

153 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket No. EL10-55-002

v.

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

OPINION NO. 519-A

ORDER DENYING REHEARING

(Issued November 19, 2015)

1. In this order, the Commission addresses a request for rehearing by the Louisiana Public Service Commission (Louisiana Commission) of Opinion No. 519,¹ in which the Commission affirmed an Initial Decision² that dismissed a complaint filed by the Louisiana Commission. The Louisiana Commission's complaint against Entergy Corporation and its subsidiaries,³ which was brought

¹ *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 519, 139 FERC ¶ 61,107 (2012).

² *La. Pub. Serv. Comm'n v. Entergy Corp.*, 134 FERC ¶ 63,016 (2011) (Initial Decision).

³ In this Order, "Entergy" will be used to refer to Entergy Corporation and its subsidiaries, and "Entergy System" will refer to the electric facilities owned by Entergy Corporation subsidiaries.

pursuant to sections 206 and 306 of the Federal Power Act (FPA),⁴ generally challenged the reasonableness of the depreciation component of the “bandwidth” formula rate in the Entergy System Agreement (System Agreement) that was designed to roughly equalize the electric production costs among the Entergy Operating Companies.⁵ In Opinion No. 519, the Commission agreed with the Presiding Judge that the Louisiana Commission had not met its burden of proof under section 206 of the FPA to show that the existing bandwidth formula is unjust, unreasonable, unduly discriminatory or preferential. In this order, the Commission denies rehearing.

I. Background

2. This complaint proceeding is part of a long history of litigation over the allocation of the production costs of electric power plants among the Entergy Operating Companies under the System Agreement. A detailed recitation of that history is set forth in Opinion No. 519 and will not be repeated here.⁶

3. As relevant to the Louisiana Commission’s rehearing request, the System Agreement provides for, among other things, joint planning, construction, and operation of the Operating Companies’ facilities and maintains a coordinated power pool among the Operating Companies. The System Agreement contains seven Service Schedules, MSS-1 through MSS-7.⁷

⁴ 16 U.S.C. §§ 824e, 825e (2012).

⁵ At the time that Opinion No. 519 was issued, the Entergy Operating Companies were: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, LLC (Entergy Gulf States Louisiana); Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc. (Entergy New Orleans); and Entergy Texas, Inc. (Entergy Texas) (together, Operating Companies). On October 1, 2015, Entergy Gulf States Louisiana and Entergy Louisiana combined substantially all of their respective assets and liabilities into a single successor public utility operating company, Entergy Louisiana Power, LLC, which then changed its name to Entergy Louisiana, LLC. *See Entergy Gulf States La. L.L.C.*, 151 FERC ¶ 62,018 (2015).

⁶ *See* Opinion No. 519, 139 FERC ¶ 61,107 at PP 3-14.

⁷ *Id.* P 4.

4. In the 1980s, as individual generation facility investments became substantial, the Commission established the standard of “rough production cost equalization” as a just and reasonable benchmark for allocating the costs of generating plants among the Operating Companies.⁸ In 2005, in Opinion No. 480,⁹ the Commission found that the allocation of production costs among the Operating Companies was no longer roughly equal, and accepted Entergy’s proposed remedy of using a cost-based formula to keep each Operating Company’s generation costs within a specified bandwidth. This bandwidth formula, added at sections 30.11 through 30.13 to Service Schedule MSS-3 of the System Agreement,¹⁰ is applied annually to calculate bandwidth payments among the Operating Companies in order to achieve a rough equalization of production costs. The Commission has issued a number of orders and opinions addressing the annual bandwidth proceedings and interpreting requirements under the bandwidth formula.¹¹

⁸ See *Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305 at 61,654, *reh’g denied*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985), *aff’d sub nom. Mississippi Industries 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), *order on remand, Sys. Energy Res., Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh’g denied*, Opinion 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).

⁹ *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *order on reh’g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006) (2006 Compliance Order), *order on reh’g and compliance*, 119 FERC ¶ 61,095 (2007) (2007 Compliance Order), *aff’d in part and remanded in part, La. Pub. Serv. Comm’n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011).

¹⁰ Service Schedule MSS-3 is a rate schedule for each of the Entergy Operating Companies and is contained in the hearing record as Ex. LC-3.

¹¹ See, e.g., *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010), *order on reh’g*, Opinion 505-A, 139 FERC ¶ 61,103 (2012), *order on compliance*, 139 FERC ¶ 61,104 (2012), *order on reh’g*, 145 FERC ¶ 61,046 (2013), *aff’d sub nom. La. Pub. Serv. Comm’n v. FERC*, 606 Fed. Appx. 1 (D.C. Cir. 2015) (orders in the first annual bandwidth filing proceeding holding that the bandwidth formula mandates the use of retail regulator-approved depreciation rates); *Ark. Pub. Serv. Comm’n v. Entergy Corp.*, 128 FERC ¶ 61,020 (2009), *order on reh’g*, 137 FERC ¶ 61,030, at P 2 (2011), *order on reh’g*, 142 FERC 61,012

(continued...)

5. In particular, as relevant here, the bandwidth formula includes depreciation expenses in the calculation of each Operating Company's production costs. Section 30.12 of Service Schedule MSS-3 sets forth the requirement for determining each Operating Company's production costs for bandwidth calculation purposes.¹² The definitions of the production depreciation expense variables in the bandwidth formula require Entergy to use the depreciation expenses the Operating Companies record in Account 403 (Depreciation Expense) on the FERC Form No. 1, "as approved by Retail Regulators," unless, as stated slightly differently for different depreciation inputs, "the jurisdiction for determining the depreciation rate is vested in the FERC under otherwise applicable law" or "unless the FERC determines otherwise."¹³ In Opinion No. 514, the Commission held that under the terms of the formula, depreciation rates approved by retail regulators are required to be reflected in calculations implementing the bandwidth formula.¹⁴

