

167 FERC ¶ 61,246  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER10-1350-007

ORDER DENYING REHEARING

(Issued June 20, 2019)

1. On October 24, 2016, the Louisiana Public Service Commission (Louisiana Commission) sought rehearing of the Commission's September 22, 2016 Order on Rehearing and Clarification<sup>1</sup> of Opinion No. 545,<sup>2</sup> the Commission's order on Initial Decision<sup>3</sup> of the fourth annual bandwidth filing, covering calendar year 2009, which Entergy Services, Inc. (Entergy) submitted on behalf of the Entergy Operating Companies.<sup>4</sup> We deny rehearing, as discussed below.

**I. Overview**

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

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<sup>1</sup> *Entergy Servs., Inc.*, 156 FERC ¶ 61,196 (2016) (Rehearing Order).

<sup>2</sup> *Entergy Servs., Inc.*, Opinion No. 545, 153 FERC ¶ 61,303 (2015).

<sup>3</sup> *Entergy Servs., Inc.*, 148 FERC ¶ 63,015 (2014) (Initial Decision).

<sup>4</sup> The Entergy Operating Companies (Operating Companies) involved in this proceeding are: Entergy Arkansas, Inc. (now Entergy Arkansas, LLC) (Entergy Arkansas); Entergy Gulf States Louisiana, LLC (now merged with Entergy Louisiana, LLC) (Entergy Gulf States); Entergy Louisiana, Inc. (now Entergy Louisiana, LLC) (Entergy Louisiana); Entergy Mississippi, Inc. (now Entergy Mississippi, LLC) (Entergy Mississippi); Entergy New Orleans, Inc. (now Entergy New Orleans, LLC) (Entergy New Orleans); and Entergy Texas, Inc. (Entergy Texas).

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Entergy System Agreement (System Agreement).<sup>5</sup> In 2005, in Opinion No. 480,<sup>6</sup> the Commission determined that production costs across the multistate Entergy system were not roughly equal and were thus unduly discriminatory. 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.<sup>7</sup> 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.<sup>8</sup>

3. On May 27, 2010, as revised on September 21, 2010, Entergy submitted its fourth annual bandwidth filing pursuant to Service Schedule MSS-3 of the System Agreement

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<sup>5</sup> See generally Opinion No. 545, 153 FERC ¶ 61,303 at PP 6-10. "The System Agreement, a FERC approved tariff, is an agreement among the Operating Companies and Entergy that provides for a sharing of the costs and benefits of the joint planning, construction, operation and maintenance of the generation, transmission, and other facilities for those Operating Companies participating in the System Agreement." *Id.* P 1 n.4.

<sup>6</sup> See *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 sub nom. La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152 (2014), *order rejecting compliance filing*, 146 FERC ¶ 61,153 (2014), *order on compliance*, 151 FERC ¶ 61,112 (2015).

<sup>7</sup> See *id.* P 144; see also Initial Decision, 148 FERC ¶ 63,015 at P 3. The System Agreement terminated at 11:59 p.m. on August 31, 2016. See *Entergy Ark., Inc.*, 153 FERC ¶ 61,347 (2015) (approving settlement terminating System Agreement). The tenth and final annual bandwidth filing was accepted by delegated letter order on July 26, 2016, in Docket No. ER16-1806.

<sup>8</sup> 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 (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 percent above the Entergy System average or more than 11 percent below the Entergy System average.").

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and section 205 of the Federal Power Act,<sup>9</sup> implementing the bandwidth remedy for calendar year 2009.<sup>10</sup> On July 23, 2010, the Commission accepted the proposed rates for filing and suspended them for a nominal period, to become effective June 1, 2010, subject to refund, and established hearing and settlement judge procedures.<sup>11</sup> The hearing was held in March 2014 and resulted in the Initial Decision.<sup>12</sup> Among other things, the Presiding Judge ordered Entergy to include in the bandwidth formula calculation the portion of contra-securitization Accumulated Deferred Income Taxes (ADIT) needed to offset “liberalized depreciation” ADIT associated with securitized assets (that is, securitized asset ADIT or securitization ADIT).<sup>13</sup>

4. On December 17, 2015, the Commission issued Opinion No. 545, which affirmed the Initial Decision on most issues, but also, pertinent to this order, required inclusion in the bandwidth formula calculation of *all* storm-restoration contra-securitization ADIT recorded in Account No. 282, rather than inclusion of only the portion of contra-securitization ADIT that offsets the securitization ADIT, which the Presiding Judge had ordered.<sup>14</sup>

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<sup>9</sup> 16 U.S.C. § 824d (2012).

