

171 FERC ¶ 61,216
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket Nos. ER11-3658-001
ER12-1920-001
ER13-1595-001
ER14-2085-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued June 18, 2020)

1. On May 18, 2018, Entergy Services, Inc., as agent for the Entergy Operating Companies (Operating Companies),¹ submitted a compliance filing pursuant to Opinion No. 560.² The compliance filing consists of a comprehensive recalculation of the bandwidth formula rate. As discussed below, we accept Entergy’s compliance filing.

I. Background

2. This proceeding is part of a long history of litigation over the allocation of the production costs of electric power plants among the Operating Companies under the Entergy System Agreement (System Agreement). In 2005, in Opinion No. 480, the Commission determined that production costs across the multistate Entergy system were

¹ Entergy Corporation is an electric utility holding company consisting of the Operating Companies and various service and support subsidiaries, including Entergy Services, Inc. (Entergy Services). The Operating Companies at the time relevant to this proceeding were Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States), Entergy Louisiana, L.L.C. (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy Texas, Inc. (Entergy Texas), and Entergy New Orleans, Inc. Entergy Gulf States and Entergy Louisiana have since merged into a single entity, also named Entergy Louisiana, L.L.C. For the purposes of this order, we refer to Entergy Corporation, the Operating Companies, and/or Entergy Services as “Entergy.”

² *La. Pub. Serv. Comm’n v. Entergy Corp.*, Opinion No. 560, 162 FERC ¶ 61,234 (2018).

not roughly equal and were thus unduly discriminatory.³ To ameliorate this situation, the Commission imposed a bandwidth remedy that reallocated costs that deviate from an established bandwidth around the system average, as determined in annual proceedings.⁴ The bandwidth formula calculation in Service Schedule MSS-3 of the System Agreement determined whether the Operating Companies' production costs were roughly equal in a given year and reallocated them if they were not.⁵

3. On May 29, 2007, in Docket No. ER07-956-000, Entergy submitted its first annual bandwidth implementation filing under Service Schedule MSS-3, based on calendar year 2006 data. Subsequently, in each year through 2015, Entergy submitted annual bandwidth filings to the Commission using prior calendar year data. The fifth through eighth annual bandwidth proceedings (using 2010 through 2013 data) are at issue here.⁶ In each of these proceedings, the Louisiana Public Service Commission (Louisiana

³ *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047, *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152, *order rejecting compliance filing*, 146 FERC ¶ 61,153 (2014), *order on compliance*, 151 FERC ¶ 61,112 (2015).

⁴ *See Entergy Servs., Inc.*, 148 FERC ¶ 63,015, at P 3 (2014) (Fourth Bandwidth Initial Decision). The System Agreement terminated on August 31, 2016. *See Entergy Ark., Inc.*, 153 FERC ¶ 61,347 (2015) (approving settlement terminating System Agreement).

⁵ Fourth Bandwidth Initial Decision, 148 FERC ¶ 63,015 at P 3; *see also La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,152 at P 3 (stating that under the bandwidth formula, the production costs of each Operating Company are calculated each calendar year and, if necessary, "payments [are] made by the low cost Operating Company(ies) to the high cost Operating Company(ies) such that, after reflecting the payments and receipts, no Operating Company would have production costs more than 11% above the Entergy System average or more than 11% below the Entergy System average.").

⁶ The ninth annual bandwidth filing was set for hearing and settlement judge procedures and ultimately resulted in a settlement approved by the Commission. *See Entergy Servs., Inc.*, 156 FERC ¶ 61,091 (2016). The tenth and final annual bandwidth filing was accepted by delegated letter order on July 26, 2016. *Entergy Services, Inc.*, Docket No. ER16-1806-000 (July 26, 2016) (delegated order).