(2013), *aff'd sub nom. La. Pub. Serv. Comm'n v. FERC*, 761 F.3d 540 (5th Cir. 2014) (denying complaint seeking to modify bandwidth formula language) (*La. Pub. Serv. Comm'n*); *Entergy Servs., Inc.*, 130 FERC ¶ 61,170 (2010) (removing depreciation issue from third bandwidth proceeding) (Order Denying Interlocutory Appeal); *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029, at P 49 (2011), *order on reh'g*, Opinion No. 514-A, 142 FERC ¶ 61,013 (2013) (order on second bandwidth filing holding that depreciation rates approved by retail regulators are required to be reflected in the bandwidth formula), *aff'd sub nom. La. Pub. Serv. Comm'n*, 761 F.3d 540; *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012), *order on reh'g and clarification*, 145 FERC ¶ 61,047 (2013), *aff'd sub nom. La. Pub. Serv. Comm'n v. FERC*, 771 F.3d 903 (5th Cir. 2014) (order on third bandwidth filing other than depreciation); *Entergy Servs., Inc.*, Opinion No. 523, 142 FERC ¶ 61,022, at P 198 & n.398 (2013) (finding that Entergy is not required to file updates to Entergy Arkansas' Service Schedule MSS-3 depreciation rates to reflect changes by state regulators); *Entergy Servs., Inc.*, Opinion No. 526, 143 FERC ¶ 61,116, at P 30 (2013) (same holding with respect to Entergy Texas).

¹² Service Schedule MSS-3, section 30.12.

¹³ For example, variable DEXN is defined as "Depreciation and Amortization Expense associated with the plant investment in [production plant in service, excluding nuclear plant] as recorded in FERC Accounts 403 and 404, as approved by Retail Regulators unless the jurisdiction for determining the depreciation rate is vested in the FERC under otherwise applicable law." *Id.* For the text of all definitions, *see* System Agreement, section 30.12.

¹⁴ *See* Opinion No. 514-A, 142 FERC ¶ 61,013 at P 17.

6. In its complaint in this case, the Louisiana Commission asserted that the defined variables in the bandwidth formula that govern the calculation of generation depreciation expenses were not just and reasonable. Specifically, it argued that it is unjust and unreasonable for the formula to incorporate generation depreciation rates that were established by retail regulatory commissions, rather than use depreciation rates established by application of the Commission's rate policies for wholesale power sales.

7. In Opinion No. 519, the Commission affirmed most of the Initial Decision,¹⁵ holding that the challengers had failed to demonstrate that the bandwidth formula's requirement to include retail-determined depreciation data in the depreciation and decommissioning components of the bandwidth formula was unjust, unreasonable or unduly discriminatory or preferential.¹⁶ The Commission further held, among other things, that reliance on retail-determined depreciation data was not an unlawful delegation to retail regulators of Commission authority over wholesale rates,¹⁷ and that the Louisiana Commission had not proven its allegation that the Arkansas Commission's depreciation component had been manipulated to shift cost allocations among the states.¹⁸

8. On June 6, 2012, the Louisiana Commission filed a request for rehearing of Opinion No. 519, as discussed below.

¹⁵ The Commission did not affirm the Initial Decision's reliance on the Commission's orders in the annual bandwidth filings, holding that precedent from those cases was not dispositive of whether the depreciation and decommissioning expense variables in the bandwidth formula itself were just and reasonable. Opinion No. 519, 139 FERC ¶ 61,107 at PP 109-110. Also, the Commission did not endorse the Initial Decision's use of the terminology "*per se* just and reasonable" to characterize its findings. *Id.* P 119.

¹⁶ Opinion No. 519, 139 FERC ¶ 61,107 at PP 108, 121.

¹⁷ *Id.* P 111.

¹⁸ *Id.* PP 112-118.

II. Discussion

A. Delegation of Authority to the States

1. Opinion No. 519

9. In Opinion No. 519, the Commission agreed with the Initial Decision that “the Commission has the authority to adopt retail-determined depreciation rates in the ‘jurisdictional’ [b]andwidth [f]ormula.”¹⁹ The Commission rejected the notion that it has delegated its authority over wholesale rates to retail regulators. The Commission stated that its acceptance of a formula that utilizes inputs that may have been determined at the state level does not constitute a delegation of Commission jurisdiction over depreciation expenses.²⁰ The Commission noted that it previously approved Entergy’s compliance filings implementing the bandwidth formula as just and reasonable, which included the use of depreciation expenses as approved by the relevant state commissions.

2. Request for Rehearing

10. The Louisiana Commission argues on rehearing that the Commission’s approval in Opinion No. 519 of the use of retail-determined depreciation rates for the jurisdictional bandwidth formula represents an unlawful delegation of its FPA authority. It asserts that the Commission has “unlawfully abdicate[d] its wholesale ratemaking jurisdiction” and “impermissibly delegate[d] the Commission’s ratemaking authority” to retail regulators.²¹ The Louisiana Commission argues that the Commission has refused to review the justness and reasonableness of depreciation rates approved by state regulators and used by Entergy in the bandwidth formula, which represents an abdication of the Commission’s exclusive jurisdiction to establish just and reasonable wholesale rates, and an unlawful delegation of its jurisdiction to state authorities.²²

¹⁹ *Id.* P 109 (quoting the Initial Decision, 134 FERC ¶ 63,016 at P 24).

²⁰ *Id.* P 111.

²¹ Rehearing Request at 7, 17.

²² *Id.* at 1 (citing *La. Pub. Serv. Comm’n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999); *U.S. Telecom Ass’n v. FERC*, 359 F.3d 554 (D.C. Cir. 2004)).

11. The Louisiana Commission argues that the alleged delegation of authority over wholesale rates to retail regulators constitutes an unlawful sub-delegation of authority provided to this Commission by Congress.²³ Further, the Louisiana Commission asserts that the Commission has a statutory duty and a special obligation to enforce its own requirement that production costs on the Entergy System be roughly equal.²⁴ Additionally, the Louisiana Commission argues that depreciation rates must be calculated in a uniform manner to avoid undue discrimination.²⁵

3. **Commission Determination**

12. As the Commission held in Opinion No. 519, the Commission's acceptance of the bandwidth formula, which includes the use of depreciation expenses as approved by the relevant state commissions, did not abdicate nor delegate the Commission's jurisdictional responsibilities.²⁶ Rather, the Commission first exercised its jurisdiction over the bandwidth formula when it reviewed and accepted the formula as a remedy for the large production cost disparities among the Operating Companies that were found to exist in Opinion No. 480.²⁷ Notably, there were no protests in those proceedings that the use in the bandwidth formula of depreciation costs as approved by retail regulators was an unlawful delegation of the Commission's jurisdiction to the states.²⁸

13. Further, the Commission repeatedly exercised its authority over the depreciation components of the bandwidth formula in its many orders and opinions concerning the formula.²⁹ In the present case, the Commission, in response to the

²³ *Id.* at 3.