<sup>10</sup> Opinion No. 545, 153 FERC ¶ 61,303 at P 7.

<sup>11</sup> *Id.* P 10.

<sup>12</sup> *Id.* P 15.

<sup>13</sup> We note that the technical terms used in this proceeding are arguably more daunting and opaque than the actual issues. For an explanation of the source and meaning of securitized asset ADIT (also called securitization ADIT) and contra-securitized asset ADIT (also called contra-securitization ADIT), *see infra* PP 8-13. Additionally, the Commission ultimately concluded that the phrase “liberalized depreciation ADIT on assets that were financed by securitization” is at least a subset of, if not completely synonymous with, securitization ADIT. Rehearing Order, 156 FERC ¶ 61,196 at P 72 n.144. To avoid confusion, in this order, we use the term securitization ADIT, instead of liberalized depreciation ADIT, wherever possible. We also use the term contra-securitization ADIT rather than contra-securitized asset ADIT.

<sup>14</sup> Opinion No. 545, 153 FERC ¶ 61,303 at PP 1, 186-191. The System Agreement expressly required that ADIT amounts recorded in FERC Account 282 be included in the bandwidth formula calculation to the extent they are includable for cost of service purposes. *See Entergy Servs., Inc.*, Opinion No. 518, 139 FERC ¶ 61,105, at PP 84, 88 (2002), *order on reh’g*, 145 FERC ¶ 61,047 (2013).

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5. The Commission denied rehearing of Opinion No. 545, except for the treatment of contra-securitization ADIT.<sup>15</sup> As explained further below, after considering the parties' pleadings, the Initial Decision, and the Commission's determination in Opinion No. 545, the Commission directed exclusion of both securitization ADIT and contra-securitization ADIT from the bandwidth formula calculation.<sup>16</sup> The Commission directed submission of a compliance filing that, among other things, removes securitization ADIT and contra-securitization ADIT from the bandwidth formula calculation.<sup>17</sup> The Commission accepted the compliance filing on November 16, 2017.<sup>18</sup>

6. The Louisiana Commission sought rehearing of the Rehearing Order. The Louisiana Commission originally raised two issues: (1) whether refunds related to the sale/leaseback of the Waterford 3 nuclear plant violate the filed rate doctrine and constitute retroactive ratemaking; and (2) the reasonableness of excluding contra-securitization ADIT but including casualty loss ADIT<sup>19</sup> in the bandwidth formula calculation.<sup>20</sup> The Louisiana Commission subsequently filed a notice of withdrawal of pleadings concerning the Waterford 3 nuclear plant-related refunds.<sup>21</sup>

## **II. Procedural Matter**

7. Pursuant to Rule 216(b)(1) of the Commission's Rules of Practice and Procedure, "[t]he withdrawal of any pleading is effective at the end of 15 days from the date of filing of a notice of withdrawal," provided "no motion in opposition to the notice of withdrawal is filed within that period and the decisional authority does not issue an order disallowing

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<sup>15</sup> Rehearing Order, 156 FERC ¶ 61,196 at PP 86-104. *See infra* P 12 for the text of the ADIT variable of the bandwidth formula.

<sup>16</sup> Rehearing Order, 156 FERC ¶ 61,196 at PP 86-104.

<sup>17</sup> *Id.* P 104.

<sup>18</sup> *Entergy Servs., Inc.*, 161 FERC ¶ 61,169 (2017).

<sup>19</sup> Casualty losses are defined *infra* P 8; ADIT is explained *infra* P 11.

<sup>20</sup> *See* Request for Rehearing on behalf of the Louisiana Public Service Commission, Docket No. ER10-1350-007 (filed Oct. 24, 2016) (Rehearing Request).

<sup>21</sup> Louisiana Commission, Notice of Withdrawal of Pleadings, Docket No. ER10-1350-007 (filed June 18, 2018).

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the withdrawal within that period.”<sup>22</sup> Since there was no opposition to the withdrawal notice and the Commission did not disallow the withdrawal, the Louisiana Commission’s pleadings with respect to the refund issue were withdrawn effective July 3, 2018. Hence the Commission need only address the remaining ADIT issue.