Commission) filed a protest and the Commission issued an order accepting and suspending the filing, establishing hearing and settlement judge procedures, and holding the proceedings in abeyance pending Commission action on Entergy's prior annual bandwidth filings.⁷ On August 4, 2010, the Commission set for hearing and settlement judge procedures a complaint filed by the Louisiana Commission in Docket No. EL10-65-000 against Entergy seeking to change the rates included in the bandwidth formula, although the Commission held the matter in abeyance pending the resolution of other bandwidth-related proceedings.⁸ Additionally, on May 30, 2014, Entergy submitted the eighth bandwidth filing and the Louisiana Commission filed a protest. On December 18, 2014, the Commission issued an order accepting and suspending the eighth bandwidth filing and establishing hearing and settlement judge procedures. In addition, the Commission reinstated the hearing procedures that the Commission previously held in abeyance in the fifth, sixth, and seventh bandwidth proceedings as well as in the bandwidth-related complaint proceeding in Docket No. EL10-65-000, and consolidated the five proceedings for the purposes of hearing and settlement.⁹

4. The hearing in the consolidated proceeding occurred in November 2015 and the Presiding Judge issued an initial decision on July 28, 2016.¹⁰ On March 15, 2018, the Commission issued Opinion No. 560 affirming the 2016 Initial Decision.¹¹

5. On April 16, 2020, the Commission granted partial rehearing of Opinion No. 560 with respect to the Waterford 3 nuclear plant financing transaction and whether the accumulated deferred income taxes (ADIT) associated with the Waterford 3 financing should be included in the bandwidth calculation. The Commission determined that the tax gain portion of the Waterford 3 financing ADIT in Account No. 190 (Accumulated Deferred Income Taxes) arises from the Waterford 3 financing, and is directly related to amounts included in bandwidth formula accounts and, consequently, "the tax gain portion of the Waterford 3 [f]inancing ADIT is generally and properly includable for FERC cost

⁷ *Entergy Servs., Inc.*, 136 FERC ¶ 61,057 (2011) (order on fifth bandwidth proceeding); *Entergy Servs., Inc.*, 140 FERC ¶ 61,111 (2012) (order on sixth bandwidth proceeding); *Entergy Servs., Inc.*, 144 FERC ¶ 61,167 (2013) (order on seventh bandwidth proceeding).

⁸ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,104, at P 30 (2010).

⁹ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 149 FERC ¶ 61,244 (2014).

¹⁰ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 156 FERC ¶ 63,017 (2016) (2016 Initial Decision).

¹¹ Opinion No. 560, 162 FERC ¶ 61,234.

of service purposes, and should be included in the bandwidth calculation.”¹² The Commission also determined that the “additional interest” portion of the Waterford 3 financing, which represents the difference between depreciating the Waterford 3 plant asset over its service life of 40 years and repayment of the debt obligation over the debt term of 27.5 years, should continue to be excluded from the bandwidth calculation.¹³

II. Compliance Filing

6. Entergy states that its compliance filing, submitted pursuant to Opinion No. 560, consists of the comprehensive recalculation of the bandwidth formula rate with true-up payments and receipts for the fifth through eighth bandwidth filings and supporting compliance workpapers for each identified adjustment. Entergy states that the bandwidth true-up payments and receipts would be effectuated among the current Operating Companies on May 18, 2018—the filing date.¹⁴ The bandwidth formula or bandwidth calculation adjustments included in the compliance filing are as follows: (1) Waterford 3 plant accounting change; (2) Entergy Mississippi and Entergy Texas revised 2012 FERC Form No. 1 data; (3) functionalization of Account No. 924 (Property Insurance); (4) River Bend Administrative and General (A&G) expenses and Other Taxes; (5) Net Operating Loss ADIT; (6) ADIT recorded in Account No. 282 (Accumulated Deferred Income Taxes – Other Property) associated with casualty loss balances; (7) exclusion of securitized asset ADIT recorded in Account No. 282; (8) Entergy Arkansas fuel inventory balances; (9) adjustments to reprice certain purchased power expense associated with renewable resources; and (10) change in storm cost accrual as a result of resubmitted 2012 FERC Form No. 1 data for Entergy Mississippi and Entergy Texas.

