169 FERC ¶ 61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Louisiana Public Service Commission Docket No. EL09-61-008
v.
Entergy Corporation,
Entergy Services, Inc.,
Entergy Louisiana, LLC,
Entergy Arkansas, Inc.
Energy Mississippi, Inc.,
Entergy New Orleans, Inc.,
Entergy Gulf States Louisiana, L.L.C., and
Entergy Texas, Inc.

OPINION NO. 565-A

ORDER DENYING REHEARING

(Issued December 3, 2019)

1. On November 19, 2018, the Louisiana Public Service Commission (Louisiana Commission) filed a request for rehearing of Opinion No. 565.[1] For the reasons discussed below, we deny the Louisiana Commission's request for rehearing.

I. Background and Request for Rehearing

2. This proceeding addresses damages arising from Entergy Arkansas, Inc.'s (Entergy Arkansas) sales of excess electric energy to third-party power marketers and

[1] *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 565, 165 FERC ¶ 61,022 (2018).

others that are not members of the Entergy System Agreement (System Agreement)[2] for the benefit of its shareholders over the period from 2000 through 2009 (Opportunity Sales).[3] The Louisiana Commission alleged in a June 2009 complaint that Entergy Arkansas and other Entergy Corporation (Entergy) affiliates[4] violated the System Agreement and acted imprudently by entering into the Opportunity Sales.[5]

3. Following a hearing and issuance of an initial decision,[6] the Commission issued Opinion No. 521, finding that although the Operating Companies had authority under the System Agreement to make opportunity sales for their own accounts, they had violated the System Agreement by improperly allocating the energy used for the Opportunity Sales to Entergy Arkansas's load under section 30.03 of the System Agreement.[7] The

[2] The System Agreement was a 1982 contract among Entergy Services, Inc. (Entergy Services) and Entergy Arkansas; Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; and Entergy Gulf States Louisiana, L.L.C. (collectively, the Operating Companies) that provided the contractual basis for planning and operating the Operating Companies' generation and bulk transmission facilities on a coordinated, single-system basis. The System Agreement contained six articles with numerous provisions that governed, inter alia, objectives, obligations, and key terms, and was appended by eight Service Schedules, Service Schedule MSS-1 through MSS-8, which governed the basis for compensation for the use of facilities and for the capacity and energy provided or supplied by one or more Operating Companies under the System Agreement.

[3] The detailed background of this proceeding is set forth in Opinion No. 565. As in Opinion No. 565, the capitalized phrase "Opportunity Sales" in this order refers to the disputed sales described above that were made by Entergy Arkansas. The phrase "opportunity sales" in lower case refers to the general practice of public utilities making off-system sales of energy on their own behalf. *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 1 n.5.

[4] The Entergy affiliates named as respondents in the complaint were Entergy Services and the Operating Companies.

[5] *See* Opinion No. 565, 165 FERC ¶ 61,022 at PP 1, 5.

[6] *La. Pub. Serv. Comm'n v. Entergy Corp.*, 133 FERC ¶ 63,008 (2010) (Phase I Initial Decision).

[7] *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 521, 139 FERC ¶ 61,240 (2012), *order on reh'g*, Opinion No. 521-A, 155 FERC ¶ 61,064 (2016), *order on reh'g*, 160 FERC ¶ 61,109 (2017).

Commission noted that the energy used to source the Opportunity Sales had been allocated to Entergy Arkansas's load under section 30.03 of the System Agreement, which provided for the lowest-cost energy to first be allocated on an hourly basis to the load of the company having such source available and then to the requirements of other Operating Companies' loads. Because the Opportunity Sales were made to third-party power marketers and others that are not members of the System Agreement, the Commission found that these sales should have been classified as "Sales to Others" under section 30.04 and allocated higher-priced energy.[8] The Commission agreed with the Presiding Judge that damages should be determined by re-running the billing system (the Intra-System Bill, or ISB) used to determine the costs of energy exchanges among the Operating Companies and resources used for sales for the joint account of the Operating Companies (Joint Account Sales),[9] and established a second round of hearing procedures (Phase II) to calculate appropriate refunds.[10]

4. The Phase II hearing procedures established the broad contours of the damages to be collected from Entergy Arkansas and the other Operating Companies, but left certain issues to be resolved in a further hearing proceeding (Phase III). In Opinion No. 548, the Commission affirmed the Presiding Judge's determination that, although no damages calculation could precisely recreate the allocations that would have been made on a system-wide basis had the correct priority been assigned to the Opportunity Sales, the Louisiana Commission's proposed calculation of damages based on a full re-run of the ISB presented the most reasonable measurement of the effects of the System Agreement violation than Entergy's lower estimate.[11] However, the Commission directed certain modifications including, as relevant here, that the damages should be reduced to the

[8] *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 6; Opinion No. 521, 139 FERC ¶ 61,240 at PP 124-133.

[9] Joint Account Sales refers to sales of capacity and energy made by one Operating Company for the joint account of all the Operating Companies pursuant to section 4.05 of the System Agreement, with the net balance derived from such sales divided among the Operating Companies as set forth in the applicable Service Schedule.

[10] Opinion No. 521, 139 FERC ¶ 61,240 at PP 135-137.

[11] *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 548, 155 FERC ¶ 61,065, at PP 87-90 (2016), *reh'g denied*, Opinion No. 548-A, 161 FERC ¶ 61,171 (2017), *appeal pending sub nom. Ark. Pub. Serv. Comm'n v. FERC*, No. 18-1009 (D.C. Cir. Filed Jan. 1, 2018).

extent that the Opportunity Sales inflated Entergy Arkansas's bandwidth payments[12] to the other Operating Companies.[13] The Commission noted that the bandwidth payments started in June 2005, and so only affected the remedy in this proceeding for the period of June 2005 through December 2009.[14]

5. Subsequently, the Commission directed further proceedings in Phase III to implement the adjustments it required in Phase II and to calculate the full measure of damages.[15] With respect to reducing the damages to reflect inflated bandwidth payments from the misallocated Opportunity Sales, the Phase III hearing procedures examined the question of whether or not these reductions should be capped to hold other Operating Companies harmless from exporting negative margins from the reallocated Opportunity Sales.[16] The Presiding Judge found that these damages should be capped, by removing

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[12] "Bandwidth payments" refers to annual payments made among the Operating Companies to maintain the rough equalization of production costs among the Operating Companies. In Opinion Nos. 480 and 480-A, the Commission accepted a numerical bandwidth of +/- 11 percent of the Entergy System average production cost. *See La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *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). For the purposes of this order, we refer to the reduction to the damages that should be made to the extent that the Opportunity Sales inflated Entergy Arkansas's bandwidth payments as the "bandwidth adjustment."

[13] Opinion No. 548, 155 FERC ¶ 61,065 at PP 196-199. The Commission also found that Opportunity Sales should have the same priority as joint account sales under section 30.03 for energy allocation purposes, instead of the lower priority the Presiding Judge would have afforded them, and directed that the Opportunity Sales be subtracted from each Operating Company's peak-load demand for the purpose of determining its Responsibility Ratio. *Id*. PP 92, 149-152. An Operating Company's Responsibility Ratio is that company's load responsibility divided by the system load responsibility. The Responsibility Ratios are used to allocate costs or benefits among the Operating Companies based on their peak-load demand. *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 9 n.22 (citing System Agreement §§ 2.16, 2.17, 2.18).

[14] *See* Opinion No. 565, 155 FERC ¶ 61,065 at P 25.

[15] Opinion No. 548, 155 FERC ¶ 61,065 at P 212.

[16] *Id*. P 200.

the negative margins resulting from Entergy Arkansas's off-system sales from the refund calculation.[17]

6. In Opinion No. 565, however, the Commission reversed the Phase III Initial Decision to find that no cap on the reduction in damages was necessary. The Commission disagreed with the Presiding Judge's conclusion that removing the negative margins from the damages calculation was necessary to hold the other Operating Companies harmless from Entergy Arkansas's violation of the System Agreement, finding instead that capping the reduction could leave the Operating Companies in a better position than they would have been in had the Opportunity Sales been properly allocated in the first place.[18] The Presiding Judge's decision to cap the reduction in damages was based in part on a finding that Entergy Arkansas shareholders received $138 million in net gain from the Opportunity Sales, and thus would retain more revenues ($71 million) than the proposed $67 million refund.[19] The Commission found, however, that this estimate was based on an incomplete calculation from the Louisiana Commission that simply subtracted the fuel costs originally allocated to the Opportunity Sales from revenues, without accounting for the additional costs (calculated by Entergy at $151.7 million) Entergy Arkansas incurred under the System Agreement as a result of originally including the Opportunity Sales in its load.[20]

7. Two additional questions arose in the course of calculating damages in the Phase III hearing procedures: (1) whether sales made from capacity of the Grand Gulf nuclear generating facility (Grand Gulf)[21] should be included in the damages calculation for the

[17] *La. Pub. Serv. Comm'n v. Entergy Corp.*, 160 FERC ¶ 63,009, at PP 35-37 (2017) (Phase III Initial Decision).

[18] Opinion No. 565, 165 FERC ¶ 61,022 at P 76. The Commission reasoned that absent this adjustment the Operating Companies effectively would receive "double damages," first through the increased bandwidth payments resulting from the misallocation and then from the damages ordered in this proceeding. *Id.*

[19] *See id*. P 78; Phase III Initial Decision, 160 FERC ¶ 63,009 at PP 31, 37.

[20] Opinion No. 565, 165 FERC ¶ 61,022 at P 78.

