutdown units are used and useful because they were found to be "useful in the System in providing a backup reserve to the System and in allowing the [Entergy Operating Companies] to defer repairs of the [extended reserve shutdown] units and construction of new generation units."¹¹² Thus, the Mississippi Commission argues, whether the extended reserve shutdown units remained in service is irrelevant. The Mississippi Commission further asserts that the Little Gypsy cancellation costs were not incurred to build the existing gas-fired unit, but rather to build a new solid-fuel generating resource that has not, and will never be, used

¹⁰⁸ *Id.* at 23.

¹⁰⁹ *Id.* at 35-36.

¹¹⁰ *Id.* at 36-37; Arkansas Commission Brief Opposing Exceptions at 8-9.

¹¹¹ Arkansas Commission Brief Opposing Exceptions at 8-9.

¹¹² Mississippi Commission Brief Opposing Exceptions at 28 (citing *La. Pub. Serv. Comm'n v. FERC*, 174 F.3d at 228).

for the Entergy Operating Companies' benefit.¹¹³ The Mississippi Commission similarly argues that the Commission approved including the Spindletop Regulatory Asset costs in the bandwidth formula because they, unlike the Little Gypsy cancellation costs, represented "deferred *actual* costs of providing storage and transportation services necessary for the production of electricity" and represent "costs associated with actual service for the production of energy."¹¹⁴

63. The Mississippi Commission asserts that although the used and useful test can be used to determine how much ratepayers in the aggregate will pay, it also is appropriately used for cost allocation among the Entergy Operating Companies. The Mississippi Commission agrees with the Presiding Judge that "cost allocation seeks in principle to ensure that 'current rate payers ... bear only legitimate costs of providing service to them.'"¹¹⁵ For example, the Mississippi Commission states that an Allowance for Funds Used During Construction (AFUDC) is recovered after a facility enters service, instead of collecting for CWIP before the in-service date.¹¹⁶ The Mississippi Commission argues that the "used" clause of section 3.01 of the System Agreement guarantees that an Operating Company will only be responsible for costs related to a project from which it derives a benefit.¹¹⁷

64. According to the Arkansas Commission, Entergy's argument that the Initial Decision erred by applying the requirement and text of section 3.01 to the bandwidth formula in section 30.12 "is impermissible under Commission policy and case law precluding an interpretation that would render a particular provision in a contract a nullity or meaningless."¹¹⁸ The Arkansas Commission argues that Article 3 of the System Agreement containing section 3.01 establishes the System Agreement's essential and foundational objectives and purpose. The Arkansas Commission claims that the

¹¹³ *Id.* at 30-31.

¹¹⁴ *Id.* at 32 (citing Opinion No. 509, 132 FERC ¶ 61,253 at P 37).

¹¹⁵ *Id.* at 16-17 (citing Initial Decision, 143 FERC ¶ 63,012 at P 22).

¹¹⁶ *Id.* at 17 (noting that the System Agreement and its bandwidth formula continue to provide for 100 percent AFUDC recovery, but do not provide any recovery for CWIP).

¹¹⁷ *Id.*

¹¹⁸ Arkansas Commission Brief Opposing Exceptions at 10 (citing, *e.g.*, *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995)).

Commission has never ruled that the overarching guidance in the System Agreement's objectives and purpose section applies to part but not all of the System Agreement. The Arkansas Commission asserts that Entergy has never sought to change the controlling language in section 3.01 and previously opposed inclusion of the Little Gypsy cancellation costs in the bandwidth formula.¹¹⁹ According to the Arkansas Commission, Entergy changed its position based on the Louisiana Commission's insistence and associated threat of less-than-100-percent recovery of Entergy Louisiana's cancellation costs at retail.¹²⁰

iv. Commission Determination

65. As an initial matter, the Presiding Judge stated that the question presented in this case is a matter of first impression. Specifically, he stated: "The Commission never before has adjudicated the specific issue of whether cancelled costs from an abandoned generation project, which never provided service, should be subject to rough production cost equalization among the Operating Companies by inclusion in the bandwidth formula."¹²¹ It is uncontroverted in the record that when the Commission issued Opinion No. 480, and the subsequent orders accepting Entergy's compliance filings to implement rough production cost equalization, none of the Entergy Operating Companies had cancelled a plant in the period covered in Entergy's exhibits implementing the bandwidth formula. Accordingly, the issue of whether to include any cancelled plant costs in the bandwidth formula or other System Agreement service schedule is a matter of first impression. However, we find that by adding "which never provided service" the Presiding Judge improperly narrowed the question in this proceeding.

66. We reverse the Presiding Judge's determination that it would be inappropriate to include the Little Gypsy cancellation costs in the bandwidth formula because the Little Gypsy Repowering Project was "planned, subsequently cancelled, and never provided any service." While section 3.01 may be "a fundamental provision" of the System Agreement describing its purpose, the Presiding Judge's reading of the provision is unreasonably narrow. We agree with Entergy that the Presiding Judge closely focused on one word (i.e., used) in the second sentence of that provision rather than reading the provision as a whole as presenting the purpose of the System Agreement. In its entirety, section 3.01 provides as follows:

¹¹⁹ *Id.* at 11-12.

¹²⁰ *Id.* at 15.

¹²¹ Initial Decision, 143 FERC ¶ 63,012 at P 15.

The purpose of this Agreement is to provide the contractual basis for the continued planning, construction, and operation of the electric generation, transmission and other facilities of the Companies in such a manner as to achieve economies consistent with the highest practicable reliability of service, subject to financial considerations, reasonable utilization of natural resources and minimization of the effect on the environment. This Agreement also provides a basis for equalizing among the Companies any imbalance of costs associated with the construction, ownership and operation of such facilities as are used for the mutual benefit of all the Companies.¹²²

67. We find a more reasonable interpretation of the purpose of the System Agreement, based on a reading of section 3.01 as a whole, is, as Entergy explains, to enable the Entergy Operating Companies to equalize the imbalance in costs that encompasses the planning, construction, and operation of the electric generation, transmission, and other facilities of the Entergy Operating Companies.¹²³ Thus, we are unable to interpret “used” here as an equivalent to the used and useful principle, as that principle has traditionally been applied in utility ratemaking.

68. Furthermore, such a restrictive reading of section 3.01 is inconsistent with how rough production cost equalization has been implemented under the System Agreement in general and Opinion No. 480 in particular.¹²⁴ As discussed more fully below, the oft-stated objective of the bandwidth formula, as approved by the Commission in Opinion No. 480, is to ensure that the purpose of the System Agreement is achieved—i.e., to

¹²² System Agreement, Article III, § 3.01.

¹²³ Entergy Brief on Exceptions at 19.

¹²⁴ The Mississippi Commission would ascribe this Commission’s allowing the inclusion of some of the costs associated with the Vidalia plant in the bandwidth formula to a “used” test under section 3.01. *See supra* P 59. The Commission has not read section 3.01 to amount to a “used” test as the Initial Decision’s narrow reading would require. The Commission found that Vidalia was not planned to meet the needs of the entire Entergy System. However, to the limited extent it did provide value to the system, the Commission re-priced Vidalia only to establish a rate that reflected, to the extent possible, what Entergy Louisiana would have paid for the purchase of power from all other Entergy resources had it not purchased energy from Vidalia. *Louisiana Pub. Serv. Comm’n v. Entergy Corp*, 139 FERC ¶ 61,100 at P 34.

roughly equalize production costs among the Entergy Operating Companies.¹²⁵ To adopt the Initial Decision's narrow interpretation of section 3.01 would foreclose the inclusion of a number of production-related costs items in the bandwidth formula that have already been found just and reasonable for inclusion in Service Schedule MSS-3.¹²⁶

69. Accordingly, we find that Entergy's FPA section 205 proposal to amend the bandwidth formula to include the Little Gypsy cancellation costs is not inconsistent with section 3.01 of the System Agreement.

b. The Purpose of the Bandwidth Remedy as Established by Opinion No. 480 and the History of the Entergy System

i. Initial Decision

70. The Presiding Judge found that nothing in Opinion No. 480 or the historical operation of the Entergy System suggests that the Little Gypsy cancellation costs should fall within the universe of costs to be allocated in the bandwidth formula. The Presiding Judge stated that Opinion No. 480 mandates that the total production costs of each Operating Company be roughly equal. According to the Presiding Judge, the Commission recognized in Opinion No. 480 that "full production cost equalization [would be] too dramatic a departure from the [Entergy System's] historical operations, individual company autonomy and allocation methodologies," and therefore determined that costs among the Entergy Operating Companies should be roughly, rather than fully, equalized.¹²⁷ The Presiding Judge therefore stated that including the Little Gypsy

¹²⁵ Opinion No. 480, 111 FERC ¶ 61,311 at P 44.

¹²⁶ The Commission has allowed costs associated with generating assets that are purchased, not constructed, by Entergy Operating Companies to flow through the bandwidth formula. For example, on November 30, 2012, Entergy Arkansas acquired the Hot Spring generating facility and Entergy Mississippi acquired the Hinds generating facility. Entergy's request to include in the bandwidth formula the costs associated with the acquisition of both facilities for test year 2012 was accepted for filing on October 16, 2012. *See Entergy Servs., Inc.*, Docket No. ER12-1102-000 (Oct. 16, 2012) (delegated letter order).