A. Waterford 3 Plant Accounting Change

7. Entergy states that it has reclassified the accounting for the Waterford 3 plant consistent with the findings in the 2016 Initial Decision.¹⁵ Entergy states that the 2016

¹² *La. Pub. Serv. Comm’n v. Entergy Corp.*, 171 FERC ¶ 61,044, at P 38 (2020) (2020 Rehearing Order).

¹³ *Id.* P 45.

¹⁴ Entergy Compliance Filing at 1.

¹⁵ In the 2016 Initial Decision, the Presiding Judge recognized that the Commission has found that, for accounting purposes, Entergy’s sale and leaseback of the 9.3% interest in Waterford 3, frequently referred to as the “Waterford 3 Sale/Leaseback,” is a financing transaction and not a sale and leaseback of plant. 2016 Initial Decision, 156 FERC ¶ 63,017 at P 130 & n.220. *See also* 2020 Rehearing Order, 171 FERC ¶ 61,044 at n.10.

Initial Decision concluded that Entergy Louisiana's use of Account Nos. 101.1 (Property Under Capital Leases), 111 (Amortization of Electric Utility Plant), and 404 (Amortization of Limited-Term Electric Plant) to record the cost and related depreciation for the Waterford 3 plant was inconsistent with the requirements of the Commission's Uniform System of Accounts. Entergy states that it has reclassified the cost of the Waterford 3 plant to Account No. 101 (Electric Plant in Service) and the related depreciation in Account Nos. 403 (Depreciation Expense) and 108 (Accumulated Provision for Depreciation of Electric Utility Plant), consistent with the Presiding Judge's finding in the 2016 Initial Decision that the Waterford 3 transaction is a financing transaction and not a sale and leaseback of plant.¹⁶

8. In addition, as a result of the accounting changes for the Waterford 3 plant described above, Entergy states that certain bandwidth formula variables must change.¹⁷ According to Entergy, prior to this compliance filing, the numerator and denominator used to derive the plant ratios that functionalize ADIT to the production function in the bandwidth formula excluded the Waterford 3 plant investment because the ratemaking balance of the ADIT to be functionalized excluded any ADIT pertaining to the Waterford 3 plant pursuant to a Commission directive.¹⁸ Entergy states that, due to the accounting changes for the Waterford 3 plant (i.e., reclassifying the Waterford 3 plant from Account No. 101.1 to Account No. 101), the numerator and denominator of the plant ratio used to functionalize ADIT to Variable Production Rate Base (i.e., Variables NPPR and PPRXN) and the denominator of the ratio used to functionalize ADIT to Fixed Production Rate Base (i.e., Variable PPRXN) (which each specify the exclusion of "Waterford 3 Capital Lease as recorded in Account 101.1") will no longer exclude the Waterford 3 plant investment resulting in a change to the amount of ADIT functionalized to the production function.

B. Entergy Mississippi and Entergy Texas Revised 2012 FERC Form No. 1 Data

9. Entergy states that Entergy Mississippi and Entergy Texas submitted revised 2012 FERC Form No. 1 pages to reflect the corrected amortization of deferred storm costs consistent with recoveries, and that the comprehensive recalculation for the seventh bandwidth filing, in Docket No. ER13-1595, reflects the revised data. Entergy states that

¹⁶ Entergy Compliance Filing at 4 (citing 2016 Initial Decision, 156 FERC ¶ 63,017 at P 243).