[21] Four of the Operating Companies purchased capacity from Grand Gulf in fixed percentages, known as "retained shares." *See id*. P 84. Opportunity Sales sourced from the Grand Gulf retained shares in the January-September 2000 period totaled 326,196 MWh (Grand Gulf Sales). Phase III Initial Decision, 160 FERC ¶ 63,009 at P 57.

period of January 2000 through September 2000;[22] and (2) whether damages should include Opportunity Sales during the period from 2000 through 2005 that were converted by Entergy to Joint Account Sales because Entergy Arkansas did not have sufficient resources to fully source the sales (Converted Opportunity Sales).[23] However, the Commission found both questions to be outside the scope of the damages calculation in Opinion No. 565.[24]

8. On rehearing, the Louisiana Commission asserts that the Commission erred in Opinion No. 565 by: (1) directing a remedy that harms the Operating Companies that did not violate the System Agreement and benefits Entergy Arkansas by imposing the full bandwidth adjustment, instead of removing the negative margins as advocated by the Louisiana Commission;[25] (2) excluding the Grand Gulf Sales from the remedy, even though these sales reflect substantively the same violation as other Opportunity Sales;[26] and (3) finding that the Converted Opportunity Sales are outside the scope of this proceeding, even though these sales are linked to the same violation and contributed to the system harm.[27]

II. Commission Determination

9. As discussed further below, we deny the Louisiana Commission's request for rehearing, and affirm the Commission's determinations in Opinion No. 565 that: (1) a cap on the reduction in damages to account for increased bandwidth payments is not necessary;[28] (2) the Grand Gulf Sales in the January-September 2000 period should not have been included in the damages calculation;[29] and (3) the Louisiana Commission's

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[22] The Louisiana Commission's June 2009 complaint alleged that Entergy Arkansas made Opportunity Sales using 644 MW of slice-of-system capacity as well as 91 MW of capacity from Grand Gulf. *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 5.

[23] *See id*. P 10.

[24] *Id*. PP 102-107, 128-129.

[25] Rehearing Request at 5-9, 10-45.

[26] *Id*. at 9-10, 45-52.

[27] *Id*. at 10, 52-58.

[28] Opinion No. 565, 165 FERC ¶ 61,022 at PP 75-83.

[29] *Id*. PP 102-107.

claims regarding the Converted Opportunity Sales are outside the scope of this proceeding.[30] In its request for rehearing, the Louisiana Commission repeats arguments that already have been fully litigated in this proceeding. During the course of the Phase III proceeding, the Louisiana Commission submitted direct and rebuttal testimony from three witnesses, initial and reply post-hearing briefs, and briefs on and opposing exceptions to the Phase III Initial Decision. Many of the Louisiana Commission's rehearing arguments mirror arguments it advanced in its brief on exceptions and brief opposing exceptions following the Phase III Initial Decision.[31] As discussed below, these arguments were fully considered by the Commission, addressed in Opinion No. 565, and the Louisiana Commission's request for rehearing does not persuade us to revisit them.

A. Bandwidth Adjustment

10. In Opinion No. 565, the Commission found that, "on balance, the best method to determine the damages that Entergy Arkansas owes to the other Operating Companies is to do a full re-run of the ISB, with an adjustment to recognize the full amount of the additional bandwidth payments Entergy Arkansas made to the other Operating Companies as a result of Entergy's original incorrect accounting for the Opportunity Sales," that is, without capping that adjustment.[32] The Louisiana Commission asserts that the Commission erred, and should instead have affirmed the Presiding Judge's finding that a cap was needed.[33] We deny rehearing, and affirm the determination in Opinion No. 565 that it is not necessary to cap the reduction in damages to account for the increased bandwidth payments.

11. The Louisiana Commission repeats assertions from its September 18, 2017 Brief Opposing Exceptions that, unless the negative margins are removed, the bandwidth adjustment allows Entergy Arkansas to shift its negative margins to the other Operating Companies, thus harming the Operating Companies who did not violate the System

[30] *Id*. PP 128-129.

[31] *See, e.g.*, Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 43-61 (arguing that removing the negative margins fulfills the object of avoiding duplicative damages and is necessary to avoid a windfall to Entergy Arkansas and harm to the other Operating Companies); Rehearing Request at 1-2, 10-26 (same); Opinion No. 565, 165 FERC ¶ 61,022 at PP 77, 81 (responding to the Louisiana Commission's arguments).

[32] Opinion No. 565, 165 FERC ¶ 61,022 at P 75.

[33] Rehearing Request at 1-4, 5-9, 10-45.

Agreement and effectively rewarding Entergy Arkansas for its violation.[34] The Commission rejected this argument in Opinion No. 565, and the Louisiana Commission's arguments on rehearing continue to reflect a misunderstanding of the Commission's holding in Opinion No. 521.[35] In Opinion No. 521, the Commission found that Entergy improperly allocated the energy used for Opportunity Sales[36] but also found that the Opportunity Sales themselves did not violate the System Agreement.[37] The Louisiana Commission sought rehearing of this finding, which the Commission denied in Opinion No. 521-A.[38] The Phase III proceedings thus were not intended to reexamine whether Entergy Arkansas was permitted to make the Opportunity Sales,[39] but only to make further refinements to the calculation of damages within the parameters defined in Opinion No. 548.

12. The Louisiana Commission nevertheless maintains that the Commission erred by going beyond the objective the Commission provided in Opinion No. 548-A for requiring the bandwidth adjustment—eliminating duplicative damages[40]—to accept a damages calculation that imposes harm on the other Operating Companies.[41] We disagree. As an initial matter, the Louisiana Commission errs in asserting that the Commission "changed its objective" in Opinion No. 565 from the objective stated in Opinion No. 548-A, and that the result in Opinion No. 565 is incompatible with the goal of eliminating duplicative

[34] *Id*. at 1-2, 10-45; *see* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 43-61.

[35] Opinion No. 565, 165 FERC ¶ 61,022 at P 77.

[36] Opinion No. 521, 139 FERC ¶ 61,240 at P 128.

[37] *See id*. PP 107-123.

[38] Opinion No. 521-A, 155 FERC ¶ 61,064 at PP 17-22.

[39] *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 77 ("If some of the Opportunity Sales are now determined after the fact to have negative margins, those sales are still valid under the System Agreement.").

[40] The Louisiana Commission states that the "only point" of the Phase III proceeding was to eliminate duplicative damages. Rehearing Request at 5 (citing Opinion No. 548-A, 161 FERC ¶ 61,171 at P 22 n.48); *id*. at 12-13.

[41] Rehearing Request at 1-2, 5-7; *see also*, Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 47-51.

damages.[42] The Louisiana Commission alleges that, in explaining that "the goal of the damages proceeding should be to put the parties as close as possible to the position they would have been in had the Opportunity Sales not been improperly allocated for under the Agreement,"[43] the Commission articulated a new and conflicting goal, without recognizing or explaining it.[44] The Louisiana Commission fails to acknowledge, however, that the Commission established the overall objective referenced in Opinion No. 565—i.e., putting parties as close as possible to the position they would have been in had the Opportunity Sales been properly allocated—in Opinion No. 548 (i.e., prior to Opinion No. 548-A).[45] Indeed, this was the Commission's reasoning for adopting the Louisiana Commission's preferred methodology, a full re-run of the ISB, over Entergy's proposal to re-price energy based on the change in costs between the actual and attributed costs of the Opportunity Sales.[46] The Louisiana Commission fails to demonstrate that in Opinion No. 565 the Commission intended to extinguish the overall objective articulated in Opinion No. 548-A of calculating damages to put the parties as close as possible to the position they would have been in had the Opportunity Sales not been improperly allocated.

13. Despite contending that "Opinion No. 548-A made clear that the only point of Phase III of this proceeding was to eliminate duplicative damages that might have already been compensated in prior bandwidth calculations,"[47] the Louisiana Commission fails to point to any language in Opinion No. 548-A suggesting that eliminating duplicative damages obviates the goal of putting parties as close as possible to the position in which

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[42] *See* Rehearing Request at 5-6, 20-24.

[43] Opinion No. 565, 165 FERC ¶ 61,022 at P 76 (citing Opinion No. 548, 155 FERC ¶ 61,065 at P 90).

[44] *See* Rehearing Request at 5-6.

[45] *See* Opinion No. 548, 155 FERC ¶ 61,065 at P 90 ("Further, we agree with the Presiding Judge that the goal of the damage proceeding here should be to put the parties as close as possible to the position they would have been in had the Opportunity Sales not been improperly allocated for under the System Agreement."); Opinion No. 548-A, 161 FERC ¶ 61,171 at P 22 ("As the Commission reiterated in Opinion No. 548, the goal of the damage proceeding was to put the parties as close as possible to the position they would have been in had the Opportunity Sales been correctly allocated for.").

[46] *See* Opinion No. 548, 155 FERC ¶ 61,065 at PP 88-89.

[47] Rehearing Request at 5; *see id.* at 6 (asserting that the two objectives "are not the same, as Opinion No. 548-A recognized").

they would have been had the Opportunity Sales not been misallocated. Rather, the Louisiana Commission cites language in Opinion No. 548-A explaining that the refunds ordered in this proceeding would not be included in revised bandwidth formula inputs; instead, the Commission would direct Entergy to deduct overpayments made under the bandwidth formula as a result of the incorrect accounting of the Opportunity Sales from the refunds required in this proceeding.[48] As discussed below, the Commission intended the damages to put the parties as close as possible to the position in which they would have been had the Opportunity Sales not been misallocated, while also eliminating duplicative damages, and we believe that the holding in Opinion No. 565 comports with this guidance.