¹²⁷ Initial Decision, 143 FERC ¶ 63,012 at PP 24-25 (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 73).

cancellation costs in the bandwidth formula “would constitute a landmark policy shift for the Entergy System and would go beyond the authorization of section 3.01.”¹²⁸

71. The Presiding Judge also stated that testimony in the Opinion No. 480 proceeding supported limiting the degree of cost equalization in the bandwidth formula “to preserve state retail regulatory authority and to prevent the establishment of an adversarial atmosphere in which states felt compelled to intervene in each other’s certification proceedings.”¹²⁹ The Presiding Judge noted that one of Entergy’s witnesses in this proceeding, Mr. Louiselle, also testified in the Opinion No. 480 proceeding in opposition to full production cost equalization. The Presiding Judge quoted Mr. Louiselle pointing to “the need to avoid the ‘regulatory quagmire’¹³⁰ that would result from a system design that induced ‘the intervention of all other retail regulators in proceedings concerning the certification of new facilities.’”¹³¹ According to the Presiding Judge, Mr. Louiselle conceded, to a point, that including cancelled costs in the bandwidth formula would have the same effect.¹³²

ii. Briefs on Exceptions

72. Trial Staff states that, by definition, cancelled generating plants are not operational. Thus, according to Trial Staff, the Presiding Judge sets forth a paradigm in which one of the thresholds for determining whether it is just and reasonable to amend the bandwidth formula to provide for rough production cost equalization of the Little Gypsy cancellation costs is operational status. Trial Staff requests that the Commission reject the “pervasive circular reasoning” upon which it believes the Initial Decision is based.¹³³ Although the Presiding Judge correctly points out that no prior amendments involved cancelled plants, Trial Staff argues that this fact cannot reasonably serve as a bar to the proposed amendment at hand.¹³⁴

¹²⁸ *Id.* P 26.

¹²⁹ *Id.* P 27 (citing Ex. MS-15 at 2).

¹³⁰ *Id.*

¹³¹ *Id.* (citing Ex. MS-16 at 5).

¹³² *Id.* (citing Tr. 338:17-339:2 (Louiselle)).

¹³³ Trial Staff Brief on Exceptions at 14-15.

¹³⁴ *Id.* at 32-33.

73. Entergy, the Louisiana Commission, and Trial Staff maintain that at the time the bandwidth formula was developed, none of the Entergy Operating Companies had cancelled plant costs reflected on their books; thus inclusion of cancelled costs in the Service Schedule MSS-3 bandwidth formula was not an issue at the time.¹³⁵ They also argue that including the Little Gypsy cancellation costs in the bandwidth formula would not constitute a landmark policy shift.¹³⁶ According to Trial Staff, the Initial Decision makes this broad pronouncement without explaining how Entergy's proposal would dramatically impact individual Entergy Operating Company autonomy, allocation methodologies, and the cost equalization ceiling. Trial Staff argues that the bandwidth formula itself is a shift from the Entergy System's historical operations to maintain rough production cost equalization. Further, Trial Staff argues that including the securitized Little Gypsy cancellation costs may impact an individual Entergy Operating Company if the Entergy System production costs are not roughly equal thereby requiring an Entergy Operating Company to make a bandwidth payment or receive a bandwidth payment.¹³⁷ However, Trial Staff argues that because cancelled plant costs were never contemplated in the bandwidth formula, it is unreasonable to classify the inclusion of the securitized Little Gypsy cancellation costs in the bandwidth formula as a landmark policy shift.¹³⁸ The Louisiana Commission contends that the costs of abandoned plant and other costs not associated with used and useful plant have been included in the System Agreement and the bandwidth formula since their inception.¹³⁹

74. Trial Staff further asserts that Opinion No. 480 addressed the issue of full equalization of production costs, which it claims is distinct from the issue related to the inclusion of cancelled plant costs in the bandwidth formula. Trial Staff contends that, because the inclusion of cancelled plant costs was not an issue when Opinion No. 480

¹³⁵ See Entergy Brief on Exceptions at 30-31; Louisiana Commission Brief on Exceptions at 5; Trial Staff Brief on Exceptions at 34-35.

¹³⁶ Entergy Brief on Exceptions at 31; Louisiana Commission Brief on Exceptions at 28; Trial Staff Brief on Exceptions at 34-35.

¹³⁷ Trial Staff Brief on Exceptions at 34.

¹³⁸ *Id.* at 34-35.

¹³⁹ For example, the Louisiana Commission asserts that the remaining book value of power plants, steam generators, turbines, and other major items that are retired before being fully depreciated remain in the bandwidth formula and are roughly equalized among the Entergy Operating Companies, even though the retired plant is not used and useful. Louisiana Commission Brief on Exceptions at 28-30.

was issued, it is simply not reasonable to view silence on the issue as dispositive as to Entergy's proposed amendment.¹⁴⁰ Trial Staff argues that such "circular reasoning" would preclude a host of amendments to the bandwidth formula that the Commission has already approved.¹⁴¹

75. Entergy and the Louisiana Commission argue that the Initial Decision rejects the central basis of Opinion No. 480 that cost causation should drive the allocation of costs.¹⁴² Entergy argues that nothing in Opinion Nos. 480 and 234-A suggests that the Commission intended phrases such as "eliminate all cost disparities" and "equalize all costs" to describe which costs should or should not be considered for rough production cost equalization purposes. According to the Louisiana Commission, in the Opinion No. 480 proceeding, the Commission determined that the cost allocations under the System Agreement were no longer just and reasonable and a new rough production cost equalization remedy was needed to ensure that the costs borne by the Entergy Operating Companies were not unduly discriminatory into the future.¹⁴³ The Louisiana Commission states that the D.C. Circuit affirmed and ruled that the rough equalization requirement "hing[ed] ... on the fact that all generating capacity on the System had been built and planned on an integrated basis by the System in order to meet the collective needs of the System."¹⁴⁴ Entergy argues that the Commission expressly intended the bandwidth formula to be an "insurance policy" capable of narrowing production cost disparities. Entergy states that, based on assumptions, the System planning process identified the Little Gypsy Repowering Project as a project that would narrow production cost disparities.¹⁴⁵ Entergy further argues that the proposed amendment does not

¹⁴⁰ Trial Staff Brief on Exceptions at 33-34.

¹⁴¹ *Id.* at 34 (citing, as examples, the negative acquisition adjustments and the Spindletop amendment).

¹⁴² Entergy Brief on Exceptions at 35; Louisiana Commission Brief on Exceptions at 23-25.

¹⁴³ Louisiana Commission Brief on Exceptions at 25 (citing Opinion No. 480, 111 FERC ¶ 61,311).

¹⁴⁴ *Id.* at 25-27 (citing *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d at 383).

¹⁴⁵ Entergy Brief on Exceptions at 35 (citing Ex. ESI-13 at 11-12, 17).

implicate full production cost equalization because it will not change the potential for a 22 percent disparity in production costs to persist on the Entergy System.¹⁴⁶

76. The Louisiana Commission notes that, except for the Vidalia costs, the Commission did not limit the universe of costs by selecting or excluding individual production costs. The Louisiana Commission asserts that the courts previously found that some form of equalization is necessary when units are planned to meet overall System needs and objectives and that “[section] 206 of the FPA imposed on [the Commission] an obligation to fix terms that would render the contract ‘just and reasonable.’”¹⁴⁷ Because of the precipitous decline in expected natural gas prices, Entergy states that the Entergy System determined that pursuit of the Little Gypsy Repowering Project was more likely to widen production cost disparities than narrow them and therefore suspended the project.¹⁴⁸ According to the Louisiana Commission, Entergy made the decisions regarding the construction and cancellation of the Little Gypsy Repowering Project and imposed them on Entergy Louisiana. The Louisiana Commission states that all of the Entergy Operating Companies participated in that decision. Therefore, the Louisiana Commission argues that the Little Gypsy cancellation costs should be shared through the tariff in a manner that roughly equalizes the cost consequences of those decisions.¹⁴⁹ Because the purpose of the bandwidth formula is to roughly equalize Entergy System production costs among the Entergy Operating Companies within +/- 11 percent, Entergy and the Louisiana Commission argue that excluding the Little Gypsy cancellation costs frustrates the purpose of the bandwidth formula.¹⁵⁰

77. Entergy and Trial Staff assert that there is no evidentiary support for the Presiding Judge’s claim that including the Little Gypsy cancellation costs in the bandwidth formula will create a “regulatory quagmire” in which retail regulators would intervene in each other’s certification proceedings. They state that the likelihood that one retail regulator

¹⁴⁶ *Id.* at 32-33.

¹⁴⁷ Louisiana Commission Brief on Exceptions at 23-25 (citing *Miss. Indus. v. FERC*, 808 F.2d at 1540, 1557; *Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354 (1988)).

¹⁴⁸ Entergy Brief on Exceptions at 35 (citing Ex. ESI-13 at 18-21).

¹⁴⁹ Louisiana Commission Brief on Exceptions at 17-22; 34-36.