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 4 (citing *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at PP 233-236 (2010); *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029, at PP 117-120 (2011)).

the revised FERC Form No. 1 data do not pertain to any issue that is being litigated in this consolidated proceeding, but states that the comprehensive recalculation reflects the revised data.¹⁹

C. Functionalization of Account No. 924

10. Entergy states that consistent with the Commission's guidance in an order issued on May 13, 2013,²⁰ the comprehensive recalculation uses the amended variables under Service Schedule MSS-3 section 30.12 for the calculation of Actual Production Cost. Entergy states that the bandwidth formula reflects an amended variable and an additional variable in the calculation of Fixed Production Expense under Service Schedule MSS-3 section 30.12 for the calculation of Actual Production Cost. Entergy explains that the Variable AG (Administrative and General expense) excludes not only Storm Accrual Expense, but also the balance recorded in Account No. 924, so that the balance in Account No. 924 is no longer functionalized using the labor ratio used to allocate intangible plant costs and administrative and general expenses among the Operating Companies.²¹ Entergy states that the comprehensive recalculation reflects these revised variables for the fifth through seventh bandwidth filings and that the eighth bandwidth filing already reflected the revised variables.²²

D. River Bend A&G and Other Taxes

11. Entergy notes that the Commission explained in Opinion No. 505 that the parties to the first bandwidth proceeding in Docket No. ER07-956 had agreed that A&G expenses and Other Taxes associated with the unregulated 30% of the River Bend plant were inadvertently excluded twice from Entergy Gulf States' production costs.²³ Entergy explains that when the parties to the first bandwidth proceeding disagreed over how to fix

¹⁹ *Id.*

²⁰ *Id.* at 5 (citing *Entergy Servs., Inc.*, 143 FERC ¶ 61,120 (2013) (denying in part and granting in part rehearing of *Entergy Servs., Inc.*, Opinion No. 506, 130 FERC ¶ 61,026 (2010)).

²¹ Entergy also explains that the comprehensive recalculation includes the additional variable 924AG – FERC Account 924 excluding Storm Accrual Expense and functionalizes the amount recorded in FERC Account 924 excluding storm accrual expense using the Variable PPR – Ratio of Production Plant to Total Plant excluding Intangible Plant. *Id.*

²² *Id.* at 5-6.

²³ *Id.* at 6 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 238).

the error, the Commission directed that a compliance filing be made with respect to the removal of the associated River Bend A&G and Other Taxes when functionalizing those costs in the first bandwidth calculation. Entergy states that the comprehensive recalculation reflects the methodology accepted by the Commission for the fifth through seventh bandwidth filings, as shown in Compliance Filing Workpaper No. 19 attached to its filing, and that the eighth bandwidth filing already reflected this methodology.²⁴

E. Net Operating Loss ADIT

12. Entergy states that in Opinion No. 505 the Commission determined that the Net Operating Loss (NOL) carry-forwards are related to storm damage losses from Hurricanes Katrina and Rita and that these storm damage costs are properly recorded in Account No. 182.3 (Other Regulatory Assets) and must be amortized to the appropriate functional O&M expense accounts as the costs are recovered in rates.²⁵ Entergy states that the Commission thus determined that the ADIT for NOL carry-forwards associated with production storm damage expenses may not be excluded from the bandwidth calculation. Entergy states that on November 15, 2013, Entergy submitted a compliance filing concerning NOL carry-forward ADIT balances including workpapers in which the numerator of the ratio to be used to recalculate the NOL carry-forward ADIT balances included the sum of total utility operating expenses as shown on the FERC Form No. 1 at page 115 (excluding income taxes) for each company and incurred utility operating expenses includable in future rates that were deductions on the tax return not charged against book income during the period the net operating loss was recognized. Entergy states that the denominator of the ratio included the sum of utility operating expenses and below-the-line expenses (excluding income taxes) charged against book income as reported in the FERC Form No. 1 at pages 115 and 117 for each company, respectively, that were included in taxable income determinations during the period the net operating loss was recognized, and deductions on the tax return not charged against book income as reported in the FERC Form No. 1 at page 261. Entergy states that the Commission accepted the compliance filing on July 31, 2014.²⁶ Entergy states that the comprehensive recalculation reflects the methodology accepted by the Commission in the July 31, 2014 order as shown in Compliance Filing Workpaper No. 20 for the fifth through seventh bandwidth filings and that the eighth bandwidth filing already reflected this methodology.²⁷

²⁴ *Id.*

²⁵ *Id.* (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 234).