### III. Discussion

#### A. Background

##### 1. Entergy’s Treatment of Securitization ADIT and Contra-Securitization ADIT

8. Between 2005 and 2008, certain Operating Companies incurred substantial costs due to hurricane damage.<sup>23</sup> These Operating Companies had both storm damages, that is, losses to property that were on the books and in the cost of service at the time when the storms occurred (casualty losses)<sup>24</sup> and post-storm damage restoration costs (storm restoration costs).<sup>25</sup> Of these two types of costs, only storm restoration costs were financed through securitization.<sup>26</sup> Securitization is a financing vehicle through which

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<sup>22</sup> 18 C.F.R. § 385.216(b)(1) (2018).

<sup>23</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 64 & n.123.

<sup>24</sup> See Ex. ESI-125, Rory L. Roberts Rebuttal Testimony, at 4-5. Technically, “property loss” is the appropriate term to use to describe these losses for accounting purposes, whereas casualty loss is the appropriate tax term, but, in accordance with prior orders in this proceeding and the parties’ pleadings, we will continue to refer to these storm damage property losses as casualty losses. As the United States Court of Appeals for the Fifth Circuit (Fifth Circuit) explained, for tax purposes, Entergy measures casualty losses by the difference in the value of property immediately before and after the storm. *La. Pub. Serv. Comm’n v. FERC*, 771 F.3d 903, at 918 n.10 (5th Cir. 2014) (*LPSC v. FERC*) (“[T]he proxy that is properly used for tax purposes to represent that differential, since such values are hard to determine, is the cost of repair, such as the ‘internal labor, contracted labor, and materials and supplies used to repair or replace damaged property.’”) (quoting Initial Decision, 148 FERC ¶ 63,015 at P 118). Thus, the court explained, the Presiding Judge “concluded that the storm-related costs are precisely those appropriately used to determine the casualty loss tax deduction.” *Id.*

<sup>25</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 64. These are the securitized costs of rebuilding the property that was damaged in the storm.

<sup>26</sup> *Id.* P 64 & n.124.

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assets are financed by the proceeds of bonds issued by a non-affiliated third-party entity, instead of by the utility.<sup>27</sup> Whereas customers usually pay a return of and on the utility's capital expenditures through inclusion of these assets in depreciation/amortization expense and rate base in the cost of service, customers typically pay for securitized assets by paying their direct financing costs (e.g., debt service on the bonds issued by the non-affiliated third party).<sup>28</sup>

9. First, storm restoration costs. Entergy explained that it recorded capital investments that were made to restore its system after a storm in Account 101 (Electric plant in service).<sup>29</sup> Since Entergy did not finance the capital investments that were securitized, the value of the securitized asset was offset by an equal negative or "contra"-securitized asset recorded in a sub-account of Account 101.<sup>30</sup> Contra-asset and contra-depreciation accounts were created to offset capital expenditures and associated accumulated depreciation for securitized storm restoration costs to reflect properly the correct amount of plant in service for ratemaking purposes.<sup>31</sup> The contra-securitized asset was created to "zero out" the costs of the securitized asset because it would be inappropriate for the utility to charge its customers for costs that the utility did not itself incur.<sup>32</sup> Entergy stated that, through the creation of the contra-securitized asset, the

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<sup>27</sup> *Id.*; see Entergy Initial Post-Hearing Br., Docket No. ER10-1350-001, at 32 (filed May 16, 2014) (Entergy Initial Post-Hearing Br.).

<sup>28</sup> Entergy Initial Post-Hearing Br. at 32.

<sup>29</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 65. Storm restoration costs other than capital that are financed by securitization are recorded in Account 182.3. Entergy Initial Post-Hearing Br. at 32 n.91.

<sup>30</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 65 & n.128.

<sup>31</sup> Entergy Initial Post-Hearing Br. at 32.