¹⁵⁰ Entergy Brief on Exceptions at 35-36; Louisiana Commission Brief on Exceptions at 35-36.

would intervene in another's certification proceeding exists today and would continue to exist even if the Commission approved Entergy's proposed amendment.¹⁵¹

iii. Briefs Opposing Exceptions

78. The Mississippi Commission, the Arkansas Commission, and the New Orleans Council argue that the Presiding Judge did not engage in circular reasoning. They assert that based on the history and purpose of the System Agreement and the bandwidth remedy, the Presiding Judge concluded that inclusion of the Little Gypsy cancellation costs is not in keeping with the scope of the bandwidth formula.¹⁵² The Mississippi Commission agrees with the Presiding Judge that the public should be able to rely on the System Agreement as "a Commission-filed tariff that is authorized and approved under the FPA."¹⁵³ The Arkansas Commission similarly argues that because the bandwidth formula is a "formula rate," it was appropriate for the Presiding Judge to examine what the Commission-accepted formula's basic framework and purpose requires and provides.¹⁵⁴

79. The Mississippi Commission explains that neither the bandwidth formula nor any System Agreement provision has previously provided for the distribution of cancelled plant costs. According to the Mississippi Commission, "Opinion No. 234 recited and approved the [System Agreement's] objective of 'the equalization among the [Entergy O]perating [C]ompanies of any imbalance of costs associated with the construction, ownership and operation of such facilities as are used for the mutual benefit of all the companies.'"¹⁵⁵ The Mississippi Commission asserts that in Opinion Nos. 234 and

¹⁵¹ Entergy Brief on Exceptions at 35-36; Trial Staff Brief on Exceptions at 35.

¹⁵² Mississippi Commission Brief Opposing Exceptions at 11-12; Arkansas Commission Brief Opposing Exceptions at 17-18; New Orleans Council Brief Opposing Exceptions at 24.

¹⁵³ Mississippi Commission Brief Opposing Exceptions at 11-12 (citing Initial Decision, 143 FERC ¶ 63,012 at P 18).

¹⁵⁴ Arkansas Commission Brief Opposing Exceptions at 17-18 (referencing *Arkansas Pub. Serv. Comm'n v. Entergy Corp., et al.*, 142 FERC ¶ 61,012, at P 31 n.63 (2013); *Entergy Servs., Inc.*, Opinion No. 526, 143 FERC ¶ 61,116, at P 12 (2013); *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105, at PP 25-27 (2012); *Entergy Servs., Inc., et al.*, Opinion No. 514, 137 FERC ¶ 61,029 (2011)).

¹⁵⁵ Mississippi Commission Brief Opposing Exceptions at 6-7 (citing Opinion No. 234, 31 FERC at 61,656).

234-A, the Commission balanced the need to avoid undue cost disparities with the need to uphold state regulatory control over generation facilities and retail rate regulation. The Mississippi Commission states that the D.C. Circuit found that production cost equalization should be limited to the “*excess energy and capacity*” associated with an in-service unit and “used” by the Entergy Operating Companies beyond that unit’s owner.¹⁵⁶ The Mississippi Commission asserts that the Commission similarly found that costs of facilities built for the companies’ mutual benefit should not be shared because cost equalization is tied to *use*.¹⁵⁷

80. The Mississippi Commission argues that Opinion Nos. 480 and 480-A were meant to continue this deference to the “use” clause of the System Agreement. The Mississippi Commission explains that since the original 1951 version of what is now the System Agreement, each Operating Company has had to meet its kW resource responsibility and pay all corresponding construction or cancellation costs.¹⁵⁸ The Mississippi Commission states that the pre-bandwidth System Agreement assigned new generation projects to the Entergy Operating Companies on a rotating basis and made each Operating Company bear the cancellation risk for the resources it undertook, or was assigned, to build and own when its turn came. The Mississippi Commission asserts that the Commission emphasized that the bandwidth was meant to restore rough equalization of “imbalances in the cost of those facilities *used for the mutual benefit of all the [Entergy] Operating Companies*.”¹⁵⁹ By equalizing only the out-of-bandwidth costs of mutually used facilities, the Mississippi Commission argues that the Commission avoided “a mismatch between regulatory responsibility over certificates of need ... and the resulting costs of a new certificated resource that would be spread across the entire [S]ystem under full production cost equalization.”¹⁶⁰

81. The Mississippi Commission argues that while the bandwidth formula was originally adopted because high natural gas prices made Entergy Louisiana’s bus bar

¹⁵⁶ *Id.* at 8-9 (citing *Miss. Indus. v. FERC*, 808 F.2d at 1566 (emphasis in original)).

¹⁵⁷ *Id.* (citing *Sys. Energy Res., Inc.*, Opinion No. 292, 41 FERC ¶ 61,238, *aff’d*, Opinion No. 292-A, 42 FERC ¶ 61,091 (emphasis in original)).

¹⁵⁸ *Id.* at 18 (citing *Miss. Indus. v. FERC*, 808 F.2d at 1530).

¹⁵⁹ *Id.* at 10 (citing Opinion No. 480-A, 113 FERC ¶ 61,282 at P 8 (emphasis retained)).

¹⁶⁰ *Id.* (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 69).

production costs exceed those of Entergy Operating Companies that built or acquired solid-fuel resources, the Little Gypsy Repowering Project was cancelled because falling prices made it uneconomic. Thus, according to the Mississippi Commission, “the cancellation was due to the occurrence of the almost precise opposite of the contingency against which the bandwidth remedy was meant to insure.”¹⁶¹ The Arkansas Commission similarly argues that the Little Gypsy Repowering Project was not connected to the bus bar because it was cancelled by Entergy Louisiana prior to its construction. According to the Arkansas Commission, until a generating facility is connected to the bus bar, it cannot be in operation and available for use, per the System Agreement’s section 3.01 criteria for cost equalization.¹⁶²

82. The New Orleans Council asserts that the bandwidth mechanism is not intended to be used as a means of cost recovery. The New Orleans Council asserts that the Presiding Judge did not assign any costs to Entergy Louisiana; Entergy assigned the Little Gypsy cancellation costs to Entergy Louisiana as part of the system planning process under the System Agreement. Because the bandwidth formula is designed to roughly allocate costs on the books of the Entergy Operating Companies, the New Orleans Council argues that the proposal to include costs for which Entergy Louisiana has already been made whole, for the sole purpose of recovering from ratepayers of other jurisdictions amounts that Entergy Louisiana’s ratepayers are bearing, is unjust and unreasonable.¹⁶³

83. The Arkansas Commission asserts that the Commission’s cost causation test requires that those who are deemed to be the cause of and intended to benefit from a facility be assigned the responsibility to pay for its costs.¹⁶⁴ According to the Arkansas Commission, Entergy planned the Little Gypsy Repowering Project to meet baseload resource needs of Entergy Louisiana and Entergy Gulf States Louisiana alone and provide them with all of the expected benefits. The Arkansas Commission asserts that

¹⁶¹ Mississippi Commission Brief Opposing Exceptions at 43.

¹⁶² Arkansas Commission Brief Opposing Exceptions at 13-16.

¹⁶³ New Orleans Council Brief Opposing Exceptions at 28-29.

¹⁶⁴ Arkansas Commission Brief Opposing Exceptions at 20 (citing *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 559, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

Entergy Louisiana cancelled the Little Gypsy Repowering Project without Entergy Operating Committee approval and the Louisiana Commission imposed a condition on Entergy Louisiana's recovery of the Little Gypsy cancellation costs at retail. The Arkansas Commission further asserts that the Little Gypsy Repowering Project would have provided a negligible benefit to Entergy Arkansas' ratepayers and cost causation dictates that the intended beneficiary, Entergy Louisiana, should pay for all of the Little Gypsy cancellation costs.¹⁶⁵

84. According to the New Orleans Council, Entergy Louisiana was paid in full for its prudent investment when the securitization took place.¹⁶⁶ The New Orleans Council emphasizes that Entergy Louisiana has no Little Gypsy cancellation costs on its books, whether categorized as production costs or not, that can be roughly equalized in the bandwidth formula. Thus, according to the New Orleans Council, the Little Gypsy cancellation costs "are not 'within the universe of costs to be allocated in the bandwidth formula.'"¹⁶⁷

iv. Commission Determination

85. We reverse the Presiding Judge's determination that Entergy's proposal to amend the bandwidth formula to include the Little Gypsy cancellation costs "would constitute a landmark policy shift for the Entergy System and would go beyond the authorization of section 3.01."¹⁶⁸ As we have already found, Entergy's proposal to amend the bandwidth formula to include the Little Gypsy cancellation costs is not inconsistent with section 3.01 of the System Agreement. We disagree with the Presiding Judge that operational status of a plant is a threshold question for determining whether it is just and reasonable for Entergy to amend the bandwidth formula to provide for rough production cost equalization of plant costs.

86. Although the Presiding Judge is correct that in Opinion No. 480 the Commission found that rough rather than full equalization of production costs was consistent with the purpose of the System Agreement, the Commission also found that rough production cost

¹⁶⁵ *Id.* at 20-21.