²⁴ *Id.* at 16.

²⁵ *Id.* at 22-26.

²⁶ Opinion No. 519, 139 FERC ¶ 61,107 at P 111,

²⁷ *See, e.g.*, 2006 Compliance Order, 117 FERC ¶ 61,203 and 2007 Compliance Order, 119 FERC ¶ 61,095.

²⁸ *See* Service Schedule MSS-3 § 30.12, definitions of formula inputs NAD, NDE, ADXN, GAD, and DEXN (depreciation inputs were to be as "approved by the retail regulator," subject to variously-worded conditions relating to Commission jurisdiction).

²⁹ *See* note 9, *supra*.

Louisiana Commission's complaint, exercised its jurisdiction to establish a full evidentiary hearing to litigate the issues that the Louisiana Commission sought to raise concerning the justness and reasonableness of the formula's depreciation components.

14. These multiple Commission orders, which accepted the original bandwidth formula, clarified the depreciation components in that formula, and established full evidentiary hearing procedures to address the Louisiana Commission's present complaint, refute the Louisiana Commission's allegation of an abdication or delegation of the Commission's jurisdiction. These actions are evidence that the Commission asserted jurisdiction over the workings of the bandwidth formula and exercised its authority to find that the components of the bandwidth formula, including their requirement to use depreciation data from the retail regulators, produce just and reasonable results for purposes of allocating production costs. The Louisiana Commission may disagree with the findings and determinations the Commission made when it exercised its jurisdiction with respect to the reasonableness of the bandwidth formula, including the depreciation components in the formula, but the Commission has not abdicated or delegated its jurisdiction.

15. The Commission, which is responsible for determining what is "just and reasonable" under the FPA, necessarily has broad discretion to take into account all factors that affect that determination.³⁰ When Entergy first proposed the production cost formula in compliance with Opinion Nos. 480 and 480-A, neither the Louisiana Commission nor any other party objected to the definitions for the depreciation components, which explicitly were tied to the accounting approved by the retail regulator having jurisdiction over the Operating Company.³¹

³⁰ See *Morgan Stanley Capital Grp. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 532 (2008) ("The statutory requirement that rates be 'just and reasonable' is obviously incapable of precise judicial definition, and we afford great deference to the Commission in its rate decisions."); *FPC v. Texaco, Inc.*, 417 U.S. 380, 394-96 (1974) (recognizing Commission discretion to interpret the "just and reasonable" standard); *Am. Pub. Power Ass'n v. FPC*, 522 F.2d 142, 146 (D.C. Cir. 1975) ("Congress carefully eschewed tying 'just and reasonable' rates to any particular method of deriving the rates . . . Congress clearly intended to allow the Commission broad discretion in regard to the methodology of testing the reasonableness of rates.").

³¹ See notes 13 and 27, *supra*; Service Schedule MSS-3 § 30.12; 2007 Compliance Order, 119 FERC ¶ 61,095; 2006 Compliance Order, 117 FERC ¶ 61,203.

16. In the context of the purpose of the bandwidth formula in Service Schedule MSS-3, i.e., as a basis to roughly equalize production costs, the Commission was justified in exercising its discretion to adopt state depreciation determinations as a reasonable way to implement that purpose.³² Accordingly, the Commission did not delegate nor abdicate its FPA responsibilities by allowing the depreciation variable to be based on state-determined rates. Rather, it exercised those responsibilities in a manner that was appropriate to accomplish a just and reasonable result consistent with the purposes of the bandwidth formula in Service Schedule MSS-3.

17. The Louisiana Commission made the same allegation of unlawful delegation when it petitioned the court for review of Opinion No. 514, and the U.S. Court of Appeals for the Fifth Circuit firmly rejected that argument. That court held:

We conclude that there is no unlawful subdelegation in this case because FERC exercised its role when it initially reviewed and accepted the bandwidth formula incorporating the state agencies' depreciation rates....

[C]ontrary to the Louisiana Commission's argument that FERC interpreted the System Agreement to "preclude" itself from reviewing the reasonableness of depreciation inputs, FERC reviewed the reasonableness of incorporating the state agencies' rates when it accepted the bandwidth formula and continues to review them in Section 206 complaint filings.

Accordingly, FERC has not unlawfully subdelegated to state regulators and continues to exercise its authority consistent with the FPA.³³

18. Furthermore, the Louisiana Commission is incorrect in its assertion that in Opinion No. 519 the Commission held "that the unreasonable rates cannot be adjusted because the Commission-approved formula tariff permits state regulators to

³² *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378, 393-94 (D.C. Cir. 2008) (In affirming Opinion No. 480, the court cited approvingly to its precedent on the Commission's cost allocation among the Operating Companies, stating "we were especially deferential to FERC's remedy because it was the product of a difficult policy choice.").

³³ *La. Pub. Serv. Comm'n*, 761 F.3d at 552.

fix whatever depreciation rates they desire....”³⁴ Opinion No. 519 does not stand for the proposition that “unreasonable rates cannot be adjusted.” Rather, the Louisiana Commission has not demonstrated that the bandwidth formula produces “unreasonable rates,” i.e., an unreasonable allocation of production costs due to the use of depreciation rates set by retail jurisdictions. The Commission retains oversight of all of the components in the bandwidth formula including the depreciation variable. If it were shown that there are circumstances under which the methodology in the formula with respect to depreciation expense would not result in a just and reasonable allocation of production costs, the Commission would exercise its statutory authority to determine appropriate changes to the depreciation component to ensure just and reasonable rates. Here, however, the Louisiana Commission has not made such a showing.

19. We disagree with the Louisiana Commission’s contention that the use of state determined depreciation rates in the bandwidth formula results in undue discrimination among the operating companies. The Louisiana Commission relies on the Initial Decision in Docket No. EL01-88-001 for the proposition that production costs must be calculated in a uniform manner.³⁵ The Louisiana Commission alleges, that in that decision it was held that retail disallowances, other than imprudence, should not be reflected in the bandwidth formula. However, the instant case does not involve retail disallowances, but depreciation rates. We do not deem it to be undue discrimination, for the purpose of achieving rough production cost equalization, to allow the use of state depreciation rates in the bandwidth formula.