<sup>32</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 65 & n.129. As Entergy explained:

[I]f a group of retail customers is responsible for the service of securitization bonds, those customers should not at the same time be responsible for providing a return of and on the assets financed by securitization. On the other hand, there may be other customers, such as wholesale customers, who are not responsible for service on the securitization bonds, who should rightfully provide a return of and on the assets financed by the utility. By the use of securitization

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securitized asset was effectively removed from the Operating Company's cost of service before the bandwidth formula calculation was made, and the value of the securitized asset was "zeroed out" for bandwidth formula calculation purposes.<sup>33</sup>

10. In addition to the contra account for electric plant in service, Account 101, accounts were also created to zero out the Accumulated Depreciation in Account 108 and the Depreciation Expense in Account 403 that are associated with the securitized asset.<sup>34</sup> The contra-entries to Accounts 101, 108, and 403 ensure that storm restoration costs that were financed by securitization are zeroed out of the cost of service for bandwidth formula calculation purposes.<sup>35</sup> All parties agreed that securitized costs (that is, securitized assets, the associated accumulated depreciation and depreciation expense, and the related tax effects discussed below) should be zeroed out from the bandwidth formula calculation.<sup>36</sup>

11. Both the securitized asset and the contra-securitized asset have associated ADIT.<sup>37</sup> As Entergy explained, the tax associated with the difference between book income and income per the tax return is recorded as a deferred tax expense and is reflected on the company's balance sheets as ADIT.<sup>38</sup> Any asset or contra-asset that creates a difference between book income and income per the tax return will give rise to a deferred tax expense that is accumulated on the balance sheet as ADIT.<sup>39</sup> The ADIT associated with the securitized asset is securitized asset ADIT (or securitization ADIT), and the

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accounting, the utility may accurately identify the net rate base for which either set of customers should be responsible.

Entergy Initial Post-Hearing Br. at 32-33.

<sup>33</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 65 & n.130.

<sup>34</sup> *Id.* P 66 & n.131.

<sup>35</sup> *Id.* P 66 & n.132.

<sup>36</sup> Opinion No. 545, 153 FERC ¶ 61,303 at P 161.

<sup>37</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 67 & n.133.

<sup>38</sup> *Id.* P 67 & n.134.

<sup>39</sup> *Id.* P 67; Initial Decision, 148 FERC ¶ 63,015 at P 239 (stating that "deferred tax saving is a timing difference that generates ADIT").

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ADIT associated with the contra-asset is contra-securitized asset ADIT (or contra-securitization ADIT).

12. The issue of contra-securitization ADIT evolved from the application over time of a provision in the bandwidth formula that defines the ADIT variable of the bandwidth formula.<sup>40</sup> ADIT is defined in the bandwidth formula as:

ADIT = Net Accumulated Deferred Income Taxes (ADIT) recorded in FERC Accounts 190, 281 and 282 (as reduced by amounts not generally and properly includable for FERC cost of service purposes, including but not limited to, SFAS 109 ADIT amounts and ADIT amounts arising from retail ratemaking decisions) plus Accumulated Deferred Income Tax Credit-3% portion only recorded in FERC Account 255[.]<sup>41</sup>

13. The contra-securitization ADIT at issue here is related to storm restoration costs that were financed by securitization or other alternative financing.<sup>42</sup> While Entergy included a “relatively small” amount of securitization ADIT in the fourth annual bandwidth formula calculation, it did not include any contra-securitization ADIT.<sup>43</sup> Entergy explained that, while the securitized asset and the contra-securitized asset zero each other out, the ADIT associated with the securitized asset and the contra-securitized asset do not zero each other out.<sup>44</sup> Rather, the contra-securitization ADIT recorded on the Operating Companies’ books is roughly two to three times larger than the securitization

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<sup>40</sup> Initial Decision, 148 FERC ¶ 63,015 at P 233.

<sup>41</sup> Entergy Arkansas, Inc., Entergy System Agreement, Service Schedule MSS-3 (4.0.0), § 30.12. ADIT for all of an Operating Company’s electric plant in service (production, transmission, and general plant) is allocated between production plant in service and all other electric plant in service, and the portion of ADIT allocated to production plant in service is subtracted from that Operating Company’s rate base in the bandwidth formula. Initial Decision, 148 FERC ¶ 63,015 at P 233 & nn.519-520.

<sup>42</sup> Rehearing Order, 156 FERC ¶ 61,196 at PP 64-65; *see also* Entergy Initial Post-Hearing Br. at 33.

<sup>43</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 68 & n.136.

<sup>44</sup> Initial Decision, 148 FERC ¶ 63,015 at P 68 & n.137.