¹⁶⁶ New Orleans Council Brief Opposing Exceptions at 17-18 & n.39 (stating that once the bonds were sold, Entergy Louisiana recovered its full prudent investment from the proceeds of those sales).

¹⁶⁷ *Id.* at 15 (citing Initial Decision, 143 FERC ¶ 63,012 at P 26).

¹⁶⁸ Initial Decision, 143 FERC ¶ 63,012 at P 26.

equalization on the Entergy System should be determined based on “[f]uture production cost comparisons among the [Entergy] Operating Companies.”¹⁶⁹ The Commission did not suggest that certain production-related costs should be considered for rough production cost equalization purposes while others should not.

87. Furthermore, the Presiding Judge’s conclusion that Opinion No. 480 incorporates and relies on the “used” language in section 3.01, and thus means that production costs can only be equalized when a project is constructed, owned, and operated, and then at one time or another is “used” by the Entergy System, misconstrues Opinion No. 480. To the contrary, the Commission has never interpreted the section 3.01 phrase “used for the benefit of the Companies” to foreclose consideration of cancellation costs or any other costs in the bandwidth formula.¹⁷⁰

88. We also disagree that including the Little Gypsy cancellation costs in the bandwidth formula would constitute a landmark policy shift for the Entergy System. The allocation of production costs among the Entergy Operating Companies under the System Agreement has a very long history. As relevant here, the Commission initially determined the justness and reasonableness of the then-current version of the System Agreement in Opinion Nos. 234, 234-A, 292, and 292-A.¹⁷¹ In Opinion No. 480, the Commission found that the attempts made in those earlier opinions to maintain rough production cost equalization on the Entergy System had not been successful and that rough production cost equalization on the Entergy System had been disrupted. Accordingly, in Opinion Nos. 480 and 480-A, the Commission approved a numerical bandwidth of 11 percent of the Entergy system average production cost in order to maintain the rough equalization of production costs among the Entergy Operating Companies. The Commission concluded that a bandwidth remedy of +/- 11 percent allowing for a maximum of a 22 percent spread of production costs, between the Entergy

¹⁶⁹ Opinion No. 480, 111 FERC ¶ 61,311 at P 33.

¹⁷⁰ We note that, in Opinion No. 480, the Commission quoted Opinion No. 234 (“What our decision purports to do is to eliminate drastic rate disparities at the wholesale rate level which are associated with units used for the mutual benefit of all companies, and to do so in a manner which disturbs the historical operation of the System as little as possible, and which allows the individual companies to retain as fully as possible the benefits of units they have financed and constructed.”). Although the Commission quoted the language of Opinion No. 234, it did not interpret the meaning of “used for the benefit of the Companies.” *See* Opinion No. 480, 111 FERC ¶ 61,311 at P 65.

¹⁷¹ *See* Opinion No. 234, 31 FERC at 61,656; Opinion No. 292, 41 FERC ¶ 61,238.

Operating Companies on an annual basis, is just and reasonable and will help keep the Entergy System in rough production cost equalization.

89. The Initial Decision does not explain how Entergy’s proposal would disrupt the +/- 11 percent bandwidth established by Opinion No. 480 or “would represent a dramatic disruption of the [Entergy] system’s historical operations and of the states’ settled interests and expectations.”¹⁷² Nor does the record support a conclusion that including the Little Gypsy cancellation costs in the bandwidth formula would constitute “too dramatic a departure from the system’s historical operations, individual company autonomy and allocation methodologies and an unwarranted disruption of the states’ settled authority”¹⁷³ or otherwise be antithetical to the history and purpose of the System Agreement. Accordingly, we find that including the Little Gypsy cancellation costs in the bandwidth formula is consistent with the purpose of the bandwidth remedy as established by Opinion No. 480 and the history of the Entergy System.

c. Bandwidth Formula’s Treatment of Other Costs

i. Initial Decision

90. The Presiding Judge also explained that, for a cost to flow into the bandwidth formula, the cost must reside in an account that qualifies for bandwidth formula inclusion. The Presiding Judge noted, however, that the mere fact that the Little Gypsy cancellation costs are not housed in an account that flows into the bandwidth formula is not dispositive. Rather, the Presiding Judge found that the relevant question is whether the “securitized cancellation costs associated with the Little Gypsy Project ... are of the *same character* as production costs currently included in the Bandwidth Calculation.”¹⁷⁴

91. The Presiding Judge stated that CWIP, included in FERC Account 107, is a distinct category from cancelled costs and is not included in the bandwidth formula. The Presiding Judge noted that the Little Gypsy cancellation costs were initially recorded in FERC Account 107, but moved to a different account upon cancellation. The Presiding Judge likened the Little Gypsy cancellation costs to CWIP, however, on the basis that both are associated with a plant that has not entered into service for the production of energy. Thus, according to the Presiding Judge, the Little Gypsy cancellation costs are of

¹⁷² Opinion No. 480, 111 FERC ¶ 61,311 at P 70 (citing *Miss. Indus. v. FERC*, 808 F.2d at 1565).

¹⁷³ Initial Decision, 143 FERC ¶ 63,012 at P 8.

¹⁷⁴ *Id.* PP 28-29 (emphasis in original).

the *same character* as costs that are *not* included in the bandwidth formula.¹⁷⁵ The Presiding Judge further found that a project going from having the potential to be used and useful at some future date, to having such potential eliminated, does not appear to transform a project's costs into something that now should be included in the bandwidth formula and roughly equalized as a production cost.

92. The Presiding Judge further explained that abandoned plant costs are typically recorded in FERC Account 426.5, which is not a bandwidth eligible account.¹⁷⁶ The Presiding Judge noted that the Little Gypsy cancellation costs are not recorded in FERC Account 426.5 because the Louisiana Commission authorized the costs to be securitized and transferred to a Special Purpose Entity. However, according to the Presiding Judge, even if the Little Gypsy cancellation costs had been accounted for differently and recorded in FERC Account 426.5, they still would not have been contained in a bandwidth eligible account.¹⁷⁷ The Presiding Judge emphasized that a project must be actually *used* by the system to include it in the bandwidth formula.

ii. Briefs on Exceptions

93. The Louisiana Commission argues that the Presiding Judge employs circular reasoning by concluding that the Little Gypsy cancellation costs should not be included in the bandwidth formula because they are not currently included in a bandwidth-eligible account.¹⁷⁸ The Louisiana Commission asserts that the fact that there is no provision in the bandwidth formula simply reflects the fact that there were no Operating Company plant cancellations in the historical period covered by Exhibits ETR-26 and ETR-28.¹⁷⁹ The Louisiana Commission claims that the Presiding Judge's conclusion that the amendment should be rejected because CWIP is not included in the tariff relies on a faulty comparison.¹⁸⁰ According to the Louisiana Commission, the exclusion of CWIP

¹⁷⁵ *Id.* PP 30-31 (emphasis in original).

¹⁷⁶ *Id.* P 32.

¹⁷⁷ *Id.*

¹⁷⁸ Louisiana Commission Brief on Exceptions at 49-50; Trial Staff Brief on Exceptions at 14.

¹⁷⁹ Louisiana Commission Brief on Exceptions at 50-51.

¹⁸⁰ *Id.*

simply regulates the timing in which investments are recognized in rate base, whereas the Presiding Judge imposes a total and permanent exclusion of cancelled plant costs.¹⁸¹

94. Entergy and the Louisiana Commission argue that the fact that FERC Account 426.5, an account to which cancellation costs can be amortized under the Uniform System of Accounts, is not included in the bandwidth formula does not justify the Presiding Judge's decision to reject the amendment.¹⁸² Entergy states that, as noted in the Initial Decision, "the mere fact that these cancelled costs are not housed in an account that flows into the formula is not dispositive."¹⁸³

95. Further, Entergy claims that none of the Entergy Operating Companies had cancelled plant costs reflected on their accounting books when the bandwidth formula was formed and therefore the fact that FERC Account 426.5 is not included in the bandwidth formula does not suggest that cancelled production plant costs recorded in FERC Account 426.5 should be excluded from the bandwidth formula.¹⁸⁴ Entergy states that had the Little Gypsy cancellation costs been housed in FERC Account 426.5, it still would have submitted a proposed amendment requesting that the costs be included in the bandwidth formula.¹⁸⁵ Trial Staff similarly asserts that Entergy could seek an amendment to the bandwidth formula to include certain CWIP costs or abandoned plant costs in FERC Account 426.5 if it chose to do so.¹⁸⁶

96. The Louisiana Commission states that it and Entergy are similarly not proposing to include the Little Gypsy cancellation costs in rate base. Rather, the Louisiana Commission asserts that the Variable LGCC will permit the reflection of the Little Gypsy cancellation costs as *an expense* over the period of the amortization, which it claims is 10 years. Thus, the Louisiana Commission argues that the proposed Variable LGCC does

¹⁸¹ *Id.* at 51.

¹⁸² Entergy Brief on Exceptions at 30 (citing Initial Decision, 143 FERC ¶ 63,012 at P 32); Louisiana Commission Brief on Exceptions at 51-52.