B. Consistency with Commission Requirements for Establishing Rates for Wholesale Sales

1. Opinion No. 519

20. In Opinion No. 519, the Commission rejected the notion that the bandwidth formula is unjust and unreasonable under Commission ratemaking standards and with Commission accounting instructions, finding that the Louisiana Commission failed to meet its burden of proof to demonstrate that the bandwidth formula is unjust and unreasonable because it does not follow particular Commission

³⁴ Rehearing Request at 2.

³⁵ *Id.* at 22-23 (citing *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 106 FERC ¶ 63,012 at PP 94-100 (2004)).

depreciation policies.³⁶ Specifically, the Commission found that its *Boston Edison*³⁷ precedent is not controlling in the context of the bandwidth formula.³⁸ In addition, the Commission stated that *Boston Edison* has not been codified in the Commission's regulations and that there is no requirement in the Commission's accounting regulations that nuclear plant service life assumptions must always match a nuclear plant's Nuclear Regulatory Commission operating license.

21. The Commission explained that Order No. 618 provides that the Commission monitors a utility's depreciation practices on a case-by-case basis to mitigate the potential for abuse.³⁹ The Commission stated that in Opinion No. 480, the Commission affirmed without discussion the Initial Decision's finding that the bandwidth formula not only could, but *should*, track retail ratemaking on prudence issues. The Commission stated that it has previously recognized that, due to the nature of the bandwidth formula, the Commission's ratemaking practices should not apply in all instances,⁴⁰ and that the Louisiana Commission had not demonstrated that the depreciation variables are a bandwidth component that must conform to all Commission depreciation policies for wholesale rates.

22. Concerning whether section 30.12 of the bandwidth formula conflicts with Commission accounting policies, the Commission found that to the extent that the approved bandwidth depreciation variables require the use of depreciation rates approved by retail regulators, those depreciation rates *are* the Commission-approved depreciation rate for bandwidth formula purposes, and the resulting amount of depreciation expense is appropriately recorded by the Entergy Operating Companies

³⁶ Opinion No. 519, 139 FERC ¶ 61,107 at P 112.

³⁷ *Boston Edison Co.*, 52 FERC ¶ 61,010 (1990) (*Boston Edison*) (holding that, as a general policy, in the context of a formula for the wholesale sale of power, decommissioning costs for a nuclear plant should be amortized over the life of the plant's license).

³⁸ Opinion No. 519, 139 FERC ¶ 61,107 at P 112.

³⁹ *Id.* (citing Depreciation Accounting, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 (2000)).

⁴⁰ The Commission noted that in the 2006 Compliance Order, the Commission accepted provisions that determine each Operating Company's production costs using a cost of equity set at the simple average of approved retail rates of return on common equity. *See id.* (citing 2006 Compliance Order, 117 FERC ¶ 61,203 at P 64).

in the FERC depreciation accounts in their FERC Form No. 1s, consistent with *Ohio Edison*.⁴¹

2. Request for Rehearing

23. The Louisiana Commission repeats its argument that the depreciation calculations used by the state commissions and incorporated into the bandwidth formula do not conform to methodologies that are used by the Commission for setting wholesale rates for power sales, and this non-conformance equates to depreciation components that are unjust and unreasonable.⁴² The areas of non-conformance alleged by the Louisiana Commission concern: (1) General Instruction 22 to the Uniform System of Accounts, which requires depreciation expense to be allocated over the estimated service lives of property in a “systematic and rational manner;” (2) Order No. 618,⁴³ which governs procedures for changes in depreciation rates; (3) *Boston Edison*, which held that depreciation costs for nuclear units should be based on their license lives; and (4) *Ohio Edison*, which requires that amounts booked to Commission depreciation accounts reflect Commission approved depreciation rates.⁴⁴

24. According to the Louisiana Commission, Opinion No. 519 fails to comply with the Order No. 618 requirement to establish and enforce a uniform rule for depreciation accounting. It asserts that the Commission fails to justify its determination that the bandwidth formula in Entergy’s tariff, rather than instructions in the Uniform System of Accounts, should control what depreciation expense is recorded by the Entergy Operating Companies in their FERC Form No. 1 reports.⁴⁵

⁴¹ *Id.* P 113 (citing *Ohio Edison Co.*, 84 FERC ¶ 61,157, at 61,862 (1998) (*Ohio Edison*) (finding that the amounts booked to FERC depreciation accounts should reflect Commission-approved depreciation rates and differences between those rates and state-approved depreciation rates should be recorded as regulatory assets and regulatory liabilities)).

⁴² Rehearing Request at 3, 5.

⁴³ Order No. 618, FERC Stats. & Regs. ¶ 31,104.

⁴⁴ Rehearing Request at 26-29, 36.

⁴⁵ *Id.* at 27-28.

25. The Louisiana Commission also argues that Opinion No. 519 deviates from Commission precedent with respect to whether Commission approval is required for any changes in depreciation rates as set by the states, citing the statement in Opinion No. 505 that Entergy would have to make an FPA section 205 filing to change the depreciation rates in the bandwidth formula.⁴⁶

26. The Louisiana Commission contends that Opinion No. 519 ignores undisputed evidence that Entergy has included depreciation expenses in its wholesale rates that reflect grossly erroneous assumptions concerning the service lives of generating units.⁴⁷ It asserts that the state commissions' determinations of depreciation "cannot be supported by studies, are based on incorrect service lives, do not systematically and rationally allocate service value over the correct estimated lives, and are calculated on an inconsistent basis."⁴⁸ The Louisiana Commission states that the Commission's obligation to prevent undue discrimination requires that the production cost calculations for each Entergy Operating Company have no material differences that could affect the wholesale rates used to roughly equalize the costs, and that the Commission's decision fails to assess the undue discriminatory impact of the use of retail depreciation rates.⁴⁹

3. Commission Determination

27. In Opinion No. 519, the Commission fully addressed each of the allegations that the Louisiana Commission raised on rehearing of inconsistencies between the depreciation calculations used by the states and Commission policies for wholesale rates. Although the Louisiana Commission asserts on rehearing that these explanations are not adequate, the Louisiana Commission does not provide sufficient support for the Commission to reconsider its finding that the use of depreciation rate data determined by state commissions, as reflected in the Entergy Operating Companies' FERC Form No. 1s, does not render the bandwidth formula unjust and unreasonable.