ADIT amounts, depending on the Operating Company.<sup>45</sup> Entergy explained that this occurs because the tax basis, which impacts the ADIT calculation, is not the same for the securitized asset and the contra-securitized asset.<sup>46</sup> The tax basis Entergy used for the securitized asset is the value of the physical plant that was securitized.<sup>47</sup> In contrast, Entergy set the basis for the contra-securitized asset at zero because “it cost Entergy nothing to create the contra-asset.”<sup>48</sup> Consequently, the difference in the two bases results in the securitization ADIT and the contra-securitization ADIT not zeroing each other out.<sup>49</sup> Including the entire amount of contra-securitization ADIT (a negative amount) in the bandwidth formula calculation would ultimately increase Entergy Arkansas’ and Entergy New Orleans’ bandwidth payments (or decrease their respective receipts from other Operating Companies) because Entergy Arkansas and Entergy New Orleans have no contra-securitization ADIT entries, whereas bandwidth payment recipients Entergy Louisiana, Entergy Gulf States, and Entergy Texas have such entries.<sup>50</sup>

14. Next, casualty losses. Casualty losses (losses to property on the books and in the cost of service at the time of the storm)—are includable in the cost of service and in the bandwidth formula.<sup>51</sup> Casualty losses also have associated ADIT, casualty loss ADIT. In the third bandwidth proceeding, the Presiding Judge ruled that casualty loss ADIT recorded in bandwidth eligible accounts should be included in the bandwidth formula calculation.<sup>52</sup> The Commission affirmed this ruling and the Fifth Circuit upheld this

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<sup>45</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 89 & n.179 (citing Exs. LC-160, LC-161, and LC-162; Ex. 130 at Workpaper Nos. 4.2.4, 4.3.3, and 4.6.3; Entergy Rehearing Request at 9; Trial Staff Br. on Exceptions at 17; Louisiana Commission Pre-Trial Br. at 20).

<sup>46</sup> *Id.* P 68 & n.139.

<sup>47</sup> *Id.* P 68 & n.140.

<sup>48</sup> *Id.* P 69 & n.141.

<sup>49</sup> *Id.* P 89.

<sup>50</sup> Initial Decision, 148 FERC ¶ 63,015 at P 243.

<sup>51</sup> *LPSC v. FERC*, 771 F.3d at 918 (finding that storm damage costs included in bandwidth eligible accounts are includable for cost of service purposes) (citing Opinion No. 518, 139 FERC ¶ 61,105 at PP 84, 88).

<sup>52</sup> *Id.* at 907 (citing *Entergy Servs., Inc.*, 132 FERC ¶ 63,005, at PP 275-77 (2010)).

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determination in *LPSC v. FERC*.<sup>53</sup> The Fifth Circuit affirmed that, because storm damage costs included in bandwidth eligible accounts are includable for cost of service purposes and casualty loss ADIT amounts are directly attributable to storm damages, casualty loss ADIT should also be included in the bandwidth formula calculation.<sup>54</sup>

15. In the third bandwidth proceeding, the Louisiana Commission argued in the alternative that Entergy should not have included casualty loss ADIT in the bandwidth formula calculation; but, if casualty loss ADIT is included in the bandwidth formula calculation, then contra-securitization ADIT also should be included in the calculation because, according to the Louisiana Commission, it was meant to offset casualty loss ADIT.<sup>55</sup> However, the Commission “demurred on this point” in the third bandwidth proceeding because the Louisiana Commission had “not explained how [contra-securitization ADIT] amounts arise or demonstrated why they are ‘generally and properly includable for FERC cost of service purposes.’”<sup>56</sup>

16. In this fourth annual bandwidth proceeding, Entergy included securitization ADIT in the bandwidth formula calculation for the first time, but not contra-securitization ADIT. The Louisiana Commission and Trial Staff advocated including contra-securitization ADIT in the bandwidth formula calculation.<sup>57</sup> Entergy and the Arkansas Public Service Commission opposed including it.<sup>58</sup>

## 2. Initial Decision

17. The Presiding Judge traced the history of ADIT in the bandwidth formula, explaining that Entergy in the first and all subsequent bandwidth proceedings took the position that some ADIT amounts should not be included in the Operating Companies’ cost of service for purposes of the bandwidth formula calculation.<sup>59</sup> Entergy interpreted the ADIT variable in the bandwidth formula to allow exclusion from the bandwidth formula calculation of certain entries that Entergy deemed to be not “generally and

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<sup>53</sup> *Id.* at 918-919.

<sup>54</sup> *Id.* at 918 (citations omitted).

<sup>55</sup> Initial Decision, 148 FERC ¶ 63,015 at P 244 & n.541.