14. Neither do we agree that the Commission's rationale for the bandwidth adjustment—eliminating duplicative damages—is inconsistent with the overall remedial objective of putting the parties as close as possible to the position in which they would have been had the Opportunity Sales not been improperly allocated. The Louisiana Commission frames the dispute as whether only the duplicative damages previously compensated should be eliminated from the refunds, or whether parties should be in the same position as if the energy sales had never been misallocated.[49] According to the Louisiana Commission, there would have been no effect on the bandwidth payments if the sales had been properly allocated, because Entergy Arkansas only made the Opportunity Sales because it could allocate low-cost baseload fuel costs to these sales.[50] The Louisiana Commission further contends that, even if the sales had been made and properly allocated, they would have been challenged as imprudent and the Commission would not allow Entergy Arkansas to impose its negative margins on the other Operating Companies.[51] These arguments are overly reductive. As the Commission acknowledged in Opinion No. 548, "no damage calculation will be completely accurate under the circumstances as presented;" rather, "we are attempting to recreate a situation that did not exist at the time the original allocation was made, which inevitably requires some adjustments."[52] Moreover, as noted above, the Louisiana Commission assumes that the Opportunity Sales should not have been made in the first place, whereas the Commission

[48] *Id*. at 12-13 (citing Opinion No. 548-A, 161 FERC ¶ 61,171 at P 22 n.48).

[49] *Id*. at 11.

[50] *Id*. at 23; *see also*, Louisiana Commission Aug. 28, 2017 Brief on Exceptions at 16; Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 5, 64-65.

[51] Rehearing Request at 23-24; *see also* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 65.

[52] Opinion No. 548, 155 FERC ¶ 61,065 at P 90.

already has found that Entergy Arkansas was entitled to make the sales and only violated the System Agreement by improperly allocating the sales. By contrast, the damages for which the Louisiana Commission continues to advocate would shield the other Operating Companies from any economic effects of the Opportunity Sales, when the only damages they are entitled to under Opinion Nos. 521 and 548 are the damages arising from Entergy's improper allocation of these sales in its accounting.

15. The Louisiana Commission suggests that the Commission reversed its position both on the objective of the Phase III hearing and on whether refunds should be included in revised bandwidth formula inputs.[53] Specifically, the Louisiana Commission alleges that the Commission stated in Opinion No. 548-A that it only intended for bandwidth overpayments resulting from the misallocation to be deducted from the refunds (and not for the refunds ordered in this proceeding to be included in the bandwidth formula inputs), but contradicted itself in Opinion No. 565 by holding that the refunds ordered in this proceeding should be included in the revised bandwidth formula inputs, which has the effect of reversing all prior damages and benefitting Entergy Arkansas.[54] As the Louisiana Commission notes, the Commission explained in Opinion No. 548-A that the Louisiana Commission was mistaken in assuming that the refunds ordered in this proceeding should be included in revised bandwidth formula inputs and clarified that instead the hearing should determine whether any overpayments were made under the bandwidth formula and deduct any such payments from the required refunds.[55] Contrary to the Louisiana Commission's assertions, the Commission has not reversed this position. In Opinion No. 548, the Commission found that the damages should reflect the Opportunity Sales' effects on bandwidth payments, and that it would be reasonable to calculate the amount by which the bandwidth payments were affected and subtract that from the damages.[56] As contemplated in Opinion No. 548-A, the damages directed in Opinion No. 565 are to be determined by a full re-run of the ISB, with the additional bandwidth payments Entergy Arkansas made to the other Operating Companies as a

[53] Rehearing Request at 5-6 (arguing that it is inconsistent for the Commission to adjust the refund calculation for the full amount of the bandwidth payments made as a result of the misallocation and at the same time to put the parties in as close as possible to the position they would be in had the Opportunity Sales not been misallocated) (citing Opinion No. 565, 165 FERC ¶ 61,022 at PP 75-76).

[54] *Id*. at 5, 20-21 (citing Opinion No. 548-A, 161 FERC ¶ 61,171 at P 22 n.48).

[55] *Id*. at 12-13 (citing Opinion No. 548-A, 161 FERC ¶ 61,171 at P 22 n.48).

[56] Opinion No. 548, 155 FERC ¶ 61,065 at PP 196-197.

result of Entergy's incorrect accounting deducted from the damages.[57] The fact that in Opinion No. 565 the Commission considered the question posed in Opinion No. 548 of "whether a cap on reduction in damages to account for increased bandwidth payments is necessary to hold other Operating Companies harmless from exporting negative margins from the reallocated Opportunity Sales,"[58] and found that it was not,[59] does not change the Commission's objective or reasoning on this point.

16. Furthermore, although the Louisiana Commission contends that the Commission should have required Entergy to re-run the ISB without the Opportunity Sales, perform a revised bandwidth calculation with the new cost distribution, and compare that to past bandwidth calculations,[60] we find this additional step to be unnecessary. The Louisiana Commission suggests that, although Entergy did not perform this calculation, the Commission could direct it to do so.[61] The remedy directed in Opinion No. 565 appropriately adjusts the damages to account for the amount by which bandwidth payments were increased due to the misallocation of Opportunity Sales, consistent with the Commission's determination in Opinion No. 548, and we do not agree with the Louisiana Commission's contention that this remedy re-imposes damages on the other Operating Companies. As explained above, and consistent with Opinion No. 548-A, the bandwidth adjustment is used to reduce the damages; the Commission has not directed that the refunds be included in the bandwidth calculation.[62] Accordingly, we decline to direct Entergy to recalculate the damages using the Louisiana Commission's preferred method.

17. We continue to disagree with the Louisiana Commission's reassertion of arguments already advanced in this proceeding that offsetting the damages by the full

[57] Opinion No. 565, 165 FERC ¶ 61,022 at P 75.

[58] Opinion No. 548, 155 FERC ¶ 61,065 at P 200.

[59] Opinion No. 565 at PP 75-83.

[60] Rehearing Request at 6, 11-12, 21-22.

[61] *Id*. at 22.

[62] Opinion No. 548-A, 161 FERC ¶ 61,171 at P 22 n.48.

bandwidth adjustment goes beyond eliminating duplicative damages to benefit Entergy Arkansas for its violation and imposes harm on the other Operating Companies.[63] According to the Louisiana Commission, because the damages were $8.3 million while the bandwidth adjustment is $13.8 million putting the parties in the same position cannot be the same as eliminating duplicative damages.[64] The Louisiana Commission again argues that requiring a reduction, or "counter-payment," of $13.8 million for bandwidth payments Entergy Arkansas made in 2005 to 2009 against Entergy Arkansas's $8.3 million in damages for those years means that Entergy Arkansas benefits from its violation by $5.5 million.[65] Again, the Louisiana Commission misapprehends the function of the bandwidth adjustment. As the Commission explained in Opinion No. 565, the majority of the Opportunity Sales occurred prior to 2005 and thus are not affected by the bandwidth adjustment.[66] Thus, despite the Louisiana Commission's narrow focus on the effect of the bandwidth adjustment to the refunds for 2005 to 2009, Entergy Arkansas will still owe damages to the other Operating Companies for the full period during which it made the Opportunity Sales (2000 to 2009). Additionally, the fact that the bandwidth adjustment may exceed the damages for the years in which the misallocated Opportunity Sales affected bandwidth payments does not, as the Louisiana Commission maintains, reward Entergy Arkansas or harm the other Operating Companies. Rather, as the Commission has explained, this "means that the other Operating Companies have already derived a benefit in [those] years from the improper accounting for the Opportunity Sales (through increased bandwidth payments) and that

[63] Rehearing Request at 7-8, 10-25; Louisiana Commission August 28, 2018 Brief on Exceptions at 2; Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 43-61.

[64] Rehearing Request at 7; *see also* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 44-46.

[65] Rehearing Request at 19; *id*. at 19-20 (arguing that the refund reverses the net damages in the bandwidth calculation, and other effects on the bandwidth payment drive the offsetting payment to the full $13.8 million); Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 4.

[66] Opinion No. 565, 165 FERC ¶ 61,022 at P 81; *see also* Opinion No. 548, 155 FERC ¶ 61,065 at P 198 ("However, we note that many of the years when the Opportunity Sales were made, including years in which Opportunity Sales transactions were most extensive, were prior to the imposition of the bandwidth remedy in 2005, which lessens the impact of an adjustment due to the bandwidth formula upon the damages awarded in this proceeding.").

those benefits should be considered when determining damages."[67] This result does not run afoul of the Commission's objective in calculating the damages; in fact, the Commission expressly contemplated this potential outcome.[68] Likewise, contrary to the Louisiana Commission's assertion, the bandwidth adjustment does not permit Entergy Arkansas to impose the consequences of the Opportunity Sales on the other Operating Companies,[69] but rather adjusts the damages to accurately compensate for the effect of Entergy's improper allocation of those sales.[70]

18. The fact that the Commission considered whether it would be "possible and/or advisable" to cap the bandwidth adjustment, and found that such a cap was not supported on the record, does not invalidate the adjustment itself.[71]

19. We also are not persuaded by the Louisiana Commission's renewed assertions that the original bandwidth payments did not fully compensate the other Operating Companies for the effects of the Opportunity Sales.[72] Pointing to its estimate of the

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[67] Opinion No. 565, 165 FERC ¶ 61,022 at P 81 (citing Opinion No. 548, 155 FERC ¶ 61,065 at P 197).

[68] Opinion No. 548, 155 FERC ¶ 61,065 at P 197 ("If it is the case that an adjustment to damages needs to be made, it is more reasonable simply to calculate the amount by which the bandwidth payments were affected and subtract that from the damage figures. If that subtraction is a large one, then the other Operating Companies were arguably already made whole from the violation of the System Agreement in this proceeding as a result of the bandwidth overpayments, and further damages are thus duplicative.").