¹⁸³ *Id.* (referencing Initial Decision, 143 FERC ¶ 63,012 at P 29).

¹⁸⁴ *Id.* at 30-31.

¹⁸⁵ *Id.*

¹⁸⁶ Trial Staff Brief on Exceptions at 32-33.

not conflict with the “general rule” that only used and useful plant costs may be recovered in rate base.¹⁸⁷

iii. Briefs Opposing Exceptions

97. The Mississippi Commission asserts that the participants in the Opinion No. 480 proceeding kept CWIP and cancelled plant costs out of the bandwidth remedy despite being aware that Entergy Operating Companies incur costs to build generators before those generators come on line and that generators for which CWIP is included are sometimes cancelled prior to entering service.¹⁸⁸ The Mississippi Commission further asserts that under the Commission’s related policies, ratepayers commonly begin paying their 50 percent share through CWIP allocated before commercial operation. However, the Mississippi Commission argues, Entergy Operating Companies do not pay CWIP when they transact under the System Agreement and its bandwidth formula.¹⁸⁹

98. The Mississippi Commission argues that the Little Gypsy cancellation costs, just like CWIP, are costs that are associated with a plant that has not entered service. According to the Mississippi Commission, although the parties argued that Entergy could file under FPA section 205 to add CWIP to the bandwidth formula, they did not consider whether this would be consistent with section 3.01 of the System Agreement. The Mississippi Commission also argues that the parties fail to recognize that the treatment of CWIP in Exhibits ETR-26 and ETR-28, relied upon in Opinion No. 480, indicates the Commission’s original intent in defining the extent of partial cost equalization through the bandwidth formula.¹⁹⁰

99. The Arkansas Commission and the New Orleans Council similarly argue that to be eligible for inclusion in the bandwidth calculation, costs must reside in a bandwidth-eligible account.¹⁹¹ The New Orleans Council asserts that, as Entergy’s witness Mr. Louiselle acknowledged, not all prudently-incurred costs are eligible to be included in the

¹⁸⁷ Louisiana Commission Brief on Exceptions at 43 (citing *NEPCO MRC*, 668 F.2d at 1333).

¹⁸⁸ Mississippi Commission Brief Opposing Exceptions at 20-21.

¹⁸⁹ *Id.* at 24-25.

¹⁹⁰ *See id.* at 27.

¹⁹¹ Arkansas Commission Brief Opposing Exceptions at 13-14; New Orleans Council Brief Opposing Exceptions at 15.

bandwidth formula.¹⁹² The New Orleans Council agrees with the Presiding Judge that, for costs to be included in the bandwidth formula, there must be a nexus to a generating facility that does, or at one time did, produce electricity. The New Orleans Council further agrees with the Presiding Judge that the Little Gypsy cancellation costs are of the same character as costs that are excluded from the bandwidth formula.¹⁹³ The New Orleans Council asserts that to be included in the bandwidth calculation, costs must be recorded in a bandwidth-eligible account and must reflect costs associated with actual service for the production of electricity. The New Orleans Council asserts that defining costs as “production costs” does not move them into a bandwidth-eligible FERC Form No. 1 account.

100. The Arkansas Commission claims that CWIP costs are of a like “type and character” as the Little Gypsy cancellation costs. According to the Arkansas Commission, if a “system benefit” or “system planning” was dispositive of the issue of whether to include any particular production cost, all CWIP costs would be included, which they are not.¹⁹⁴ The Arkansas Commission therefore concludes that because Exhibits ETR-26 and ETR-28 excluded CWIP costs from the bandwidth formula, the Commission did not intend for Opinion No. 480 to require all production-related costs to be included in the bandwidth formula.¹⁹⁵

101. The Mississippi Commission further asserts that the fact that the net book value of retired assets remains in rate base and in the bandwidth formula does not justify including the Little Gypsy cancellation costs. The Mississippi Commission argues that by definition, retired assets have entered service and thereby became used and useful, while cancelled plant assets have not. Further, the Mississippi Commission argues that unlike actual plant in service, cancelled plant does not depreciate and therefore does not give rise to a “double-negative effect.”¹⁹⁶ The Mississippi Commission argues that the

¹⁹² New Orleans Council Brief Opposing Exceptions at (citing Tr. 305:1-306:9; 308:10-17 (Louiselle)).

¹⁹³ *Id.* at 22-23.

¹⁹⁴ Arkansas Commission Brief Opposing Exceptions at 13-14 (citing Initial Decision, 143 FERC ¶ 63,012 at P 30).

¹⁹⁵ *Id.* at 15-16.

¹⁹⁶ The Mississippi Commission explains that when plant is removed from service before it is fully depreciated, its cost is removed from the plant accounts. However, such plant’s remaining net book value is also subtracted from the depreciation reserve,

(continued...)

reduced depreciation subtraction that results from early retirements of those assets that retire early is not properly understood as an addition to rate base. Rather, the Mississippi Commission explains that it is understood as an offset to the increased depreciation subtraction that results from late retirements of those assets that retire late.¹⁹⁷

iv. Commission Determination

102. We disagree with the Presiding Judge that the Little Gypsy cancellation costs are of the same character as costs that are not included in the bandwidth formula. As the Presiding Judge himself stated “the mere fact that [the Little Gypsy cancellation] costs are not housed in an account that flows into the formula is not dispositive.”¹⁹⁸ As discussed previously, at the time the bandwidth formula was formed, none of the Entergy Operating Companies had cancelled plant costs reflected on their accounting books. Thus, the fact that FERC Account 426.5 is not included in the bandwidth formula does not justify denying Entergy’s request in this proceeding to include the Little Gypsy cancellation costs in the bandwidth formula. The issue of whether to include cancelled plant costs in the bandwidth formula is therefore a matter of first impression.

103. We disagree with the Presiding Judge, the Arkansas Commission, and the Mississippi Commission that the Little Gypsy cancellation costs are similar to CWIP and should therefore be excluded from the bandwidth formula. As discussed above, the purpose of the bandwidth formula is to include legitimate production costs associated with projects for the Entergy System and potentially allocate them to other Entergy Operating Companies. When construction is completed and the facility is placed in service, CWIP costs are included in the bandwidth formula through AFUDC. We agree that, had the Little Gypsy Repowering Project not been cancelled, the costs would have been classified as CWIP. However, Entergy elected to cancel the Little Gypsy Repowering Project and securitize the Little Gypsy cancellation costs. We find that the Little Gypsy cancellation costs are now securitized cancelled plant costs, which are distinct from CWIP. Thus, we are not persuaded that it is necessary to apply the Commission’s treatment of CWIP to the treatment of the Little Gypsy cancellation costs. We further note that the Commission has never considered whether it would be

creating a double negative that has an arithmetic effect as if that net book value had been left in the rate base. Mississippi Commission Brief Opposing Exceptions at 33-34.

¹⁹⁷ *Id.* at 34-35.

¹⁹⁸ Entergy Brief on Exceptions at 30 (citing Initial Decision, 143 FERC ¶ 63,012 at P 29).

reasonable to include CWIP in rate base in the bandwidth formula and we do not find it necessary to consider it here.

104. Accordingly, for the reasons discussed above, we find that the Little Gypsy cancellation costs are production costs and are therefore the kinds of costs that are appropriate for inclusion in the bandwidth formula.

3. Should Opinion No. 295 Apply to Inclusion of the Little Gypsy Cancellation Costs in the Service Schedule MSS-3 Rough Production Cost Equalization Formula

a. Briefs on Exceptions

105. As noted, on March 29, 2012, Entergy filed, under FPA section 205, its proposed Variable LGCC to amend the rough production cost equalization formula in Service Schedule MSS-3. Entergy proposes that the Variable LGCC be populated with amounts specified in the variable for each year and that this variable would be included in the Fixed Production Expense calculation for the ten-year period of the securitization of these amounts as approved by the Louisiana Commission.¹⁹⁹ Entergy states that these costs would have been included in a bandwidth-eligible FERC account in the bandwidth formula if the Little Gypsy Repowering Project had been completed. Entergy also states that several parties protested its proposed amendment and that no party challenged the calculation of the annual amounts to be used to populate the variable.²⁰⁰

106. To support including the Little Gypsy cancellation costs in the bandwidth formula, Entergy witness Mr. Louiselle performed an analysis to compare the securitized recovery with “traditional recovery.”²⁰¹ Specifically, with regard to traditional recovery, Entergy states that had the Little Gypsy Repowering Project gone into service, Entergy Louisiana would have recovered the \$207.156 million through rate base and depreciation over the life of the asset, which it asserts is 36 years.²⁰² According to Entergy, over the 36-year

¹⁹⁹ Entergy Brief on Exceptions at 15-16.

²⁰⁰ *Id.* P 16.

²⁰¹ *See* Ex. ESI-34. Entergy refers to recovery under Opinion No. 295 as “traditional recovery”. Entergy Brief on Exception at 26. Entergy calculates the traditional recovery amount using 100 percent of the securitized Little Gypsy cancellation costs.