<sup>56</sup> *Id.* P 244 & n.542 (quoting Opinion No. 518, 139 FERC ¶ 61,105 at P 89).

<sup>57</sup> *Id.* PP 230-232, 254.

<sup>58</sup> *Id.* PP 222-224, 229.

<sup>59</sup> *Id.* P 237.

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properly includable for FERC cost of service purposes.”<sup>60</sup> In the first and third bandwidth proceedings, however, the Commission held that some ADIT entries should be included in the ADIT variable in the bandwidth formula.<sup>61</sup> Pertinent to this order, in the third bandwidth proceeding, the Commission required Entergy to include in the bandwidth formula calculation the ADIT in Account 282 that was generated by casualty losses (that is, casualty loss ADIT),<sup>62</sup> which, as noted above, the Fifth Circuit upheld.

18. In this fourth annual bandwidth proceeding, the Louisiana Commission originally maintained, as it had in the third bandwidth proceeding, that if casualty loss ADIT continues to be included in the bandwidth formula calculation, then Entergy should also include contra-securitization ADIT (on the books of Entergy Louisiana, Entergy Gulf States, and Entergy Texas) to offset those casualty loss ADIT entries.<sup>63</sup>

19. The Presiding Judge noted that, at the post-hearing briefing phase of the proceeding, however, the Louisiana Commission “changed course away from casualty loss ADIT as its means for incorporating contra-securitization ADIT into the bandwidth [formula] calculation.”<sup>64</sup> The Presiding Judge explained that the Louisiana Commission instead turned to “liberalized depreciation”<sup>65</sup>—the difference between accelerated depreciation that is taken for tax purposes and straight-line depreciation that is charged to ratepayers<sup>66</sup>—as the vehicle for introducing contra-securitization ADIT into the calculation.<sup>67</sup>

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<sup>60</sup> *Id.* P 235 & n.521 (discussing definition of ADIT in section 30.12 of Service Schedule MSS-3 of the System Agreement).

<sup>61</sup> *Id.* P 238.

<sup>62</sup> *Id.* P 238 & n.527 (citing *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at P 234 (2012); Opinion No. 518, 139 FERC ¶ 61,105 at P 88).

<sup>63</sup> Initial Decision, 148 FERC ¶ 63,015 at P 250.

<sup>64</sup> *Id.* P 253.

<sup>65</sup> As noted above, *see supra* note 13, “liberalized depreciation” is essentially synonymous with securitization ADIT.

<sup>66</sup> Initial Decision, 148 FERC ¶ 63,015 at P 253 & n.558.

<sup>67</sup> *Id.* P 253.

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20. The Presiding Judge stated that: “Entergy has insisted without dispute that the casualty loss ADIT entries that the [Louisiana Commission] originally pointed to are not, in fact, the securitized assets that correspond to the contra-securitization ADIT entries in Account 282 at all.”<sup>68</sup> Noting that “Entergy’s tax expert, [Rory L.] Roberts, testified at the hearing that casualty loss tax deductions are not securitized,”<sup>69</sup> the Presiding Judge concluded that the casualty loss ADIT that is included in the bandwidth formula calculation *cannot* be the corresponding entry to the contra-securitization ADIT amounts in question.<sup>70</sup>

21. Ultimately, the Presiding Judge ruled that “the only dispositive criterion” for including or excluding an ADIT item from the bandwidth formula calculation is whether that ADIT item is “generally and properly includable for FERC cost of service purposes.”<sup>71</sup> Noting that the Louisiana Commission and Trial Staff had shown that Entergy’s own methodology requires ADIT generated by securitized assets to be zeroed out (of the cost of service) by contra-entries,<sup>72</sup> the Presiding Judge reasoned that securitization ADIT is not “generally and properly includible in the bandwidth [formula] calculation.”<sup>73</sup> The Presiding Judge therefore concluded that the “just and reasonable solution” is to offset those securitization ADIT inputs in the bandwidth formula calculation with equal contra inputs that are deducted from contra-securitization federal ADIT accounts on Operating Companies’ books, and to include that contra-amount in the bandwidth formula calculation.<sup>74</sup> The Presiding Judge noted that the total amount of contra-securitization ADIT that must be moved into the bandwidth formula calculation of each affected Operating Company is less than the total amount of contra-securitization ADIT.<sup>75</sup> Consequently, the Presiding Judge required inclusion in the bandwidth formula

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<sup>68</sup> *Id.* P 258.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* P 265 & n.579 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 85; Opinion No. 514, 137 FERC ¶ 61,029 at P 117 n.193; Opinion No. 505, 130 FERC ¶ 61,023 at P 233).