[69] Rehearing Request at 7-8 (arguing that the Commission failed to explain how an individual Operating Company can assume sole responsibility for Opportunity Sales yet impose the consequences of those sales on other Operating Companies).

[70] *See* Opinion No. 548, 155 FERC ¶ 61,065 at P 196 (stating that "[t]he record shows that the treatment of the Opportunity Sales by Entergy had the result of increasing Entergy Arkansas's bandwidth payments beyond where they would have been otherwise and that failure to reflect the energy priority reordering and consequential effects would result in amounts that are in excess of what is required to make other Operating Companies whole.").

[71] *Id*. P 200; Opinion No. 565, 165 FERC ¶ 61,022 at P 83.

[72] Rehearing Request at 11, 13-17, 21-22; *id*. at 7, 24-25 (arguing similarly that that $8.3 million in misallocated costs could not produce payments to the other Operating Companies in the amount of the $13.8 million bandwidth adjustment and that the

effect of bandwidth calculations on Entergy Louisiana, the Louisiana Commission argues that, because the Energy Ratio[73] remained fixed despite Entergy Arkansas's Opportunity Sales, the effect of the Opportunity Sales on bandwidth payments and receipts "did little or nothing to compensate for the incremental costs."[74] The Louisiana Commission states that Entergy Louisiana's responsibility for the system cost, assigned in the bandwidth adjustment using the Energy Ratios, was only about $8,000 more than its actual cost, and the cost of the Opportunity Sales thus caused Entergy Louisiana to lose bandwidth receipts.[75] The Louisiana Commission asserts that as the actual costs were distributed among the Operating Companies in rough proportion to their Energy Ratios, the incremental costs Entergy Arkansas incurred for the Opportunity Sales could not have cancelled out, or substantially offset, the damages in the bandwidth calculation.[76] The Louisiana Commission further argues that, although the revenue credit resulting from Opportunity Sales would have resulted in Entergy Arkansas having to make additional payments to the other Operating Companies in previous bandwidth calculations, this would not have had a large effect on the bandwidth payments and could not have been compensation for the negative margins incurred from the Opportunity Sales.[77] The Louisiana Commission notes that some Operating Companies did not participate in bandwidth payments and receipts in some of the bandwidth periods in 2005-2009, and thus would not have received any offsetting compensation for incurring damages from the Opportunity Sales at those times.[78] These arguments again assume that the damages

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bandwidth payments would not have fully compensated the other Operating Companies for their damages); Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 52-59.

[73] The Energy Ratio used to determine each Operating Company's variable cost responsibility in the bandwidth formula in Service Schedule MSS-3 is each Operating Company's annual energy usage as a percentage of the total System's annual energy usage. *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 37 n.74; *id.* P 63 n.139.

[74] Rehearing Request at 15.

[75] The Louisiana Commission asserts that Entergy Louisiana's responsibility for system cost, assigned in the bandwidth formula using its Energy Ratio of 26.12 percent, was $12,702,979, and its actual costs were $12,694,804. Rehearing Request at 15 (citing Exh. ESI-42).

[76] *Id*.

[77] *Id*. at 16.

[78] Rehearing Request at 16-17.

directed in this proceeding should insulate the other Operating Companies from any economic effects of the Opportunity Sales by Entergy Arkansas. As explained above, we continue to find that the damage calculation directed in Opinion No. 565 appropriately rectifies the improper allocation of the Opportunity Sales, which is the violation of the System Agreement established in the proceeding. For the reasons explained above, we also continue to disagree with the Louisiana Commission's contention, raised previously in this proceeding, that declining to cap the reduction in damages to reflect the increased bandwidth payments will result in harm to the other Operating Companies.

20. The Louisiana Commission asserts that its witness Stephen J. Baron provided testimony that the previous bandwidth payments that were increased due to the misallocation of the Opportunity Sales, only partially compensated the Operating Companies other than Entergy Arkansas for their damages due to the Energy Ratios,[79] and that Trial Staff witness Sammon conceded this fact.[80] Again, however, the point the Louisiana Commission claims it established is that the other Operating Companies could be "worse off than if [Entergy Arkansas] never made the sales."[81] However, as the Commission confirmed in Opinion No. 565, Entergy Arkansas was permitted to make the Opportunity Sales under the System Agreement and "[i]f some of the Opportunity Sales are now determined to have negative margins, those sales are still valid under the System Agreement."[82] Accordingly, the Louisiana Commission's claim that no party submitted evidence contesting this assertion[83] does not change our assessment.

21. We find similarly unavailing the Louisiana Commission's arguments that the Commission lacked sufficient evidence to reverse the Presiding Judge's finding that a cap on the bandwidth adjustment was necessary.[84] Contrary to the Louisiana Commission's

[79] *Id*. at 17 (citing Exh. LC-001, Baron Direct Testimony at 47-52).

[80] Rehearing Request at 18 (citing Exh. LC-029 at 2 (depo pages 70-71)); *see* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 52-59, 66-69.

[81] Rehearing Request at 18 (citing Exh. LC-029 at 2).

[82] Opinion No. 565, 165 FERC ¶ 61,022 at P 77.

[83] Rehearing Request at 18-19, 25-26.

[84] *Id*. at 1-4, 6-8, 17-22, 26-35.

assertions,[85] the Commission considered all of the record evidence—including the evidence the Louisiana Commission presented in the Phase III hearing regarding removing the negative margins, its allegations that Entergy Arkansas acted in bad faith, and the evidence underlying the Presiding Judge's estimate that shareholders profited by $137.9 million—in reaching its conclusion that offsetting the damages by the full amount of Entergy Arkansas's bandwidth payments would not unfairly allow Entergy Arkansas to export its negative margins to the other Operating Companies.[86] The Louisiana Commission asserts that it demonstrated that removing the negative margins—which it asserts has the same effect as removing the costs and revenues from the Opportunity Sales from the bandwidth calculation—would eliminate duplicative damages, and further asserts that no party disputes this claim.[87] However, whether or not any party directly refuted the Louisiana Commission's specific claims is not dispositive. Based on the totality of the record evidence, the Commission found that Entergy's proposed bandwidth adjustment, without a cap, provided the best measure of damages. It is well established that the Commission's discretion is at its zenith when fashioning remedies and damages, and we confirm that the Commission appropriately applied this discretion in declining to cap the bandwidth adjustment.[88]

22. The Louisiana Commission claims that the Commission failed to support its damages determination, which the Louisiana Commission asserts harms the other Operating Companies. The Louisiana Commission asserts that the three justifications provided in Opinion No. 565 are insufficient.[89] In particular, the Louisiana Commission asserts that: (1) the fact that the Commission determined that Opportunity Sales were permitted under the System Agreement does not permit an Operating Company to enrich

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[85] *Id*. at 1-2, 6-7, 17-19 (arguing that the Commission failed to address evidence demonstrating that failing to impose a cap would harm the other Operating Companies, and did not justify accepting a remedy that harms the other Operating Companies).

[86] Opinion No. 565, 165 FERC ¶ 61,022 at P 77.

[87] Rehearing Request at 6-7 (citing Opinion No. 565, 165 FERC ¶ 61,022 at PP 29, 50; Transcript at 706-08); *id*. at 12, 22.

[88] *La. Pub. Serv. Comm'n v. FERC*, 866 F.3d 426, 429 (D.C. Cir. 2017); *Ariz. Corp. Comm'n v. FERC,* 397 F.3d 952, 956 (D.C. Cir. 2005) (noting that FERC "wields maximum discretion" when choosing a remedy); *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("[T]he breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions.").

[89] Rehearing Request at 26.

itself while imposing the "uneconomic consequences" on other Operating Companies;[90] (2) the Commission erred in relying on dicta that Entergy acted in "good faith" to justify imposing harm on the other Operating Companies;[91] and (3) the remedy violates the bandwidth formula.[92] We reject these arguments, and deny rehearing.

23. First, the Louisiana Commission fails to demonstrate that the remedy in this proceeding permits Entergy Arkansas to enrich itself by burdening the other Operating Companies with the uneconomic consequences of the Opportunity Sales. The Louisiana Commission asserts that the Commission has failed to explain how negative margins resulting from the Opportunity Sales can be "valid under the System Agreement" when they resulted from a violation of the System Agreement.[93] As the Louisiana Commission concedes, however, the Commission determined in Opinion No. 521 that the Opportunity Sales were permitted under the System Agreement.[94] Thus, the negative margins arising from such sales do not result from a violation of the System Agreement. As explained above, the only violation of the System Agreement at issue in this proceeding was the improper allocation of the Opportunity Sales; we find that the remedy directed in Opinion No. 565 appropriately addresses the harms arising from that violation. The Louisiana Commission stresses that in Opinion No. 521 the Commission found that the System Agreement only permitted the individual Operating Companies to make Opportunity Sales "for their own account."[95] We disagree, however, that this means that the other Operating Companies must remain entirely insulated from any economic consequence

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[90] *Id*. at 2, 7-8, 26.

[91] *Id*. at 26-27 (citing Opinion No. 521, 139 FERC ¶ 61,240 at P 136); *see id.* at 2-3, 8-9, 26-32.

[92] *Id*. at 3, 9, 32-35

[93] Rehearing Request at 2 (citing Opinion No. 565, 165 FERC ¶ 61,022 at P 77).

[94] *See id*. at 26 (citing Opinion No. 521, 139 FERC ¶ 61,240 at P 3); *see also* Opinion No. 565, 165 FERC ¶ 61,022 at P 77; Opinion No. 521, 139 FERC ¶ 61,240 at P 136.