²⁶ *Id.* at 6-7 (citing *Entergy Servs., Inc.*, 148 FERC ¶ 61,087 (2014)).

²⁷ *Id.* at 7.

F. ADIT Recorded in Account No. 282 Associated with Casualty Loss Balances

13. Entergy states that in Opinion No. 518,²⁸ the Commission affirmed the Presiding Judge's findings that: (1) the bandwidth calculation begins with the inclusion of all ADIT generally and properly includable for cost-of-services purposes; and (2) the product of that total and the production plant ratio is the portion of the ADIT which is production related.²⁹ Entergy states that in Opinion No. 518, the Commission further affirmed that no further steps to functionalize ADIT are required and that casualty loss ADIT recorded in Account No. 282 is to be included in the bandwidth calculation.³⁰ Entergy states that, as shown in Compliance Filing Workpaper No. 21, the comprehensive recalculation for the fifth bandwidth filing includes an adjustment for the difference between the production storm-related component initially included and the total balance of Casualty Loss ADIT in Account No. 282. Entergy states that the sixth through eighth bandwidth filings already reflected this methodology.

G. Exclusion of Securitized Asset ADIT Recorded in Account No. 282

14. Entergy states that in Opinion No. 545,³¹ the Commission endorsed for the bandwidth formula the Operating Companies' practice of recording capital investments made to restore the Entergy System after a storm in Account No. 101. Entergy states that because the Operating Companies securitized those capital investments, they also recorded a contra-securitized asset in a sub-account of Account No. 101 so that the value of the contra-securitized asset zeroed-out the securitized asset. Entergy states that the Operating Companies thus effectively removed the securitized asset from the cost of service.³² Entergy states that on rehearing, the Commission concluded that, because the securitized asset is not properly includable in the utility's cost of service, it follows that both the securitized asset ADIT and contra-securitized asset ADIT are also not properly

²⁸ *Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105 (2012) (order on initial decision addressing the third bandwidth calculation).

²⁹ Entergy Compliance Filing at 7 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 84).

³⁰ *Id.* (citing Opinion No. 518, 139 FERC ¶ 61,105 at PP 14, 84).

³¹ *Entergy Servs., Inc.*, Opinion No. 545, 153 FERC ¶ 61,303 (2015) (affirming in part and rejecting in part the initial decision addressing the fourth bandwidth filing).

³² Entergy Compliance Filing at 8 (citing Opinion No. 545, 153 FERC ¶ 61,303 at P 190).

includable in the Commission cost of service.³³ Entergy states that the comprehensive recalculation for the fifth through eighth bandwidth filings reflects the exclusion of the securitized asset ADIT, as shown in Compliance Filing Workpaper No. 22.

H. Entergy Arkansas Fuel Inventory Balances

15. Entergy states that Entergy Arkansas has restated fuel inventory balances in Account No. 151 (Fuel Stock) for its jointly owned coal units consistent with the Commission's directive in Opinion No. 545. Entergy states that the Commission required revisions to Entergy Arkansas's FERC Form No. 1 Account No. 151 balance to: (1) record co-owner advances for fuel inventory purchases as a debit to Account No. 131 (Cash) and a credit to Account No. 253 (Other Deferred Credits) when paid by co-owners; (2) record 100% of the fuel inventory purchases as a debit to Account No. 151 and a credit to Account No. 131 (or the appropriate accounts payable account); and (3) record the co-ownership interests in fuel inventory purchases as a debit to Account No. 253 and a credit to Account No. 151.³⁴ Entergy states that drafts of revised Entergy Arkansas FERC Form No. 1 pages are included in the workpapers found in Compliance Filing Workpaper No. 16 and those relied upon for the Entergy Arkansas fuel inventory adjustment are located in Compliance Filing Workpaper No. 23. Entergy states that the comprehensive recalculation for the fifth through seventh bandwidth filings reflects the revised Entergy Arkansas FERC Form No. 1 balances in Account No. 151 for each respective year and that the adjustment is not applicable to the eighth bandwidth filing because Entergy Arkansas was no longer a party to the System Agreement as of December 19, 2013.³⁵