28. As a general matter, we reject the Louisiana Commission's assertions that the depreciation calculations for the bandwidth remedy are unjust and unreasonable because they do not conform to Commission methodologies for deriving wholesale

⁴⁶ *Id.* at 4, 34-35.

⁴⁷ *Id.* at 1, 13.

⁴⁸ *Id.* at 13.

⁴⁹ *Id.* at 3.

rates. The fact that a state commission may have, for retail rate purposes, calculated depreciation in a manner that may differ from Commission policies for setting wholesale rates, does not by itself prove that the bandwidth formula produces a cost allocation that is unjust, unreasonable, or unduly discriminatory.⁵⁰ The purpose of the bandwidth formula is not to set a cost-of-service rate for the sale of wholesale power,⁵¹ but to provide a basis to compare each Entergy Operating Company's production costs with those of the other Entergy Operating Companies in order to allocate such costs to achieve a rough equalization. Accordingly, the circumstances surrounding the bandwidth formula are quite different from a standard calculation of wholesale rates. As the Commission stated in Opinion No. 519, it has previously found other provisions of the bandwidth formula that incorporate retail rates to be just and reasonable, despite the fact that the retail and wholesale data are derived differently.⁵² Thus, the use of methodologies different from Commission wholesale rate methodologies does not by itself render the bandwidth formula unjust or unreasonable.

29. Moreover, contrary to the Louisiana Commission's assertions, the service lives used by the state commissions are not "erroneous" because they do not strictly adhere to Commission policies for wholesale ratemaking and are not based on the most recent depreciation studies. In Order No. 618 the Commission recognized that even in the case of pure wholesale sales, the Commission does not impose one single method for depreciation accounting, but monitors a utility's depreciation practices on a case-by-case basis.⁵³ Order No. 618 "simply require[d] utilities to use for accounting purposes methods of depreciation that allocate the cost of property over its useful service life in a systematic and rational manner."⁵⁴ The Louisiana Commission's assertion that the state commissions did not follow Commission

⁵⁰ See Opinion No. 519, 139 FERC ¶ 61,107 at P 112.

⁵¹ As the Commission and the court stated, 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. Opinion No. 505-A at P 33 (citing *Mississippi Indus. v. FERC*, 808 F.2d 1525, 1541-1542, *remanded on other grounds*, 822 F.2d 1104 (D.C. Cir. 1987)).

⁵² Opinion No. 519, 139 FERC ¶ 61,107 at P 112.

⁵³ Order No. 618, FERC Stats. & Regs. ¶ 31,104 at 31,695.

⁵⁴ *Id.* at 31,694.

policies does not demonstrate that the state commissions have allocated the cost of property over its useful life in a manner that was not “systematic and rational.”

30. We also find that the Louisiana Commission’s argument that the Commission’s *Boston Edison* policy requires that nuclear plants be depreciated based on a service life that matches the plant’s Nuclear Regulatory Commission operating license misstates the significance of *Boston Edison* to this proceeding. As the Commission explained in Opinion No. 519, the Commission has not codified *Boston Edison* in its accounting regulations, and there is no requirement in the Uniform System of Accounts that service life assumptions for a nuclear plant must always match the plant’s Nuclear Regulatory Commission operating license.⁵⁵

31. Furthermore, the Commission did not violate the *Ohio Edison* policy that holds that the amounts booked to Commission depreciation accounts should reflect Commission-approved depreciation rates.⁵⁶ Here, in accepting the rough production cost equalization remedy, the Commission in Opinion No. 480 and the subsequent compliance orders specifically accepted the bandwidth depreciation variables which require the use of depreciation rates approved by retail regulators. In doing so, the Commission effectively adopted those depreciation rates approved by retail regulators as the Commission-approved depreciation rates for purposes of the bandwidth formula, and, as such, those depreciation rates approved by retail regulators are appropriately booked to the FERC depreciation accounts.⁵⁷

32. We continue to find, as the Commission found in Opinion No. 519, that the alleged inconsistency between service life assumptions used for inputs to the bandwidth formula and those that would be developed for purposes of wholesale ratemaking does not render the bandwidth formula allocations unjust, unreasonable, or unduly discriminatory or preferential.⁵⁸ Service lives of generating units are estimates, and although the Commission has policies governing how to determine service lives for purposes of calculating wholesale rates, those policies do not stand for the proposition that all other methodologies for determining service lives for different purposes necessarily produce unjust and unreasonable results. The Louisiana Commission has not demonstrated that the depreciation rates used by the

⁵⁵ Opinion No. 519, 139 FERC ¶ 61,107 at P 112.

⁵⁶ Rehearing Request at 26-28.

⁵⁷ *Ohio Edison*, 84 FERC ¶ 61,157 at 61,862.

⁵⁸ Opinion No. 519, 139 FERC ¶ 61,107 at P 112.

states produce an unjust and unreasonable allocation of production costs among the Entergy Operating Companies. Accordingly, rehearing is denied as to this issue.

C. Manipulation of Depreciation

1. Opinion No. 519

33. The Commission affirmed the Presiding Judge's finding that the Louisiana Commission had not shown that the Arkansas Public Service Commission (Arkansas Commission) or Entergy Arkansas manipulated the depreciation component of the bandwidth formula, nor had the Louisiana Commission shown there is a potential for manipulation of the bandwidth formula that justifies changing the bandwidth formula's depreciation rate method.⁵⁹ The Commission found that the Louisiana Commission's evidence allegedly proving that Entergy Arkansas and the Arkansas Commission intended to manipulate depreciation expenses in order to game the bandwidth formula was insufficient to support that premise.⁶⁰

2. Request for Rehearing

34. On rehearing, the Louisiana Commission asserts that the Commission's recitation of a prior holding and evidence that the Arkansas Commission did not intend to manipulate the tariff does not address the thrust of the Louisiana Commission's contention—i.e., that Entergy Arkansas, not the Arkansas Commission, manipulated the bandwidth formula by “sitting on” depreciation service life changes for the purpose of minimizing bandwidth payments by Entergy Arkansas. According to the Louisiana Commission, the Commission failed to address the unrefuted evidence that Entergy manipulated the depreciation provisions of the tariff.⁶¹ The Louisiana Commission argues that Opinion No. 519 did not address in any meaningful way the evidence that the Louisiana Commission provided in support of its allegation that Entergy Arkansas and the Arkansas Commission staff failed to revise the depreciation rates for the Arkansas Nuclear One (ANO) units 1 and 2 after the Nuclear Regulatory Commission granted license

⁵⁹ *Id.* P 111.