²⁰² Entergy states that it determined the life of the Little Gypsy Repowering Project in the traditional recovery analysis by using the reciprocal of the Louisiana

(continued...)

period, traditional recovery would have resulted in a total nominal value of \$502.778 million, or a net present value of \$195.246 million. In contrast, Entergy states that the securitized recovery, when amortized over 10 years, results in a total nominal value of \$194.238 million, or a net present value of \$119.395 million.²⁰³ Entergy asserts that the Little Gypsy cancellation costs would be approximately 39 percent of the traditional recovery amount on a nominal basis, or 61 percent on a net present value basis.²⁰⁴

107. Entergy and the Louisiana Commission state that the Commission allowed limited recovery of cancelled plant costs in Opinion No. 295 and, more recently, in Opinion No. 679²⁰⁵ permitted complete recovery of cancelled plant costs including a return on the amortized balance. They argue that Entergy's proposed amendment is commensurate with the limited recovery permitted by the Commission.²⁰⁶ Specifically, Entergy states that the Commission determined in Opinion No. 295 that a utility is entitled to recover 50 percent of its cancelled plant costs and is further entitled to recover a return on the unamortized 50 percent portion of that investment reduced by 50 percent of the total accumulated deferred income taxes, with the amortization period equal to the estimated life of the cancelled plant, had it gone into service.²⁰⁷

Commission depreciation rate of 3.09 percent. Ex. ESI-33 at 17. To estimate the revenue requirement under traditional recovery, Entergy states that it assumed an initial plant-in-service value of \$207.156 million. Entergy then offset the securitized Little Gypsy cancellation costs relative to the return on the accumulated deferred income taxes associated with cancelled plant costs. According to Entergy, this offset is based on an 11.51 percent pre-tax weighted average cost of capital. Entergy also states that Entergy Louisiana's pre-tax cost of capital on December 31, 2009 was 11.51 percent, which was five times higher than the rate obtained during securitization financing. Ex. ESI-4 at 13.

²⁰³ See Ex. ESI-34.

²⁰⁴ Entergy Brief on Exceptions at 26.

²⁰⁵ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

²⁰⁶ Entergy Brief on Exceptions at 25-26; Louisiana Commission Brief on Exceptions at 37-39 (citing Order No. 295, 42 FERC ¶ 61,016).

²⁰⁷ Entergy Brief on Exceptions at 25-26 (citing Opinion No. 295, 42 FERC ¶ 61,016). See also Ex. ESI-4 at 14.

108. The Louisiana Commission asserts that when the Commission applies the used and useful principle to a utility's request for recovery of cancelled plant costs, the traditional application of the policy called for a denial of a rate of return on the investment, but a recovery of the investment through an amortization over several years, which it asserts Entergy is proposing in the instant proceeding. The Louisiana Commission states that neither the policy enunciated in Opinion No. 295, nor the policy in Opinion No. 49, calls for a complete exclusion of cancelled plant costs from rates.²⁰⁸ The Louisiana Commission argues that the Commission has always allowed at least 50 percent recovery of cancelled plant costs from rates.²⁰⁹

109. The Louisiana Commission argues that in more recent decisions, the Commission has permitted 100 percent recovery of cancelled transmission plant costs.²¹⁰ The Louisiana Commission notes that, in Order No. 679, the Commission found that abandonment cost recovery is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.²¹¹ The Louisiana Commission asserts that the "vast majority of state commissions that have addressed recovery of investment in generation resources that were later cancelled have permitted recovery of some or all of that investment."²¹²

110. Entergy argues that the Presiding Judge should have explained why the Commission's policy permitting consideration of full recovery of cancelled plant costs did not come into play in his decision to reject Entergy's amendment. Entergy states that in Order No. 679, the Commission noted that, after its decision in *S. Cal. Edison Co.*,²¹³ Opinion No. 295 no longer reflected the Commission's policy on the recovery of

²⁰⁸ Louisiana Commission Brief on Exceptions at 37.

²⁰⁹ *Id.* at 36-37.

²¹⁰ Louisiana Commission Brief on Exceptions at 39 (citing *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 (2006); *S. Cal. Edison Co.*, 112 FERC ¶ 61,014, *reh'g denied*, 113 FERC ¶ 61,143 (2005); *S. Cal. Edison Co.*, 137 FERC ¶ 61,252 (2011); *PJM Interconnection L.L.C. and Public Service Electric and Gas Co.*, 137 FERC ¶ 61,253 (2011)).

²¹¹ *Id.* at 39-40.

²¹² *Id.* at 41.

²¹³ Entergy Brief on Exceptions at 26 (citing *S. Cal. Edison Co.*, 112 FERC ¶ 61,014).

cancelled plant costs and explained that it would permit an applicant to request recovery of “100 percent of prudently-incurred costs associated with abandoned transmission projects ... if such abandonment is outside the control of management.”²¹⁴ Entergy asserts that because the Little Gypsy Repowering Project was suspended because of the precipitous decline in the expected long-term price of natural gas, a circumstance “outside of the control” of the Entergy System, the Presiding Judge should not have rejected Entergy’s proposed amendment based on the “purported application” of the used and useful principle.²¹⁵

111. Trial Staff similarly argues that under Opinion No. 295, a utility may recover from ratepayers 50 percent of its prudently incurred abandoned plant costs; the remaining 50 percent must be borne by the utility’s shareholders.²¹⁶ Trial Staff states that “[t]he purpose of this 50-50 sharing policy is to provide an incentive to a utility to be extra careful when initiating a construction project and when evaluating whether it is desirable to continue funding the project.”²¹⁷ According to Trial Staff, the Commission “expressly rejected strict application of the ‘used and useful’ ratemaking principle” and “stat[ed] that the competing standards of ‘used and useful’ to the ratepayer and recovery of prudent investment are both relevant.”²¹⁸ However, Trial Staff argues that because the Little Gypsy cancellation costs have already been securitized and are not contained in Entergy’s Form No. 1, and Entergy Louisiana has recovered its costs through securitization, the Commission’s policy set forth in Opinion No. 295 is simply not appropriate.²¹⁹ In addition, Trial Staff states that the Commission has included CWIP in rate base in some circumstances, and that Order Nos. 679 and 679-A expanded the Commission’s CWIP

²¹⁴ *Id.* at 26 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at 156 n.105).

²¹⁵ *Id.* at 26-27.

²¹⁶ Trial Staff Brief on Exceptions at 26-27; Entergy Brief on Exceptions at 25-26 (citing Opinion No. 295, 42 FERC at 61,082); Louisiana Commission Brief on Exceptions at 37-38.

²¹⁷ Trial Staff Brief on Exceptions at 26-27 (citing Opinion No. 295, 42 FERC at 61,082).

²¹⁸ *Id.* at 27 (citing Opinion No. 295, 42 FERC at 61,080-82).

²¹⁹ *Id.* at 37.

policy to allow up to 100 percent of CWIP for certain transmission infrastructure projects in rate base subject to certain conditions.²²⁰

112. The Louisiana Commission claims that it has already balanced investor and ratepayer interests through the requirement of securitization and a partial disallowance of costs. Specifically, the Louisiana Commission states that it disallowed \$7.6 million of costs from any rate recovery and, by providing for the securitization of costs, assured that investors would receive no return on the cancelled plant investment.²²¹ It claims that the return component is minimal and does not go to the utility because the securitized costs include an “extremely low” 2.04 percent debt return to securitized bond holders as opposed to Entergy Louisiana’s pre-tax cost of capital of 11.51 percent.²²² The Louisiana Commission also argues that its resolution of the investor-ratepayer balance through securitization reflects a “reasonable balance between the interest of investors and ratepayers,” as ‘pragmatic adjustments which may be called for by particular circumstances.’²²³

113. According to the Louisiana Commission, at the hearing, all the parties agreed that the Little Gypsy Repowering Project costs would have been included in the bandwidth formula had it gone into service and the decision to pursue the project was prudent and the decision to cancel the project based on prevailing economics was also prudent.²²⁴ The Louisiana Commission asserts that the parties agree that the only reason the Little Gypsy Repowering Project did not enter service is because Entergy prudently decided to cancel it to save money for the Entergy System. The Louisiana Commission therefore claims that it would be unreasonable for the Commission to penalize the Louisiana Commission for approving a correct planning decision by denying its ratepayers an equitable sharing of the Little Gypsy cancellation costs.²²⁵ The Louisiana Commission argues that denying recovery of cancellation costs provides utilities with a disincentive to plan on a least-cost basis and creates an incentive for retail regulators to require the Entergy Operating Companies to complete uneconomic projects. According to the

²²⁰ Trial Staff Brief on Exceptions at 27-28.

²²¹ Louisiana Commission Brief on Exceptions at 43.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.* at 45-46.

²²⁵ *Id.* at 46.