I. Adjustments to Reprice Certain Purchased Power Expense Associated with Renewable Resources

16. Entergy states that the comprehensive recalculation for the eighth bandwidth filing reflects the terms of a Commission-approved settlement and a tariff amendment, shown in Compliance Filing Workpaper No. 24, that included a revision to the bandwidth formula effective May 31, 2014 requiring the repricing of any renewable energy purchased power agreements entered into by any Operating Company to satisfy state or local policy requirements. Entergy states that pursuant to this settlement, the price of energy to be reflected in the bandwidth formula for such purchased power agreements is to be the lower of the average annual energy rate paid by the Operating Companies for

³³ *Id.* (citing *Entergy Servs., Inc.*, 156 FERC ¶ 61,196, at P 103 (2016)).

³⁴ *Id.* at 8-9 (citing Opinion No. 545, 153 FERC ¶ 61,303 at P 53).

³⁵ *Id.* at 9.

Exchange Energy pursuant to Service Schedule MSS-3 or the average annual energy rate pursuant to the respective purchased power agreement.³⁶

J. Change in Storm Cost Accrual as a Result of Resubmitted 2012 FERC Form No. 1 Data for Entergy Mississippi and Entergy Texas

17. Entergy states that the eighth bandwidth filing reflected adjustments to Entergy Mississippi and Entergy Texas storm cost accruals based on Account No. 924 balances that included the amortization of deferred storm costs. Entergy states that as shown in Compliance Filing Workpaper Nos. 16.3 and 16.5, the 2012 test year FERC Form No. 1s were resubmitted for Entergy Mississippi and Entergy Texas to reflect revisions to Account No. 924 for the amortization of deferred storm costs, which were reclassified to Account Nos. 408.1, 514, 563, 583, and 926. Entergy states that the comprehensive recalculation for the seventh bandwidth filing reflects the adjustment to Account No. 924 to remove the amortization of the deferred storm costs, which is shown in Compliance Filing Workpaper No. 25. Entergy states that the adjustment does not pertain to any issue subject to litigation in this consolidated proceeding.³⁷

III. Notice and Responsive Pleadings

18. Notice of Entergy's compliance filing was published in the *Federal Register*, 83 Fed. Reg. 24,465 (May 29, 2018), with motions to intervene and protests due on or before June 8, 2018. The Louisiana Commission filed a protest.

19. The Louisiana Commission states that it protests one adjustment that it argues is not required pursuant to Opinion No. 560 and conflicts with a prior Commission order. The Louisiana Commission explains that it filed a complaint in Docket No. EL08-51-000 that in part addressed the allocators for ADIT in the bandwidth calculation.³⁸ The Louisiana Commission argues that the Commission agreed with its claim that, with regard to the ADIT allocators, the inclusion of the Waterford 3 "sale-leaseback" investment (Waterford 3 Investment) in the plant used to allocate ADIT to the production function of Entergy Louisiana was unjust and unreasonable because the Waterford 3 Investment did not produce ADIT in Account No. 282.³⁹ The Louisiana Commission adds that, at the time of the 2008 Complaint, Entergy classified the Waterford 3

³⁶ *Id.*

³⁷ *Id.* at 9-10.

³⁸ Protest at 1-2 (citing Louisiana Commission, Complaint, Docket No. EL08-51-000 (filed Mar. 31, 2008) (2008 Complaint)).