[95] Rehearing Request at 26 (citing Opinion No. 521, 139 FERC ¶ 61,240 at P 3). In Opinion No. 521, the Commission interpreted language in section 4.05 of the System Agreement describing Joint Account Sales as energy and capacity sales "to others for which any [Operating] Company does not wish to assume sole responsibility," to mean that there are circumstances under which an Operating Company may choose make sales to others for which it is solely responsible, i.e., for its own account. Opinion No. 521, 139 FERC ¶ 61,240 at P 109.

arising from Entergy Arkansas's sales as the Louisiana Commission asserts.[96] Indeed, this assertion is belied by the Commission's determination in Opinion No. 548 that the Opportunity Sales increased Entergy Arkansas's bandwidth payments beyond where they would have been absent the improper allocation.[97] In other words, the misallocation of the Opportunity Sales already resulted in an economic consequence (in this case, a windfall) to the other Operating Companies, and the bandwidth adjustment seeks to balance out that effect. Adjusting the damages to prevent this windfall is not, however, an uneconomic consequence of the Opportunity Sales from which the other Operating Companies must be shielded.

24. Second, the Louisiana Commission's continued arguments that Entergy Arkansas entered into the Opportunity Sales in "bad faith" are largely beyond the scope of the Phase III proceeding and, in any event, fail to persuade us that the Commission erred in declining to cap the bandwidth adjustment.[98] In Opinion No. 521, the Commission disagreed with Entergy's claim that the equities weighed against imposing damages, finding that, "notwithstanding the fact that the Opportunity Sales were made and priced in good faith," Entergy violated the System Agreement by improperly allocating the Opportunity Sales and damages were therefore warranted.[99] The Louisiana Commission takes umbrage with the Commission's reference to this language in Opinion No. 565,[100] arguing variously that the Commission failed to show that a finding of good faith justifies imposing harm on the other Operating Customers,[101] that the Commission did not, in fact,

[96] Rehearing Request at 26 (stating that in Opinion No. 521 the Commission " did *not* rule that a Company could make Opportunity Sales and enrich itself while imposing the uneconomic consequences on the accounts of *other Companies*; in fact, it required a remedy to prevent that outcome.") (emphasis in original).

[97] Opinion No. 548, 155 FERC ¶ 61,065 at P 197.

[98] Rehearing Request at 2-3, 8, 26-32.

[99] Opinion No. 521, 139 FERC ¶ 61,240 at P 136.

[100] Opinion No. 565, 165 FERC ¶ 61022 at P 77 (noting that "the Commission found that Entergy Arkansas was allowed to make the Opportunity Sales and the Opportunity Sales were made and priced in good faith").

[101] Rehearing Request at 27.

find that Entergy acted in good faith,[102] and that the record evidence shows that Entergy acted in bad faith.[103]

25. As discussed above, we do not agree that declining to cap the reduction in damages to reflect the increased bandwidth payments resulting from Entergy's misallocation of the Opportunity Sales imposes harm on the other Operating Companies; rather, adjusting the damages by the full amount of the additional bandwidth sales appropriately recognizes the benefits that the other Operating Companies derived in certain years from the improper accounting of the Opportunity Sales.[104] Accordingly, we find the Louisiana Commission's premise to be invalid;[105] the Commission was not required to explain imposing harm on the other Operating Companies because lessening the damages due to the other Operating Companies to reflect benefits already incurred—and thus avoid a windfall—does not impose harm on those companies.

26. We further affirm that the Commission appropriately held that declining to cap the bandwidth adjustment did not unfairly permit Entergy Arkansas to shift its negative margins to the other Operating Companies. Having found that adjusting the ISB re-run to recognize the full amount of the additional bandwidth payments resulting from Entergy's incorrect accounting provided the most accurate measure of damages and appropriately reflected benefits the Operating Companies received from the accounting violation, the Commission was not persuaded by the Louisiana Commission's assertions that declining to impose a cap on the bandwidth adjustment would unfairly allow Entergy Arkansas to export its negative margins to the other Operating Companies.[106] Specifically, the Commission found no reason to require damages that go beyond putting the parties as close as possible to the position they would have been in had the Opportunity Sales not been improperly allocated to provide a potential windfall to the other Operating

[102] *Id*. at 26-27.

[103] *Id*. at 27-32.

[104] *See* Opinion No. 565, 165 FERC ¶ 61,022 at PP 76, 81.

[105] *See* Rehearing Request at 27 ("If the reference to 'good faith' is supposed to support imposing negative margins on the other [Operating] Companies, the Commission needs to explain how a 'good faith' violation justifies imposing harm on the ratepayers of the other [Operating] Companies.").

[106] Opinion No. 565, 165 FERC ¶ 61,022 at P 77.

Companies, particularly as the Commission established in Opinion No. 521 that Entergy Arkansas was allowed to make the Opportunity Sales under the System Agreement.[107]

27. The Louisiana Commission's focus on the Commission's observation, in making this point, that the Opportunity Sales also "were made and priced in good faith"[108] is misplaced. As the Commission explained in Opinion No. 521-A, the statement in Opinion No. 521 that the Opportunity Sales were made in good faith "reflect[ed] the Commission's inability to divine a discriminatory intent on behalf of Entergy with respect to the Opportunity Sales."[109] In other words, based on the record before it, the Commission expressly did not find that Entergy acted in bad faith. Moreover, the Commission found the question of whether or not the sales were made in good faith to be irrelevant to the propriety of the Opportunity Sales.[110] Although we believe that the Commission appropriately described the Opportunity Sales in Opinion No. 565 as being made and priced in good faith, we find that the fact that the Opportunity Sales were permitted under the System Agreement and the Commission did not find that they were made in bad faith provided sufficient grounds for the Commission to decline to cap the bandwidth adjustment. No further parsing of the language in Opinion Nos. 521 and 521-A is therefore necessary. Accordingly, we affirm the Commission's determination that applying the full bandwidth adjustment does not unfairly shift negative margins to other Opportunity Sales.

28. Nevertheless, the Louisiana Commission seeks to reintroduce—and in some cases, introduce for the first time—arguments and evidence that Entergy acted in bad faith. In particular, the Louisiana Commission cites to evidence it submitted in Phase I of the proceeding alleging that: (1) based on Entergy's testimony in a 2000 Louisiana Commission proceeding, that Entergy knew at the time it made the Opportunity Sales that it was required to make low-cost excess energy available to the other Operating Companies before making off-system sales;[111] and (2) Entergy Arkansas made retail fuel filings with the Commission and the Arkansas Public Service Commission (Arkansas Commission) and wholesale filings to the Commission falsely reporting the Opportunity

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[107] *Id*.

[108] *Id*.

[109] Opinion No. 521-A, 155 FERC ¶ 61,064 at P 59.

[110] *Id*. (citing Opinion No. 521, 139 FERC ¶ 61,240 at P 140).

[111] Rehearing Request at 28-29 (citing *Delaney v. Entergy Louisiana, Inc.*, Docket No. U-23356 (La. P.S.C. 2000); Exh. LC-102 (Phase I); Exh. LC-62 (Phase I) at 42); Exh. LC-63 (Phase I) at 13; Phase I Initial Decision133 FERC ¶ 63,008at P 392.

Sales as sales to a fictitious wholesale requirements customer.[112] In addition, the Louisiana Commission points to evidence it submitted in Phase III to argue that Entergy was allocating lower costs as the costs of the sales for System Agreement purposes while also, as directed by the Commission, establishing a higher cost for the Opportunity Sales,[113] and that Entergy knew it could not make Opportunity Sales on a month-ahead basis without losing money, but did so anyway to enrich shareholders by allocating cheaper energy to the sales.[114] The Commission already considered and addressed these arguments,[115] and the Louisiana Commission presents no compelling reason to revisit them at this late stage of the proceeding.

29. These arguments not only constitute collateral attacks on the Commission's findings in Opinion Nos. 521 and 521-A, but are also outside the narrow scope of the Phase III proceeding, the sole purpose of which was to consider certain refinements to the damages calculation including, as relevant here, the question of whether to cap the reduction to the damages owed by Entergy Arkansas for the increased bandwidth payments the other Operating Companies received due to the accounting violation. The Commission appropriately found that the Louisiana Commission had not provided evidence to support that there was harm—in addition to the harm caused by the improper accounting—that required imposing punitive damages on Entergy Arkansas to insulate the other Operating Companies from any economic effects of sales that Entergy Arkansas was permitted to make under the System Agreement. The fact that the Commission also

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[112] Rehearing Request at 8-9, 29-30 (citing Exh. LC-11 (Phase I) at 24-25; Exh. LC 30 (Phase I) at 26; Phase I Initial Decision, 133 FERC ¶ 63,008 at P 384).

[113] Rehearing Request at 30-31 (citing Exh. LC-039 at 62, 72); *see also* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 77-79 (making similar arguments).

[114] Rehearing Request at 31-32 (citing Exh. LC-046 (Ralston Ph. I Depo. Excerpt) at 3-5; Tr. at 295, 297; LC-045 (Entergy Deponent Cornish Excerpt) at 2). The Louisiana Commission cited the same evidence and made the same arguments in its Brief Opposing Exceptions. *See* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 72-74.