⁶⁰ *Id.* P 115. The Commission noted that the Louisiana Commission raised this same issue in the first bandwidth implementation proceeding, and the presiding judge in that proceeding found “no evidence of any improper motive” by the Arkansas Commission. *Entergy Servs., Inc.*, 124 FERC ¶ 63,026 at P 465.

⁶¹ Rehearing Request at 5, 38.

extensions because doing so would increase Entergy Arkansas' bandwidth payments.⁶²

35. The Louisiana Commission again argues that it provided evidence demonstrating that Entergy prepared an analysis of the potential benefit to Entergy Arkansas of continuing to use the incorrect service lives for ANO 1 and 2 until 2013, when Entergy Arkansas intended to withdraw from the System Agreement, that Entergy personnel met with Arkansas Commission personnel to discuss depreciation rates, and that the Arkansas Commission did not follow its "history" of requiring depreciation updates for the 2006 retail rate proceeding.⁶³

3. Commission Determination

36. Contrary to the Louisiana Commission's assertion that Opinion No. 519 did not address in a meaningful way the evidence that the Louisiana Commission provided in support of its manipulation allegations, the Commission in fact examined the evidence and discussed in detail why the Louisiana Commission's evidence was insufficient to demonstrate that there was a deliberate attempt by Entergy or the Arkansas Commission to manipulate depreciation rates.⁶⁴

37. Specifically, the Commission found insufficient the evidence relied upon by the Louisiana Commission to argue that the Arkansas Commission intentionally delayed updating plant service lives. The Louisiana Commission had pointed to a 2006 Entergy/Entergy Arkansas study regarding the impact of changing the service life used for retail depreciation-setting purposes on the bandwidth, an email exchange between an Entergy Arkansas employee and an Entergy employee regarding the dollar impact of changing the service life, communications between Entergy Arkansas and staff of the Arkansas Commission regarding depreciation rates under the bandwidth, and the failure of Arkansas Commission staff to address Entergy's depreciation rates in a 2006 retail rate case proceeding.⁶⁵

38. The Commission found that even Trial Staff's witness agreed that the internal Entergy/Entergy Arkansas email exchange did not provide evidence that the Arkansas Commission manipulated depreciation rates for bandwidth purposes.

⁶² *Id.* at 38.

⁶³ *Id.* at 40.

⁶⁴ Opinion No. 519, 139 FERC ¶ 61,107 at PP 114-118.

⁶⁵ *Id.* P 115 (citing Louisiana Commission Brief on Exceptions at 66-68).

Further, that witness agreed that the Arkansas Commission did in fact adopt the longer service life assumption for the 2010 rates and he had no reason to believe there was any manipulation from the 2010 retail depreciation case forward.⁶⁶

39. In Opinion No. 519 the Commission held that:

[t]he fact that the Arkansas Commission chose not to change the service lives of ANO 1 and ANO 2 in its 2006 rate case, but did so in 2010, does not indicate that it was manipulative not to change them earlier. Rather, circumstances change over time, there is a zone of reasonableness for rates, and the state public utility commission may appropriately take a number of factors into account in establishing retail rates for its ratepayers.^[67]

40. The Commission accordingly found that there was no evidence of an attempt by the Arkansas Commission or any other retail regulators to manipulate the bandwidth formula.

41. Moreover, the Commission observed that because the Arkansas Commission had adopted in the 2010 rates the depreciation service life that the Louisiana Commission advocated, there was no reason to consider this issue further. The Commission stated that because the bandwidth implementation proceedings from 2011 going forward will reflect this changed service life assumption for the ANO 1 and ANO 2 units, and because the Louisiana Commission is not entitled to retroactive rate changes under FPA section 206 prior to the complaint's 2010 refund effective date, this issue need not be considered further.

42. In its rehearing request, the Louisiana Commission points to the same evidence and makes the same arguments made in its brief on exceptions to the Initial Decision. The Louisiana Commission's attempt to refocus its allegation of manipulation of depreciation rates on Entergy rather than on the Arkansas Commission does not change the Commission's previous conclusion that the Louisiana Commission failed to provide any evidence demonstrating that there was any intent to manipulate the bandwidth formula. Because the Louisiana Commission raises no new arguments on rehearing that were unaddressed in Opinion No. 519, we deny rehearing on this issue.

⁶⁶ *Id.* P 116.

⁶⁷ *Id.* P 117.

D. Adherence to Precedent**1. Opinion No. 519**

43. In Opinion No. 519, the Commission denied the Louisiana Commission's request for a retroactive effective date for years prior to the March 31, 2010 refund effective date for any amounts determined to be unjust and unreasonable, finding that such retroactive relief is only available in limited circumstances, such as when there is a tariff violation.⁶⁸ The Commission also rejected the assertion that Order No. 618 required Entergy to submit an FPA section 205 filing with the Commission in order to seek approval to include revised depreciation rates adopted by any of its retail regulators in the bandwidth formula in Service Schedule MSS-3. The Commission found that the Service Schedule MSS-3 bandwidth formula itself required the use of depreciation rates approved by retail regulators. The Commission acknowledged that its determination that the Commission's policy on changes in depreciation in formula rates established in Order No. 618 does not apply to the bandwidth formula was a change from its statement in Opinion No. 505, but was justified by the intervening holding in Opinion No. 514 that the depreciation variables require the use of depreciation rates approved by the state commissions.⁶⁹

2. Request for Rehearing

44. The Louisiana Commission argues that Opinion No. 519 arbitrarily overturned precedent or confirmed recent decisions overruling precedent, without rationale.⁷⁰ First, the Louisiana Commission asserts that the Commission "confirms its rejection" of precedent on whether the annual bandwidth proceedings could be used to adjudicate the reasonableness of depreciation inputs.⁷¹ The Louisiana Commission asserts that in orders prior to 2010, the Commission's position was that the justness and reasonableness of formula inputs would be reviewed in bandwidth cases. Then, according to the Louisiana Commission, the Commission changed course without explanation in orders beginning in 2010, where the Commission held

⁶⁸ *Id.* P 26.