³⁹ *Id.* at 2 (citing 2008 Complaint at PP 28-29).

Investment as Property Under Capital Lease. The Louisiana Commission argues that the point of the 2008 Complaint was that including the amount for the Waterford 3 Investment in each allocator resulted in an excessive allocation of Account No. 282 ADIT to Entergy Louisiana, which unjustly and unreasonably lowered its production costs for the bandwidth calculation and reduced its receipts. The Louisiana Commission contends that the Commission agreed that the inclusion of the Waterford 3 Investment amount in the allocators was unjust and unreasonable, stating that

[w]ith regard to the Waterford 3 capital lease issue, we note that Entergy does not oppose the Louisiana Commission's proposed amendment, and we agree with the Louisiana Commission that the inclusion of the Waterford 3 capital lease amounts in production costs in the plant ratios is unjust and unreasonable. Accordingly, to ensure just and reasonable rates, we direct Entergy to remove the Waterford 3 capitalized lease amount from the computations of the nuclear production plant ratio (NPPR) and the production plant excluding nuclear ratio (PPRXN), effective March 31, 2008.⁴⁰

The Louisiana Commission states that Entergy adopted the Louisiana Commission's proposed amendment and excluded the Waterford 3 Investment from the ADIT allocators in the third through fifth bandwidth filings.⁴¹

20. The Louisiana Commission states that, in related hearing proceedings, the Presiding Judge required the Waterford 3 Investment to be accounted for in Account No. 101, as plant subject to financing, and not as Property Under Capital Lease in Account No. 101.1, and Entergy did not take exception.⁴² The Louisiana Commission contends that the Presiding Judge did not address the allocator for ADIT.

21. Regarding Entergy's compliance filing, the Louisiana Commission argues that Entergy improperly includes the Waterford 3 Investment in the ADIT allocators. According to the Louisiana Commission, it is unjust and unreasonable to allocate ADIT

⁴⁰ *Id.* at 3 (citing *La. Pub. Serv. Comm'n v. Entergy Corp.*, 124 FERC ¶ 61,010, at P 28 (2008) (2008 Complaint Order)).

⁴¹ We note that, as described above in PP 7-8, the exclusion of the Waterford 3 Investment from the ADIT allocators was dependent on the accounting for the Waterford 3 Investment as Property Under Capital Lease in Account No. 101.1, and the Waterford 3 Investment will no longer be excluded from the ADIT allocators following the reclassification of the Waterford 3 plant from Account No. 101.1 to Account No. 101 according to Entergy.

⁴² Protest at 3-4 (citing 2016 Initial Decision, 156 FERC ¶ 63,017 at P 244).

based on a plant amount that has no ADIT associated with it. The Louisiana Commission argues that Entergy relies solely on the change in classification required by the Presiding Judge as its basis to include the investment in the ADIT allocators. The Louisiana Commission argues that Entergy makes this change without claiming that the 2016 Initial Decision or Opinion No. 560 addresses the issue of whether ADIT allocators should be changed and that Entergy also makes no claim that any ADIT included in the bandwidth calculation relates to the Waterford 3 Investment.⁴³

22. The Louisiana Commission argues that in Opinion No. 560 the Commission determined that the ADIT associated with the Waterford 3 Investment (Account No. 190 Sale-Leaseback ADIT) should not be included in the bandwidth calculation.⁴⁴ Nevertheless, the Louisiana Commission asserts that, if the Commission changes that ruling on rehearing, it will be appropriate to include the Waterford 3 Investment in the ADIT allocators as well, but that as long as no ADIT in the bandwidth calculation is associated with the Waterford 3 Investment, it is unjust and unreasonable to allocate ADIT based on the Waterford 3 Investment.⁴⁵

IV. Discussion

23. We accept Entergy's filing as being in compliance with Opinion No. 560. With respect to the impacts of the Waterford 3 plant accounting change on the plant ratios used to allocate ADIT that the Louisiana Commission objects to in its protest, we find that the adjustments to the plant ratios made by Entergy are appropriate.