[115] *See* Opinion No. 521, 139 FERC ¶ 61,240 at P 119 (finding the Louisiana Commission's evidence regarding the Louisiana Commission's *Delaney* proceeding to be irrelevant because Entergy's statements in that proceeding addressed energy purchases, not Opportunity Sales); Opinion No. 565, 165 FERC ¶ 61,922 at P 77 (after considering the Louisiana Commission's arguments and evidence, holding that "we do not find a basis for excluding the negative margins from inputs to the calculation of the bandwidth offset").

noted the prior finding that these sales were not made in bad faith does not reopen on rehearing of a separate phase of the proceeding the question of whether or not Entergy Arkansas entered into the Opportunity Sales in good faith.[116]

30. The Louisiana Commission is also incorrect in asserting that the full bandwidth adjustment approved in Opinion No. 565 violates the bandwidth formula in the tariff by making out-of-time adjustments to past annual bandwidth proceedings and payments.[117] The Louisiana Commission states that the bandwidth formula requires the use of actual Form 1 data and does not permit adjustments to bandwidth payments for out-of-period items such as the refunds in this case.[118] According to the Louisiana Commission, "Opinion No. 548 virtually instructs that negative margins must be removed from the bandwidth adjustment."[119] By contrast, the Louisiana Commission contends, Opinion No. 565 "imposes a mechanical out-of-period adjustment in violation of that tariff" by "blindly including all of the refunds without removing the negative margins."[120] Again, the Louisiana Commission misunderstands the damages calculation accepted in Opinion No. 565. The damages calculation does not change the bandwidth formula itself. Rather, the Commission found that the damages owed to the other Operating Companies should be reduced by the amount that the bandwidth payments were increased by Entergy's improper accounting.[121] This adjustment does not change the bandwidth payments, but rather reduces the damages the other Operating Companies receive for the accounting violation. Although the Commission noted that it found no basis to exclude any negative margins to the inputs to the calculation of the bandwidth adjustment, the Commission did

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[116] In addition, because answers to requests for rehearing are prohibited, adding back these arguments on rehearing deprives other parties of the opportunity to respond to the evidence. 18 C.F.R. § 385.713(d)(1) (2019). *See, e.g.*, *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 250 (2016); *Baltimore Gas and Elec. Co.*, 92 FERC ¶ 61,043, at 61,114 (2000).

[117] Rehearing Request at 3, 9, 26, 32-35; *see* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 61-63 (making similar arguments).

[118] Rehearing Request at 9 (citing *Entergy Servs., Inc.*, 139 FERC ¶ 61,105, at PP 26, 43 (2012), *aff'd La. Pub. Serv. Comm'n v. FERC*, 771 F.3d 903, 911-12 (5th Cir. 2014)); *id*. at 33.

[119] *Id*. at 34 (citing Opinion No. 548, 155 FERC ¶ 61,065 at P 197 n.289).

[120] *Id*. at 35.

[121] *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 75; Opinion No. 548, 155 FERC ¶ 61,065 at P 197.

not intend to suggest that the remedy itself requires making out-of-period changes to the bandwidth payments. Rather, the Commission determined the appropriate amount of bandwidth payments to be deducted from the damages, and found that this amount should not be reduced to exclude negative margins.

31. Finally, we affirm the Commission's determination in Opinion No. 565 that the Louisiana Commission's $138 million estimate of Entergy Arkansas shareholder profits on which the Presiding Judge relied in the Phase III Initial Decision was insufficiently supported and likely excluded significant costs.[122] The Louisiana Commission asserts that this finding was insufficiently supported and factually incorrect.[123] We disagree. Contrary to the Louisiana Commission's assertions, the Commission did not reach its determination that this estimate was insufficiently supported "based solely on a claim in Entergy's Brief on Exceptions."[124] Rather, the Commission found that the Louisiana Commission's estimate of Entergy Arkansas's profit was based on a calculation that subtracted the fuel costs originally allocated to the Opportunity Sales from the revenues from the Opportunity Sales, without considering any additional costs Entergy Arkansas incurred as a result of including the Opportunity Sales in its load.[125] Although the Commission pointed to Entergy's estimate that Entergy Arkansas incurred $151.7 million in additional costs due to the Opportunity Sales to suggest the potential magnitude of these costs, the Commission did not adopt this number.[126] Rather, because the Commission found the Louisiana Commission's $138 million estimate to be insufficiently supported and likely significantly inflated, the Commission did not agree that the fact that this value exceeded the damages necessitated a cap on the bandwidth adjustment.

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[122] Opinion No. 565, 165 FERC ¶ 61,022 at P 78. Comparing this estimate of shareholder profits to the proposed damage figure of $67 million, the Presiding Judge concluded that permitting Entergy's shareholders to retain $71 million in profits after the imposition of damages would create perverse precedent. Phase III Initial Decision, 160 FERC ¶ 63,009 at PP 31, 37.

[123] Rehearing Request at 3-4, 35-45.

[124] Rehearing Request at 35; *see id*. at 38-39 (claiming that Entergy's estimate was based on an exhibit filed in redirect testimony, which Entergy admitted was not accurate, whereas the Presiding Judge relied on Mr. Baron's pre-filed testimony, which Entergy had the opportunity to cross-examine).

[125] Opinion No. 565, 165 FERC ¶ 61,022 at P 78.

[126] *See* Rehearing Request at 37; Opinion No. 565, 165 FERC ¶ 61,022 at P 78.

32. We continue to find the Louisiana Commission's defense of the $138 million estimate unavailing. On rehearing, the Louisiana Commission further alleges that the Commission has ordered a total of $170.9 million in "offsets"—including a $151.7 million offset to refunds in Phase II related to the violation for the change in Responsibility Ratios, the $13.8 million bandwidth adjustment, and "an additional $5.4 million offset for sales now deemed 'outside the scope' of this case"—which, the Louisiana Commission argues far exceeds the $67.8 million ratepayer refund.[127] These estimates are misleading. As an initial matter, we note that the $5.4 million in costs deemed to be outside the scope of this proceeding, discussed further below, do not constitute an "offset" to the damages. Rather, and as discussed further below, the Commission found that they were not appropriately included in the damages calculation. In other words, these amounts are not being deducted from the damages but rather never should have been included as they are outside the scope of the System Agreement violation at issue in this proceeding.

33. Likewise, the $151.7 million cost estimate cited in Entergy's brief does not constitute an "offset" to the damages. We disagree with the Louisiana Commission's contention that "[a]ssuming the Commission's relying on Entergy's brief is a 'finding,' that means that the Commission previously found that the shareholders were entitled to a $151.7 million offset to refunds related to the violation for the change in Responsibility Ratios alone."[128] The Commission did not find that Entergy's $151.7 million cost estimate was accurate; rather, the Commission cited this estimate as evidence that the Louisiana Commission's $138 million profit estimate was inaccurate, as it failed to account for significant costs.[129] In fact, the Commission acknowledged that, like the data the Presiding Judge relied on, Entergy's data included sales from the January-September 2000 period, which included the disputed sales the Commission found to be outside the scope of the proceeding. However, the Commission concluded that adjusting the data to exclude

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[127] Rehearing Request at 36; *see* Louisiana Commission September 18, 2017 Brief Opposing Exceptions at 2-3, 7-8, 26-33 (defending the estimation of $137.9 million in shareholder profits in the Phase III Initial Decision).

[128] Rehearing Request at 36; *see id.* at 36-37 ("If the Commission believes the $151.7 million in so-called Entergy Arkansas costs are relevant to the shareholder benefit issue, it needs to explain why costs paid by ratepayers should be credited against the benefit reaped by shareholders.").

[129] Opinion No. 565, 165 FERC ¶ 61,022 at P 78. The Commission noted that these costs include Reserve Equalization costs under Service Schedule MSS-1 of the System Agreement, Transmission Equalization costs under Schedule MSS-2, and exchange energy effects under Schedule MSS-3. *Id.* P 78 n.169.

revenues and costs associated with the disputed sales would still produce costs in excess of revenues.[130] The Commission did not find, and does not find here, that Entergy is entitled to, or has already received, a $151.7 million "offset" from the damages it otherwise would owe. Rather, based on its conclusion that the Louisiana Commission's calculation of shareholder profits was incomplete, and evidence that Entergy Arkansas incurred additional costs that were not reflected in the damages calculation, the Commission disagreed with the Presiding Judge's determination that capping the bandwidth adjustment was necessary to prevent Entergy Arkansas's shareholders from retaining profits greatly exceeding the refunds.[131]

34. The Louisiana Commission asserts that the Presiding Judge's determination that shareholders profited by approximately $137.9 million was based on evidence "fully vetted during the proceeding," whereas the Commission lacked substantial evidence for its conclusion.[132] However, as explained above, the Commission did not adopt Entergy's precise cost estimate, or offset damages by this amount. Rather, the Commission considered the incomplete estimate of shareholder profits proffered by the Louisiana Commission and adopted by the Presiding Judge, weighed this against evidence that Entergy Arkansas also incurred substantial additional cost as a result of the Opportunity Sales and found, on balance, that the record evidence did not demonstrate that the bandwidth adjustment should be capped.[133] As the Commission has recognized, "[d]amages," like cost allocation in general, "are not an exact science."[134] Based on the considerable record evidence in this proceeding, we continue to find the most appropriate measure of damages in this proceeding to be a full re-run of the ISB, with an adjustment to recognize the full amount of additional bandwidth payments the Operating Companies received as a result of Entergy's improperly accounting for the Opportunity Sales.

35. This determination holds true even if, as the Louisiana Commission avers, the $151.7 million cost estimate provided by Entergy is not fully accurate. We therefore find the Louisiana Commission's detailed objections to the derivation and presentation at hearing of the cost estimate to be unavailing. The Louisiana Commission avers that the

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[130] *Id*. P 78 n.170.

[131] *Id*. P 78.

[132] Rehearing Request at 37-38.

[133] Opinion No 565, 165 FERC ¶ 61,022 at P 78.

[134] *BP Prods. N. Amer. Inc. v. Sunoco Pipeline L.P.*, 159 FERC ¶ 63,020, at P 124 (2017) (citing *Colorado Interstate Gas Co. v. Fed. Power Comm'n*, 324 U.S. 581, 589 (1945); *Bluebonnet Savings Bank v. United States*, 266 F.3d 1348, 1355 (Fed. Cir. 2001)).