⁶⁹ *Id.*

⁷⁰ Rehearing Request at 30-37.

⁷¹ *Id.* at 30-31.

that the justness and reasonableness of inputs could only be raised in an FPA section 206 complaint case.⁷²

45. Additionally, the Louisiana Commission asserts that despite precedent holding that formula rate inputs can be challenged anytime and corrected retrospectively, the Commission incorrectly ruled that unreasonable cost inputs cannot be corrected retroactively except under certain limited circumstances that are not present here.⁷³

46. The Louisiana Commission further asserts that Order No. 618 provides that where a utility has a formula rate that references the FERC depreciation accounts, it must file under FPA section 205 if depreciation rates are changed so as to affect the wholesale rates. The Louisiana Commission argues that Opinion No. 519 overruled this policy without explanation, and that Entergy has changed depreciation rates between 2007 and 2010 without making an FPA section 205 filing.

47. The Louisiana Commission argues that the Commission acted inconsistently with a previous proceeding involving Entergy's nuclear units by failing to follow the *Boston Edison* policy on using Nuclear Regulatory Commission operating license terms for the service lives of nuclear plants.⁷⁴

3. Commission Determination

48. We reject the assertion that Opinion No. 519 arbitrarily overturned precedent without rationale. With respect to the Louisiana Commission's assertion that the Commission has rejected precedent on whether the annual bandwidth proceedings could be used to adjudicate the reasonableness of depreciation inputs, Opinion No. 519 did not change any precedent with respect to the scope of bandwidth proceedings, and the Louisiana Commission does not argue that it does. Rather, it asserts that the Commission changed its interpretation of what could be litigated in bandwidth proceedings in orders issued in other dockets in 2010.⁷⁵ However, the

⁷² *Id.* at 31 (citing Opinion No. 505, 130 FERC ¶ 61,023; Order Denying Interlocutory Appeal, 130 FERC ¶ 61,170; and Opinion No. 514, 137 FERC ¶ 61,029).

⁷³ *Id.* at 33 (citing Opinion No. 519, 139 FERC ¶ 61,107 at P 26).

⁷⁴ *Id.* at 36-37 (citing *La. Pub. Serv. Comm'n v. Sys. Energy Res., Inc.*, 124 FERC ¶ 61,003 (2008)).

⁷⁵ Rehearing Request at 31 (citing Opinion No. 505, 130 FERC ¶ 61,023 and the Order Denying Interlocutory Appeal, 130 FERC ¶ 61,170). In the Order

(continued...)

Commission fully explained why the change was made in those dockets.⁷⁶ In fact, the Commission has consistently held since its opinion on the first bandwidth proceeding that challenges to the reasonableness of the methodology in the bandwidth formula, including the depreciation components, had to be made in an FPA section 206 filing.⁷⁷ Furthermore, the U.S. Court of Appeals for the Fifth Circuit explicitly held that the Commission's earlier change of interpretation in light of its gained experience with the bandwidth proceedings was reasoned and not arbitrary.⁷⁸

49. In Opinion No. 519, the Commission acknowledged its reversal of Opinion No. 505 on the issue of whether Entergy needed to make a section 205 filing in order to seek approval to include revised depreciation rates adopted by any of its retail regulators in the bandwidth formula. Despite the Louisiana Commission's contentions to the contrary, the Commission provided in Opinion No. 519 an explanation for why Entergy was not required to make an FPA section 205 filing

Denying Interlocutory Appeal, the Commission acknowledged that it had previously made some "general statements that could be interpreted as suggesting that parties had the opportunity in Entergy's annual bandwidth filings to challenge the reasonableness of any cost inputs in the Service Schedule MSS-3 bandwidth formula, including the depreciation rates effective for Entergy's annual bandwidth filings" but that those statements were made prior to Entergy's annual bandwidth filings, when neither the Commission nor the parties had any experience with such. 130 FERC ¶ 61,170 at P 20.

⁷⁶ See, e.g., Opinion No. 514-A, 142 FERC ¶ 61,013 at PP 15-16 ("[T]he Commission has thoroughly and repeatedly explained how and when parties may challenge a component of the bandwidth formula").

⁷⁷ See *Ark. Pub. Serv. Comm'n v. Entergy Corp.*, 137 FERC ¶ 61,030 at P 23 (2011) ("If parties believe that the methodology in Service Schedule MSS-3 with respect to depreciation expenses should be changed, they should file a separate section 206 complaint (or, in the case of Entergy, a section 205 filing"); Opinion No. 505, 130 FERC ¶ 61,023 at P 172 ("Any changes to the bandwidth formula require a section 205 or 206 filing"); Opinion No. 514-A, 142 FERC ¶ 61,013 at P 15 ("In Opinion No. 514, the Commission fully explained the basis for its determination that challenges to the reasonableness of components of the bandwidth formula must be made through either a section 205 or 206 proceeding....").

⁷⁸ *La. Pub. Serv. Comm'n*, 761 F.3d at 556 ("Here, [FERC] offered a reasoned explanation for its approach; no more is required.").

whenever the depreciation rates used by retail regulators changed.⁷⁹ The Commission cited to Opinion No. 514, in which the Commission clarified that the definitions of the depreciation expense variables in the bandwidth formula require the use of depreciation rates approved by retail regulators.⁸⁰ As such, the bandwidth formula, which is the Commission-approved rate,⁸¹ specifies that the retail-determined depreciation rate for a particular year is to be reflected in calculations implementing the bandwidth formula. Thus, the Commission's policy on changes in depreciation in formula rates established in Order No. 618 does not apply to the bandwidth formula when revised retail depreciation expenses are put into the formula.