24. Entergy's adjustments to the plant ratios stem from the Commission's directive in Opinion No. 560 to reclassify the Waterford 3 plant investment to Account No. 101.⁴⁶ As the Louisiana Commission explains, the Commission previously determined that, with regard to the ADIT allocators, the inclusion of the Waterford 3 "sale-leaseback" investment, or Waterford 3 Investment, in the plant used to allocate ADIT to the production function of Entergy Louisiana was unjust and unreasonable because the Waterford 3 Investment did not produce ADIT in Account No. 282.⁴⁷ But the revisions

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 5 (citing Opinion No. 560, 162 FERC ¶ 61,234 at P 57).

⁴⁵ *Id.*

⁴⁶ Opinion No. 560, 162 FERC ¶ 61,234 at P 57; *see also* 2016 Initial Decision, 156 FERC ¶ 63,017 at PP 243-244.

⁴⁷ Protest at 3 (citing 2008 Complaint Order, 124 FERC ¶ 61,010 at P 28). As the Louisiana Commission points out, the Commission granted the 2008 Complaint with respect to the "Waterford 3 capital lease issue" and directed Entergy to "remove the

to the bandwidth formula that the Commission adopted to exclude the Waterford 3 Investment from the plant ratios used to allocate ADIT depended on the accounting for the Waterford 3 plant in Account No. 101.1 instead of Account No. 101, which accounting the Commission has since found erroneous. Entergy correctly identified in its compliance filing that, as a result of the corrected accounting for the Waterford 3 Investment to Account No. 101, the adjustments to the plant ratios adopted in the 2008 Complaint Order no longer operate to exclude the Waterford 3 Investment and Entergy's recalculations included the Waterford 3 Investment in the plant ratios used to allocate ADIT even though there was no ADIT associated with the Waterford 3 ADIT input to the bandwidth formula.

25. In its protest, the Louisiana Commission makes clear that it only objects to Entergy's adjustment to the plant ratios to the extent that the Commission does not grant rehearing of Opinion No. 560 to allow the ADIT associated with the Waterford 3 Investment (Account No. 190 Sale-Leaseback ADIT) to be included in the bandwidth formula.⁴⁸ As noted above, in the 2020 Rehearing Order the Commission granted partial rehearing of Opinion No. 560 and found that, because the net book value of the Waterford 3 plant and the associated long-term debt from the Waterford 3 Investment are included in the bandwidth formula, the tax gain portion of the Account No. 190 Sale-Leaseback ADIT associated with the Waterford 3 plant investment is also included in the bandwidth formula.⁴⁹ Accordingly, because there is now ADIT associated with the Waterford 3 Investment included in the bandwidth formula, we find that Entergy's inclusion of the Waterford 3 plant investment in the ADIT allocators as part of this compliance filing is appropriate and we find the Louisiana Commission's protest to be moot.

Waterford 3 capitalized lease amount from the computations of the nuclear production plant ration (NPPR) and the production plant excluding nuclear ration (PPRXN)” The Louisiana Commission's arguments in the 2008 Complaint focused on the absence of nuclear depreciation ADIT amounts in Account No. 282 and therefore, it argued, none of the amounts in Account No. 282 should be allocated to production based on the Waterford 3 Investment.

⁴⁸ Protest at 5 (“If the Commission changes that ruling on rehearing, it will be appropriate to include the Sale-Leaseback investment in the ADIT allocators as well. But as long as no ADIT in the Bandwidth Calculation is associated with the Sale-Leaseback, it is unjust and unreasonable to allocate ADIT based on the Sale-Leaseback investment.”).

⁴⁹ See 2020 Rehearing Order, 171 FERC ¶ 61,044 at PP 41, 43.

The Commission orders:

Entergy's compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.