Louisiana Commission, if the Little Gypsy Repowering Project had gone into service prior to Entergy Arkansas' withdrawal from the System Agreement, Entergy would have had approximately \$250 million in annual costs for the project of which about \$50 million would have been Entergy Arkansas' share. The Louisiana Commission states that, in contrast, Entergy is only responsible for \$800,000 of the Little Gypsy cancellation costs for the 2011 test year and no more than \$4.6 million if Entergy Arkansas were outside the bandwidth for the 2012 test year.²²⁶

b. Briefs Opposing Exceptions

114. The New Orleans Council disagrees that 100 percent of the Little Gypsy cancellation costs should be included in the bandwidth formula. The New Orleans Council argues that even if the Commission finds that the Little Gypsy cancellation costs may be classified as "production costs" and recovered through the bandwidth formula, because their inclusion would amount to the distribution of the burden of investment loss on ratepayers, the Commission should require that the proposed amendment comport with its long-standing policy on recovery of cancelled generation plant. The New Orleans Council explains that this means any inclusion of these costs must reflect an equitable (i.e., 50-50) division of the investment risk (and losses) between shareholders and ratepayers.²²⁷ The New Orleans Council argues that the Commission precedent allowing 100 percent recovery rather than 50 percent recovery is inapplicable because it involves transmission incentives granted pursuant to a Congressional mandate.²²⁸ The New Orleans Council asserts that the Little Gypsy Repowering Project would not have qualified for transmission incentives because it was a generation project and because the cancellation was not due to factors beyond the control of the utility.²²⁹ While the Commission has indicated that it would review circumstances that make a project uneconomical on a case-by-case basis, the New Orleans Council asserts that the Commission has not found that this would qualify a project for 100 percent recovery.²³⁰ The New Orleans Council further asserts that the costs that Entergy's shareholders absorbed, even considering the return on amortization that is forgone as a result of the

²²⁶ *Id.* at 47

²²⁷ New Orleans Council Brief Opposing Exceptions at 30.

²²⁸ *Id.* at 31 (citing *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 and *S. Cal. Edison Co.*, 137 FERC ¶ 61,252).

²²⁹ *Id.* at 31-32.

²³⁰ *Id.* n.62 (citing Order. No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 163-165).

securitization, “pales in comparison to the 50 [percent] share of abandonment costs that [the Commission] found appropriate for utility investors to bear in Opinion No. 295.”²³¹

115. The Arkansas Commission argues that the ratemaking determination of the Louisiana Commission is not binding on the Commission and that the Presiding Judge correctly found that:

(i) ‘[t]he mere fact that the [Louisiana Commission] authorized specific annual abandoned plant costs to be recovered in retail rates does not mandate that those same annual [i.e. securitized] costs must be added to the annual bandwidth formula calculation’ and (ii) thus, ‘[t]he [Louisiana Commission] itself is responsible for the alleged discrimination of which it complains.’²³²

116. In response to arguments that when the used and useful test is applied to divide cancelled plant cost responsibility between shareholders and ratepayers, shareholders commonly only bear 50 percent, the Mississippi Commission asserts that the test says nothing about which ratepayers should pay. According to the Mississippi Commission, the only real significance of the shareholder/ratepayer split issue in this proceeding is the fact that the Louisiana Commission solely determined how the Little Gypsy cancellation costs should be divided.²³³ The Mississippi Commission explains that the Louisiana Commission chose to award Entergy Louisiana’s shareholders an expedited and nearly full return of its investment, along with a return of debt costs, rather than a 50/50 split over what would have been the Little Gypsy Repowering Project’s decades-long service life. The Mississippi Commission states that it did not step into the “regulatory quagmire” of intervening in Louisiana Commission proceedings even though the Louisiana Commission’s approach gave shareholders more cost recovery than under the Commission’s Opinion No. 295 policy²³⁴ and even though “far more of the [Little Gypsy cancellation costs] will be amortized before Entergy Mississippi departs the [System

²³¹ *Id.* at 34 (citing Ex. S-1 at 43:5-15).

²³² Arkansas Commission Brief Opposing Exceptions at 19 (citing Initial Decision, 143 FERC ¶ 63,012 at PP 41-42).

²³³ Mississippi Commission Brief Opposing Exceptions at 24-25.

²³⁴ The Mississippi Commission notes that on a net present value basis, shareholders receive through securitization 61 percent of “Traditional Recovery.” Mississippi Commission Brief Opposing Exceptions at 25 (citing Ex. ESI-34).

Agreement] in late 2015.”²³⁵ The Mississippi Commission asserts that it did not need to intervene because the Little Gypsy cancellation costs are not associated with facilities used for the benefit of Entergy Mississippi.²³⁶

117. The Mississippi Commission asserts that the primary concern identified in Opinion Nos. 49 and 295 was “providing good *ex ante* incentives, during the planning stages, *before* costs are sunk.”²³⁷ The Mississippi Commission contends that the Commission must determine whether the proposed bandwidth formula amendment would create good incentives for the next risky project. According to the Mississippi Commission, in order to provide good incentives at the project-initiation stage, the decision-makers who authorize risky projects must bear the costs of project failure.²³⁸ The Mississippi Commission argues that although utilities may push a project through to completion in order to avoid the disallowances that attend cancellation, “internalizing the risk of project cancellation on the authorizing jurisdiction(s) will properly incent authorizing jurisdictions to properly weigh the risk of cancellation for projects of which their jurisdictional [Operating Company] is the sole sponsor.”²³⁹

c. Commission Determination

118. Having found, as discussed above, that revising the bandwidth formula to allow for inclusion of the Little Gypsy cancellation costs is not inconsistent with the purpose and objectives of the System Agreement and Opinion No. 480, we now turn to whether the Commission should evaluate Entergy’s proposed LGCC Variable under the standard set forth in Opinion No. 295.

²³⁵ The Mississippi Commission compared the amount Entergy proposes to include in the Variable LGCC for years 2011 through 2015 (approximately \$76 million in total) with the amount that Entergy estimates it would have included in its revenue requirement under “traditional recovery” for the same time period (\$104 million) and concludes that under the 50-50 sharing of Opinion No. 295, ratepayers would have only been responsible for \$52 million. *Id.* at 25, n.61 (citing Ex. ESI-34 at 1).

²³⁶ *Id.* at 25-26.

²³⁷ *Id.* at 43-44.

²³⁸ *Id.* at 45 (citing Ex. MS-8 at 15-16).

²³⁹ *Id.* at 46.

119. Entergy and the Louisiana Commission argue that Entergy's proposed LGCC Variable is commensurate with the Commission's policy articulated in Opinion No. 295 and that the Louisiana Commission has already balanced investor and ratepayer interests through the requirement of securitization and a partial disallowance of costs. They also cite to Order No. 679 and recent cases in which the Commission has allowed up to 100 percent recovery of cancelled transmission plant costs.²⁴⁰ Conversely, the Mississippi Commission and the New Orleans Council argue that 100 percent of the securitized Little Gypsy cancellation costs should not be included in the bandwidth formula. The New Orleans Council argues secondarily that any inclusion of the Little Gypsy cancellation costs must reflect a 50/50 division between shareholders and ratepayers pursuant to Opinion No. 295 and that the Commission's recent cases allowing 100 abandoned plant recovery apply only to transmission projects. We find that Opinion No. 295 is not applicable under the circumstances here.

120. Service Schedule MSS-3 is not a typical agreement for wholesale power sales. As discussed, the System Agreement allows the Entergy Operating Companies to plan, construct, and operate their generation and transmission facilities as a single, integrated electric system. In Opinion No. 480, upon finding that rough production cost equalization on the Entergy System had been disrupted, the Commission approved the bandwidth formula as a mechanism to help keep the Entergy System in rough production cost equalization. Service Schedule MSS-3 "provides a formula for calculating the actual production costs for each company and the System's average production costs and specifies the billing procedure for paying or receiving funds as required to maintain the rough equalization of production costs."²⁴¹ Service Schedule MSS-3 is not an agreement for "the transmission of electric energy in interstate commerce[,]" ... "the sale of electric energy at wholesale in interstate commerce," or concerning "the facilities used for such transmissions or sales of electric energy".²⁴² As the D.C. Circuit has stated, while particular provisions of agreements that allocated generation costs among the Entergy Operating Companies did not establish a wholesale rate, "their terms and conditions do directly and significantly affect the wholesale rates at which the operating companies exchange energy due to the highly integrated nature of the ... system."²⁴³ Accordingly,

²⁴⁰ See Louisiana Commission Brief at 39-40 (citing *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058; *S. Cal. Edison Co.*, 137 FERC ¶ 61,252).

²⁴¹ *La. Pub. Serv. Comm'n. v. FERC*, 761 F.3d 540 at 544 (5th Cir. 2014).

²⁴² 16 U.S.C. § 824(b)(1).

²⁴³ See *Entergy Servs., Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103, at P 33 (2012) (citing *Miss. Indus. v. FERC*, 808 F.2d at 1542).

the bandwidth formula is not itself a rate for wholesale power, but lies within the Commission's jurisdiction because it affects wholesale rates pursuant to section 205(a) of the FPA.²⁴⁴ Furthermore, the bandwidth formula is a means of narrowing production cost disparities among the Entergy Operating Companies and not a vehicle for direct cost recovery from ratepayers.