Commission erred in relying on Entergy witness Mr. Louiselle's testimony because he admitted at the hearing that he did not make any calculation of the Responsibility Ratio to offset the damages, only provided a calculation of any Responsibility Ratio offset to damages in his redirect testimony, i.e., after cross-examination, and conceded that the $151.7 million total shown in the exhibits was "not due totally only to responsibility ratio."[135] Even if true, however, these assertions do not refute the Commission's conclusion that Entergy Arkansas incurred substantial additional costs as a result of the Opportunity Sales, which the Presiding Judge failed to consider.

36. The Louisiana Commission further asserts that removing the Opportunity Sales from Entergy Arkansas's load would cause its exchange sales to go up, its exchange purchases to go down, and more of its Joint Account Purchases to be allocated and paid for by other Operating Companies. In sum, the Louisiana Commission argues, these benefits offset the increased system incremental cost Entergy Arkansas must bear under the refund calculation.[136] According to the Louisiana Commission, in contrast to the significant effects calculated by Entergy, Louisiana Commission witness Baron quantified the Responsibility Ratio effects at $25.7 million, and demonstrated that the energy allocation effects of the changes to the Responsibility Ratios were small, about six percent, and would not have a significant impact on the allocation of exchange energy or significantly reduce stakeholder profits.[137] The Louisiana Commission already raised these arguments in its Brief Opposing Exceptions, and we remain unpersuaded.[138] Contrary to the Louisiana Commission's assertions, the fact that Mr. Baron's testimony regarding the Responsibility Ratio effects was not directly contested in answering

[135] Rehearing Request at 38-39 (citing Tr. 599-600; Exh. ESI-050). The Louisiana Commission also notes that Entergy included a footnote in its brief acknowledging that a portion of the change in exchange energy is not attributable to the Opportunity Sales, and alleges that Entergy did not calculate this portion "because it swamps the actual Responsibility Ratio Items that Entergy Arkansas previously incurred." *Id*. at 41 (citing Entergy Aug. 28, 2017 Brief on Exceptions at 42 n.140); *see also* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 37-38.

[136] Rehearing Request at 40-41 (citing Exh. ESI-404). The Louisiana Commission claims that, as a result of re-running the ISB, Entergy Louisiana will have higher costs of $34 million in lost exchange sales and $6.7 million in greater exchange purchases because Entergy Arkansas had less energy[?] available to the exchange and had to buy more from the exchange. *Id*. at 41.

[137] *Id*. at 42. The Louisiana Commission further alleges that these costs were borne by retail and wholesale customers, not shareholders. *Id*.

[138] *See* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 34-43.

testimony does not prevent the Commission from reaching a conclusion that is different from Mr. Baron's.[139]

37. The Louisiana Commission asserts that the Commission erred in finding that the Presiding Judge's calculation does not reflect the additional costs allocated to Entergy Arkansas for the sales prior to the ISB re-run.[140] We disagree. Contrary to the Louisiana Commission's assertions, the Presiding Judge's calculation of net gain does not reflect the additional costs Entergy Arkansas sustained under the original allocation of the Opportunity Sales.[141] Louisiana Commission witness Mr. Baron calculated shareholder profits by subtracting $64.4 million in fuel costs attributable to the Opportunity Sales from $202.4 million in revenues.[142] Our review of the record indicates that the Louisiana Commission's estimate does not include either the increased reserve equalization, transmission equalization, and exchange energy effect costs from including the Opportunity Sales in Entergy Arkansas's load, or the additional costs allocated to Entergy Arkansas for the sales under the ISB re-run.[143] Opinion No. 565 thus does not require the consideration of those costs twice.[144]

38. We also disagree with the Louisiana Commission's assertion that Entergy Arkansas does not reimburse each Operating Company's incremental costs of the Opportunity Sales, even under the ISB re-run.[145] The Louisiana Commission states that the Opportunity Sales were given the same treatment as Joint Account Sales in the ISB re-run, which allocates margins to all of the Operating Companies.[146] According to the Louisiana Commission, the Entergy shareholders did not participate in the ISB re-run and Entergy Arkansas did not individually reimburse the other Operating Companies; rather,

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[139] Rehearing Request at 42.

[140] *Id*. at 42-43.

[141] *Id*. at 43.

[142] *See* Phase III Initial Decision, 160 FERC ¶ 63,009 at P 31 (citing Exh. LC-023R at 19-20).

[143] *See* Opinion No. 565, 165 FERC ¶ 61,022 at P 78; *see* Exh. ESI-050 at 41.

[144] Rehearing Request at 43 ("If the presiding judge was supposed to consider those costs *twice*, the Commission needs to explain why.") (emphasis in original).

[145] *Id*. at 43-44.

[146] *Id*. at 43.

the revenues from the Opportunity Sales (as Joint Account Sales) were credited against incremental costs incurred to generate the energy for the sales, with resulting gains or losses distributed on the basis of Responsibility Ratios.[147] The Louisiana Commission asserts that imputed revenues "are simply an element of the calculation, because shareholders are in possession of the revenues," but did not provide full reimbursement.[148]

39. The Louisiana Commission again includes a chart showing the negative margins on the sales and asserting that the other Operating Companies only can be made whole if these negative margins are removed.[149] As we have explained, the Louisiana Commission's allegation that the Opportunity Sales resulted in negative margins does not necessitate removing those margins, as Entergy Arkansas was permitted to make the Opportunity Sales under the System Agreement. We also find to be irrelevant the Louisiana Commission's argument that shareholders do not participate in the ISB re-run and that shareholders will only lose a portion of their profits if the Commission so orders or the Arkansas Commission requires it.[150] The Commission determination in Opinion No. 565 was premised on whether the damages accurately balanced benefits to the other Operating Companies and costs to Entergy Arkansas, not whether shareholders would receive adequate profits. Moreover, the mechanics of how damages are collected from shareholders by a state commission is beyond the scope of this proceeding.

B. Issues Outside the Scope of this Proceeding

40. We also affirm the Commission's determination in Opinion No. 565 that the Grand Gulf Sales and Converted Opportunity Sales do not belong in the damages calculation.[151] In the Phase III Initial Decision, the Presiding Judge found that the Grand Gulf Sales should be treated the same as the Opportunity Sales and included in the damages calculation in this proceeding,[152] but that the Converted Opportunity Sales

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[147] *Id*. at 43-44; *see* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 42.

[148] Rehearing Request at 44.

[149] *Id*. The Louisiana Commission provided the same chart in its Brief Opposing Exceptions. Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 42.

[150] Rehearing Request at 44-45.

[151] Opinion No. 565, 165 FERC ¶ 61,022 at PP 11, 102, 128.

[152] Phase III Initial Decision, 160 FERC ¶ 63,009 at PP 63, 65.

should not be included in the damages calculation, as the Louisiana Commission had failed to support its claim of additional harm from these sales.[153]

41. In Opinion No. 565, the Commission reversed the Presiding Judge's determination regarding the Grand Gulf Sales and affirmed on other grounds the Presiding Judge's rejection of the Louisiana Commission's claim for damages arising from the Converted Opportunity Sales.[154] The Commission found that the Grand Gulf Sales in the January-September 2000 period were accounted for as Joint Account Sales under section 30.04 of the System Agreement and thus should not have been included in the damages calculation.[155] While the Phase III Initial Decision rejected the Louisiana Commission's claim for damages on the basis that the Louisiana Commission failed to sufficiently support the amount of damages resulting from the Converted Opportunity Sales,[156] the Commission found that the Louisiana Commission's claims were outside the scope of this proceeding, "which is intended to determine the refunds due as a result of the misallocation of the Opportunity Sales."[157]

42. We reject the Louisiana Commission's arguments that the Commission erred in excluding the Grand Gulf Sales and converted Opportunity Sales from the damages calculation in this proceeding.[158]

1. Grand Gulf Sales

43. With respect to the Grand Gulf Sales, the Louisiana Commission primarily reiterates prior arguments that these sales involved substantively the same violation as the other Opportunity Sales, i.e., failure to treat the sales as "sales to others" under section 30.04, and thus should not have been excluded from the damages calculation.[159] As with the Opportunity Sales, the Louisiana Commission asserts that Entergy diverted a low-cost

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[153] *Id*. P 69.

[154] Opinion No. 565, 165 FERC ¶ 61,022 at PP 102-107, 128-129.

[155] *Id*. PP 102-107.

[156] Phase III Initial Decision, 160 FERC ¶ 63,009 at PP 66-69.

[157] Opinion No. 565, 165 FERC ¶ 61,022 at P 128.

[158] Rehearing Request at 4-5, 9-10, 45-58.

[159] *Id*. at 4, 9, 45-50; *see* Louisiana Commission Sept. 18, 2017 Brief Opposing Exceptions at 5-6, 8, 83-95.

resource that otherwise would serve native load under section 30.03 for the Grand Gulf Sales and failed to allocate the energy pursuant to section 30.04, effecting "the same violation, accomplished in a slightly different way."[160] This characterization is not accurate. The Commission found in Opinion No. 565 that, unlike the Opportunity Sales, the Grand Gulf Sales were not improperly allocated under section 30.03, and in fact were allocated as Joint Account Sales under section 30.04.[161] The violation of the System Agreement the Commission found in Opinion No. 521, and for which the Commission is establishing damages in this proceeding, is Entergy's allocation of the Opportunity Sales under section 30.03 when they should have been treated as "Sales to Others" under section 30.04.[162] By contrast, the concern the Presiding Judge found with the Grand Gulf Sales involved Entergy Arkansas's reimbursement under section 30.04.[163] This alleged violation is not an additional instance of the Opportunity Sales violation at issue in this proceeding, as the Louisiana Commission asserts,[164] but a potential separate violation, outside the scope of this proceeding.