50. The Louisiana Commission is also mistaken in its allegation that Opinion No. 519 is inconsistent with Commission precedent with respect to when formula rate inputs can be changed retroactively.⁸² The Louisiana Commission's argument about the types of errors that would trigger retroactive relief under a formula rate misstates the Commission's precedent.⁸³ In the case that the Louisiana Commission itself cites, *American Electric Power Service Corp.*,⁸⁴ the Commission stated that when there is a formula rate, "errors in the inputs or to the implementation of the formula" can be raised and applied retroactively. However, the justness and reasonableness of what the formula provides, which is what is at issue here, is not an "error in the inputs" or a formula implementation issue.⁸⁵ The bandwidth formula was accepted by the Commission as just and reasonable in the Opinion No. 480 compliance orders, and, in a complaint proceeding, its terms can only be changed in accordance

⁷⁹ Order No. 519, 139 FERC ¶ 61,107 at P 26.

⁸⁰ See Opinion No. 514, 137 FERC ¶ 61,029 at P 49; Opinion No 514-A, 142 FERC ¶ 61,013, at P 17 (2013).

⁸¹ Order No. 519, 139 FERC ¶ 61,107 at n.55.

⁸² Rehearing Request at 32-33.

⁸³ *Id.* at 31-33.

⁸⁴ *Amer. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306 (2008).

⁸⁵ See *Entergy Servs., Inc.* 145 FERC ¶ 61,047, at P 11 (2013) ("In sum, parties can challenge in a bandwidth proceeding erroneous inputs, implementation errors, or prudence of cost inputs. However, modifications to the bandwidth formula itself must be raised in an FPA section 206 complaint, or proposed by Entergy in a section 205 filing.").

with the procedures applicable to section 206 of the FPA, which generally does not allow changes in rates to be made prior to the refund effective date established by the Commission. Furthermore, because we find that the bandwidth formula is not unjust or unreasonable, the issue as to whether a change to the formula could be applied retroactively is moot. Accordingly, because the assertion that Opinion No. 519 arbitrarily overturned precedent or confirmed recent decisions without rationale is incorrect, we deny rehearing on this issue.

E. Alleged Unachievable Burden of Proof

1. Request for Rehearing

51. The Louisiana Commission alleges that the Commission erred in affirming the determination in the Initial Decision that there is no change of circumstances justifying a revision to the depreciation variable in the bandwidth formula. According to the Louisiana Commission, the Commission found that the Louisiana Commission failed to meet its burden of proof to show a “change in circumstances” or that “new evidence is available” that would justify amending the formula or revising the depreciation inputs used in the formula.⁸⁶ The Louisiana Commission claims that this is an unachievable standard that incorrectly focuses on whether the depreciation rates were reasonable when first adopted, rather than addresses the evidence that the depreciation rates are unduly discriminatory under current conditions.⁸⁷

2. Commission Determination

52. Contrary to the Louisiana Commission’s assertion, the “change in circumstances” standard was not the only, or even the primary, reason for the Commission’s denial of the Louisiana Commission’s complaint, as demonstrated throughout the discussion in Opinion No. 519 and in this order on rehearing. As explained in Opinion No. 519, this standard was traditionally used to prevent relitigation of a prior reasonableness determination when nothing changed in the interim that would justify a different result.⁸⁸ Here, there was no evidence that any fact changed that would undermine the reasonableness determination of the bandwidth formula in the Opinion No. 480 proceeding. However, in response to the Louisiana Commission’s complaint, the Commission instituted a full evidentiary

⁸⁶ See Rehearing Request at 41.

⁸⁷ *Id.* at 41-42 (citing Opinion No. 519, 139 FERC ¶ 61,107 at P 120).

⁸⁸ Opinion No. 519, 139 FERC ¶ 61,107 at P 120.

review that gave the Louisiana Commission the opportunity to attempt to demonstrate that the existing bandwidth formula was unjust and unreasonable, or unduly discriminatory or preferential under current conditions.

53. Moreover, the Commission did not “cut off” paths to achieving a just and reasonable allocation as alleged by the Louisiana Commission.⁸⁹ The Commission provided a path by ordering a full evidentiary hearing, and that path led to the conclusion that the current allocation methodology in the bandwidth formula has not been shown to be unjust and unreasonable.

54. Furthermore, the Louisiana Commission’s burden in this case is not “unknown.” The Louisiana Commission recognized the applicable standard when it stated that “[t]he [Commission] has a statutory duty and a special obligation to enforce its own requirement that production costs on the Entergy System be roughly equal.”⁹⁰ The bandwidth formula was accepted by the Commission as a remedy for the finding in Opinion No. 480 that there was no longer rough production cost equalization on the Entergy System.⁹¹ In Opinion No. 480-A, the Commission explained that determining rough production cost equalization is a “balancing act of preventing undue discrimination and not dramatically disrupting the system’s historical operations and the states’ settled interests and expectations.”⁹² In its decision on appeal of Opinion No. 480, the court gave “great deference” to the Commission’s selection of a remedy, affirmed that the elimination of all cost disparities was not necessary to prevent undue discrimination, and agreed that the Commission’s remedy could take into consideration the states’ settled interests and expectations.⁹³

55. In this case, the Louisiana Commission alleges that failure to impose Commission depreciation policies on formula inputs distorts cost comparisons used to roughly equalize production costs among the Entergy Operating Companies.⁹⁴ However, the Louisiana Commission fails to provide evidence demonstrating that

⁸⁹ Rehearing Request at 41.

⁹⁰ *Id.* at 16.

⁹¹ Opinion No. 480, 111 FERC ¶ 61,311 at PP 28-31.

⁹² Opinion No 480-A, 113 FERC ¶ 61,282 at PP 18, 39.

⁹³ *La. Pub. Serv. Comm’n. v. FERC*, 522 F.3d at 393-94.

⁹⁴ *See* Rehearing Request at 17, 29.

these alleged distortions create cost disparities that prevent rough production cost equalization. Also, the Louisiana Commission sought to prove that the depreciation rates used by the Arkansas Commission are different than they would have been if calculated under Commission policies for wholesale power sales. While this may be true, it does not, standing alone, demonstrate that the bandwidth formula fails to produce rough production cost equalization. The Louisiana Commission did not produce any other evidence that convinced us that the bandwidth formula produces results that are unjust, unreasonable, unduly discriminatory or preferential, or contrary to its intended purpose to roughly equalize production costs.

The Commission orders:

The Louisiana Commission's request for rehearing of Opinion No. 519 is denied, 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.