121. In contrast, the Commission's cancelled and abandoned plant policy has typically addressed the recovery of costs in wholesale power sales or transmission rates and the appropriate allocation between shareholders and ratepayers. For instance, Opinion No. 295 originated in part as a result of the New England Power Company's proposal to increase its rates for firm service to 10 wholesale customers.²⁴⁵ More recently, the Commission has addressed requests for recovery of abandoned plant cost in wholesale transmission service rates.²⁴⁶ We agree with the parties that in Opinion No. 295 the Commission sought to achieve an appropriate equitable balance between the interests of shareholders and ratepayers of the recovery in wholesale rates of costs associated with cancelled plant. However, that concern is not implicated here because the bandwidth formula is a means of narrowing production costs disparities among the Entergy Operating Companies and not a vehicle for direct cost recovery from ratepayers.

122. Accordingly, we find the Opinion No. 295 cost allocation policy is not applicable under the circumstances at hand—i.e., a proposed revision to a mechanism designed to calculate rough production cost equalization among operating company affiliates to include costs associated with the cancellation of a generation project that was planned for the benefit of the entire Entergy System and that have been securitized at the retail level.

123. Furthermore, the circumstances surrounding the Little Gypsy Repowering Project, its cancellation, and securitization of the cancellation costs support a finding that the LGCC Variable is appropriate for inclusion in the bandwidth formula. As discussed, the record shows that, under the rotational assignment procedure of the System Agreement, Entergy Louisiana was selected to construct the Little Gypsy Repowering Project as a means to diversify fuel for generation for the benefit of the entire Entergy System. A

²⁴⁴ *See id.* (“the Commission's exercise of jurisdiction over Entergy Arkansas' bandwidth payments arise[s] not because a bandwidth payment represents an actual wholesale sale and purchase of power, but because that cost ‘affects’ Entergy Arkansas' and other Operating Companies' rates”).

²⁴⁵ Opinion No. 295, 42 FERC ¶ at 61,067.

²⁴⁶ *See, e.g., Pub. Serv. Co. of N.M.*, 75 FERC ¶ 61,266 (1996) (recovery of 50 percent of cancelled transmission project through wholesale transmission rates).

substantial decline in natural gas prices reversed the economics of the project resulting in its ultimate cancellation. Subsequently, upon approving an uncontested settlement for retail ratemaking, the Louisiana Commission found that the Little Gypsy cancellation costs were prudently incurred and approved the securitization of the Little Gypsy cancellation costs. As we have found, the Little Gypsy Repowering Project was designed to meet the needs of the entire Entergy System and the Little Gypsy cancellation costs are production costs and are therefore appropriate for inclusion in the bandwidth formula. Accordingly, we accept Entergy's proposal to include the LGCC Variable in the mechanism designed to help keep the Entergy System in rough production cost equalization.

4. Alleged Factual Errors

a. Brief on Exceptions

124. Entergy requests that the Commission correct two factual errors in the Initial Decision. First, Entergy notes that paragraph nine of the Initial Decision, which cites page 46 of the Louisiana Commission Approval Order, indicates that the Louisiana Commission certified the Little Gypsy Repowering Project because “it would serve Louisiana ratepayers.”²⁴⁷ Entergy asserts that the cited part of the Louisiana Commission Approval Order in fact provides that the Little Gypsy Repowering Project “is certified as serving the public convenience and necessity, is in the public interest, and therefore prudent, based on presently available information.”²⁴⁸ Second, Entergy states that the sentence in paragraph 10 of the Initial Decision stating that the “‘new natural gas extraction technologies and new natural gas discoveries rendered a significant price reduction in’ the Little Gypsy Repowering Project” is incorrect and should be revised to state that “new natural gas technologies and new natural gas discoveries reduced significantly long-term natural gas price expectations.”²⁴⁹

125. No briefs opposing exceptions were filed on this issue.

b. Commission Determination

126. Having reviewed the record, we agree with Entergy that the first error should be corrected. Accordingly, it is duly noted that page 46 of the Louisiana Commission

²⁴⁷ Entergy Brief on Exceptions at 36-37.

²⁴⁸ *Id.* at 37.

²⁴⁹ *Id.*

Approval Order indicates that the Little Gypsy Repowering Project “is certified as serving the public convenience and necessity, is in the public interest, and therefore prudent, based on presently available information.” With respect to Entergy’s second correction, however, we note that the Presiding Judge stated that “new natural gas extraction technologies and new natural gas discoveries rendered a significant price reduction in *this resource*,”²⁵⁰ and cited the testimony of Entergy witness Mr. Walz. We note that Entergy witness Mr. Walz stated at hearing:

[T]he economics of the project changed due to factors that were beyond control of the system. There were a number of things that changed, but the primary driver, the thing that made the most effect was the decline in the expectations for the long-term price of natural gas.²⁵¹

We find that although the Presiding Judge paraphrased the testimony of Mr. Walz, the Presiding Judge’s statement accurately reflects the record in this proceeding.

B. The Louisiana Commission’s FPA Section 206 Complaint

1. Initial Decision

127. The Presiding Judge found that the Louisiana Commission’s FPA section 206 complaint failed for lack of evidence because the record did not successfully demonstrate that the present bandwidth formula is unjust, unreasonable, unduly discriminatory or preferential.²⁵² Although the Commission set both the FPA section 205 filing and the FPA section 206 complaint for a consolidated proceeding, the Presiding Judge noted that the parties focused on only the FPA section 205 filing. According to the Presiding Judge, “[a]ll of the parties agreed to frame the primary issue in this proceeding as ‘[w]hether Entergy’s proposal to amend its System Agreement ... has been shown to be just and reasonable,’ with no mention whatsoever of the [Louisiana Commission’s] section 206 complaint.”²⁵³

²⁵⁰ Initial Decision, 143 FERC ¶ 63,012 at P 10 (emphasis added).

²⁵¹ *See* Tr. 132:25-133:4 (Walz).

²⁵² Initial Decision, 143 FERC ¶ 63,012 at P 35.

²⁵³ *Id.* P 36 (citing February 13, 2013 Joint Statement of Stipulated and Contested Issues, Stipulated and Contested Facts, Joint Witness List and Index of Exhibits at 8-12).

128. The Presiding Judge noted that the Commission consolidated the proceedings after recognizing that the FPA section 205 and FPA section 206 proceedings “present common issues of law and fact.”²⁵⁴ Thus, the Presiding Judge found that, “despite the procedural differences between section 205 and section 206, the same factual and legal analyses ... that served to deny the section 205 filing also serve to deny the section 206 complaint.”²⁵⁵ According to the Presiding Judge, parties did not provide any other legal or factual grounds capable of sustaining the FPA section 206 complaint.

129. For example, the Presiding Judge found that the evidence does not support the Louisiana Commission’s argument that Louisiana ratepayers are unduly discriminated against by not including the cancelled costs in the bandwidth formula. The Presiding Judge stated that the Louisiana Commission “took action on its own volition to pass [the Little Gypsy cancellation costs] on to its ratepayers, and as a result, now essentially wants to be heard that their action has caused the Commission’s bandwidth formula to become unjust and unreasonable.”²⁵⁶ The Presiding Judge found that the Louisiana Commission’s voluntary actions to impose the Little Gypsy cancellation costs on its ratepayers are not enough to render a Commission jurisdictional wholesale tariff unjust and unreasonable.

130. The Presiding Judge further found that no discrimination is present on the facts of this case. According to the Presiding Judge, the Little Gypsy cancellation costs are “outside the scope of the bandwidth formula by virtue of section 3.01 of the ... System Agreement, Opinion No. 480, and related Commission precedent.”²⁵⁷ The Presiding Judge concluded that it cannot legally be considered discriminatory to deny the inclusion of the Little Gypsy cancellation costs because they are not eligible to be shared among the Entergy Operating Companies. The Presiding Judge emphasized that Entergy Louisiana initially maintained the position that the Little Gypsy cancellation costs did not qualify for bandwidth allocation. The Presiding Judge stated that the Operating Companies only made their filings to include the costs in the bandwidth formula “at the insistence of the [Louisiana Commission].”²⁵⁸

²⁵⁴ *Id.* P 37 (citing Hearing Order, 139 FERC ¶ 61,167 at P 50).

²⁵⁵ *Id.*

²⁵⁶ *Id.* P 41.

²⁵⁷ *Id.* P 42.

²⁵⁸ *Id.* PP 42-43.

131. The Presiding Judge concluded that based on the facts and the legal reasoning underpinning the FPA section 205 analysis, “the section 206 complaint must fail for a lack of sufficient evidence that the current bandwidth formula is unjust, unreasonable, unduly discriminatory or preferential.”²⁵⁹

132. No briefs on exceptions or briefs opposing exceptions were filed on this issue.

2. Commission Determination

133. We find that the Presiding Judge appropriately considered the evidence regarding whether the existing bandwidth formula is unjust and unreasonable. Section 206(b) of the FPA requires a complainant to establish that the current rate is unjust and unreasonable. In this regard, as the complainant in this case, the Louisiana Commission bears the burden of proof to establish that the existing bandwidth formula is unjust and unreasonable, unduly discriminatory or preferential. We agree with the Presiding Judge that the parties focused only on the FPA section 205 filing. Accordingly, we affirm the Presiding Judge’s determination that the FPA section 206 complaint fails for a lack of sufficient evidence.

The Commission orders:

The Initial Decision is affirmed in part and reversed in part, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵⁹ *Id.* P 44.