[160] Rehearing Request at 46; *id.* at 46-49. The Louisiana Commission compares the Entergy Arkansas resource stack under the Opportunity Sales and Grand Gulf Sales and concludes that, in both cases, low-cost system energy that should have served native load was misallocated and energy was either unavailable to consumers or available only from higher in the stack and thus at higher cost. According to the Louisiana Commission, the only difference between the Opportunity Sales and the Grand Gulf Sales is that the Grand Gulf Sales did not affect Entergy Arkansas's Responsibility Ratio and Entergy committed a second violation by assigning a fictional cost to the Grand Gulf Sales. *Id*. at 45.

[161] Opinion No. 565, 165 FERC ¶ 61,022 at PP 103-104.

[162] *Id*. P 103 (citing Opinion No. 521, 139 FERC ¶ 61,240 at P 128).

[163] Phase III Initial Decision, 160 FERC ¶ 63,009 at PP 58-59. The Presiding Judge stated that Entergy reimbursed Entergy Arkansas for the Grand Gulf Sales at an imputed cost based on a settlement with the Arkansas Commission, when it only should have received actual cost plus an adder under the System Agreement. *Id*.

[164] Rehearing Request at 3.

44. Even if the Louisiana Commission were correct that the Grand Gulf Sales were from a section 30.03(a) resource,[165] this alleged violation would still be beyond the scope of this proceeding. Regardless of the source, these sales were correctly allocated as Joint Account Sales under section 30.04, and thus fall outside the scope of the Phase III damage inquiry is "to determine the total damages due as a result of the re-run of the ISB for all years of Opportunity Sales to properly account for them under section 30.04 of the System Agreement."[166] We therefore confirm that the Louisiana Commission's concerns regarding the Grand Gulf Sales are beyond the scope of this proceeding.

45. The Louisiana Commission's protestations to the contrary, excluding the Grand Gulf Sales from the damages calculation does not undermine administrative efficiency or the Commission's findings in earlier phases of this proceeding. The Louisiana Commission argues that requiring a new proceeding to address this issue after nine years and a full record contradicts administrative efficiency.[167] It is well established, however, that "the Commission has broad discretion in managing its proceedings."[168] We continue to find that "[t]here is nothing unfair or unreasonable about limiting the scope in the damages calculation phase of a proceeding to the violation the Commission originally identified."[169]

46. The Louisiana Commission is also incorrect in arguing that excluding the Grand Gulf Sales from the remedy constitutes a collateral attack on Opinion No. 521.[170] The Louisiana Commission repeats its prior contention that Entergy attempted to "backtrack"

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[165] *Id*. at 4, 49 (arguing that the Commission erred in finding that the Grand Gulf Safes were originally allocated as Joint Account Sales, as the sales were directly sourced from Grand Gulf, which provides baseload generation intended to serve native load, and only a small amount of margin was distributed among the other Operating Companies after the shareholders received larger profits using a fictional cost).

[166] Opinion No. 565, 165 FERC ¶ 61,022 at P 105.

[167] Rehearing Request at 10.

[168] *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over the formulation of their procedures); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578 (D.C. Cir. 1992) (the Commission has discretion to mold its procedures to the exigencies of the particular case).

[169] Opinion No. 565, 165 FERC ¶ 61,022 at P 107.

[170] Rehearing Request at 10, 50-52.

on its earlier representations that the Grand Gulf Sales were part of the Opportunity Sales, and that the Commission relied on and adopted that representation.[171] According to the Louisiana Commission, Opinion No. 521 defined the scope of the Opportunity Sales, and Entergy should have sought rehearing if it wanted to exclude sales after that point.[172] As the Commission explained in Opinion No. 565:

> although Entergy may have previously made other representations regarding the Grand Gulf sales, the total damages calculation for the entire period of the Opportunity Sales was not at issue in this proceeding until this phase (Phase III), when the Commission set for hearing a final calculation of the damages based on a full rerun of the ISB.[173]

Moreover, all parties had the ability to respond to and question these assertions during the proceedings.[174] We affirm that it was appropriate for the Commission to focus on ensuring that the damages calculation is consistent with "the violation the Commission identified in Opinion No. 521 for which damages are due," even if that required correcting prior representations in earlier phases of the proceeding.[175]

2. Converted Opportunity Sales

47. Finally, we deny the Louisiana Commission's request for rehearing of the Commission's determination to exclude the Converted Opportunity Sales from the damages calculation. The Louisiana Commission asserts that the Converted Opportunity

[171] *Id*. at 50-52 (citing Opinion No. 521, 139 FERC ¶ 61,240 at P 8 n.13). The Louisiana Commission notes that the Commission in Opinion No. 521 cited testimony that included the Grand Gulf Shares in the Opportunity Sales starting in January of 2000. *See id*. at 51.

[172] *Id*. The Louisiana Commission points to other circumstances in which the Commission has prohibited collateral attacks on issues the Louisiana Commission raised, even where it contends that earlier orders were ambiguous. *Id*. at 51-52 (citing *La. Pub. Serv. Comm'n v. FERC*, 606 F.App'x 1, 4-5 (D.C. Cir. 2015); *La. Pub. Serv. Comm'n v. FERC*, 761 F.3d 540, 558 (5th Cir. 2014)).

[173] Opinion No. 565, 165 FERC ¶ 61,022 at P 106.

[174] *See id*.

[175] *Id*.

Sales are inextricably linked with Entergy's violation.[176] The Louisiana Commission states that the Converted Opportunity Sales were entered into as Opportunity Sales, were parts of the same transactions, and also resulted in negative margins and only differed from the other Opportunity Sales in that Entergy allocated system incremental energy to them, which imposed harm on captive customers.[177] According to the Louisiana Commission, the only difference is that Entergy correctly allocated energy to the Converted Opportunity Sales pursuant to section 30.04, but with the correct allocation the sales were made at a loss and imposed negative margins on ratepayers.[178]

48. Again, the Louisiana Commission primarily repeats, almost verbatim, arguments from its August 28, 2017 Brief on Exceptions,[179] which the Commission considered and rejected in Opinion No. 565. We continue to find that the Louisiana Commission's claims for damages for sales that were originally allocated under section 30.04 of the System Agreement are outside the scope of the damages calculation in this proceeding, which addressees the refunds due as a result of Entergy incorrectly allocating the Opportunity Sales under section 30.03 of the System Agreement.[180]

49. As it argued in its Brief on Exceptions, the Louisiana Commission again alleges that the converted Opportunity Sales violated the System Agreement in several other respects, none of which are pertinent to the violation established in Opinion No. 521 for which damages are now being calculated.[181] Having affirmed that the Louisiana

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[176] Rehearing Request at 57-58. The Louisiana Commission cites precedent for the proposition that "the Commission has the power to award damages for any additional costs incurred by a Company due to the breach of contractual obligations." *Id*. (citing *Sunoco, Inc. v. Transcontinental Gas Pipe Line Corp.*, 111 FERC ¶ 61,400, at P 18 (2005), *aff'd sub nom. Transcontinental Gas Pipe Line Corp. v. FERC*, 485 F.3d 1172, 1175-78 (D.C. Cir. 2007)).

[177] *Id*. at 54.

[178] *Id*. at 53 (citing Opinion No. 565, 165 FERC ¶ 61,022 at P 128); *see* Louisiana Commission August 28, 2017 Brief on Exceptions at 9-13 (arguing that the Converted Opportunity Sales should be included in the damages calculation because they effectively were identical to the other Opportunity Sales and caused economic harm).

[179] *Compare* Rehearing Request at 53-57 *with* Louisiana Commission August 28, 2017 Brief on Exceptions at 10-17.

[180] Opinion No. 565, 165 FERC ¶ 61,022 at P 128.

[181] Rehearing Request at 54-58.

Commission's claims regarding the Converted Opportunity Sales are beyond the scope of this proceeding, we need not address the Louisiana Commission's further arguments regarding the validity of the Converted Opportunity Sales.[182] Even if the Louisiana Commission is correct in its various allegations regarding the Converted Opportunity Sales, the alleged violation would be outside the narrow scope of this Phase III damage inquiry.

50. As discussed above, we confirm that declining to include issues outside the scope of this proceeding in the calculation of damages does not "unreasonably waste[ ] resources."[183] To the contrary, it would be inappropriate to direct damages that go beyond the violation in this proceeding to address a separate alleged violation of the System Agreement.

The Commission orders:

The Louisiana Commission's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[182] *See id*. at 53-54 (arguing that Entergy knew that the system could not prudently make any Opportunity Sales more than a day ahead because it did not have adequate resources); Louisiana Commission Aug. 28, 2017 Brief on Exceptions at 10-11 (same); Rehearing Request at 54-55 (alleging that Entergy's after-the-fact accounting for these sales violated the System Agreement by allocating the margins for these sales to all Operating Companies pursuant to Service Schedule MSS-5, (1) rather than to the company that made the sales, Entergy Arkansas, and (2) when they were not entered into "for the joint account" of all the Operating Companies); *id*. at 55-56 (asserting that Entergy should not be able to avoid damages by declaring after-the-fact that sales were made for the joint account of all of the Operating Companies); *id*. at 56-57 (arguing that the Converted Opportunity Sales violated sections 5.06(o), 6.02(d), and 30.02 of the System Agreement, as well as the central purpose of the System Agreement because they were not economical).

[183] Rehearing Request at 52-53.