<sup>72</sup> *Id.* P 265.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* P 266.

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calculation of only enough contra-securitization ADIT to offset the securitization ADIT (rather than the entire amount of contra-securitization ADIT recorded in bandwidth eligible accounts) in order to zero out the securitization ADIT.<sup>76</sup> This approach effectively ensured that the securitization ADIT and the contra-securitization ADIT would not impact bandwidth equalization payments among the Operating Companies.

### 3. Opinion No. 545

22. In Opinion No. 545, the Commission affirmed the Presiding Judge's finding that contra-securitization ADIT should be included in the bandwidth formula calculation, but required inclusion of *all* contra-securitization ADIT in the relevant accounts.<sup>77</sup> The Commission determined that it was necessary to include all the contra-securitization ADIT in the relevant accounts in order to comply with the bandwidth formula (section 30.12 of Service Schedule MSS-3 of the System Agreement), which requires that the bandwidth formula input for ADIT be computed as *amounts recorded in FERC Accounts 190, 281, and 282*, as reduced by amounts not generally and properly includable for FERC cost of service purposes.<sup>78</sup> The Commission determined that all amounts recorded in the specific bandwidth eligible accounts must be included in the bandwidth formula calculation, as the formula does not expressly provide for inclusion of portions of amounts recorded in those accounts.<sup>79</sup>

23. The Commission also rejected Entergy's proposed exclusion of securitization ADIT and the corresponding contra-securitization ADIT from the bandwidth formula calculation:

[R]emoving securitized assets from ADIT accounts would cause those accounts to be incongruous with other elements of the formula for which securitized assets are zeroed out with contra-securitization. To consistently apply Entergy's proposal would require comprehensively removing all securitized elements and corresponding contra-securitization from the

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<sup>76</sup> *Id.*

<sup>77</sup> Opinion No. 545, 153 FERC ¶ 61,303 at P 186.

<sup>78</sup> *Id.* P 191.

<sup>79</sup> *Id.* PP 189-191; *see also* Rehearing Order, 156 FERC ¶ 61,196 at P 96 (“On its face, the language of the ADIT component of the bandwidth formula does not explicitly provide for including portions, rather than the entire amount, of ADIT costs associated with particular assets in the various accounts.”).

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bandwidth formula calculation, which is beyond the scope of this proceeding.<sup>80</sup>

24. As to casualty loss ADIT, the Commission affirmed the Presiding Judge's finding that, while Entergy should have had Commission approval to move casualty loss ADIT to a bandwidth eligible account, it was nevertheless appropriate to include casualty loss ADIT in the bandwidth formula calculation.<sup>81</sup>

#### 4. Rehearing Order

25. As to casualty loss ADIT, the Commission denied rehearing, affirming inclusion of casualty loss ADIT in a bandwidth eligible account and in the bandwidth formula calculation.<sup>82</sup> However, the Commission granted rehearing on the contra-securitization ADIT issue, requiring exclusion of both securitization ADIT and contra-securitization ADIT<sup>83</sup> because they are not "properly includable for FERC cost of service purposes," per the bandwidth formula.<sup>84</sup> Citing *LPSC v. FERC*,<sup>85</sup> the Commission stated that securitized assets, which were financed by a third party, are not includable in Entergy's cost of service or in the bandwidth formula calculation.<sup>86</sup> The Commission added that "everyone agrees that securitized assets and their related costs do not belong in the bandwidth [formula] calculation."<sup>87</sup> The Commission reasoned that "[b]ecause the securitized asset is not includable in the utility's cost of service, neither the securitization ADIT nor the contra-securitization ADIT should be included in the bandwidth [formula]

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<sup>80</sup> Opinion No. 545, 153 FERC ¶ 61,303 at P 191.

<sup>81</sup> *Id.* PP 77 & n.123, 80-81.

<sup>82</sup> Rehearing Order, 156 FERC ¶ 61,195 at PP 110-113.

<sup>83</sup> *Id.* PP 86-104.

<sup>84</sup> *Id.* P 86 & n.174 (citing section 30.12 of Service Schedule MSS-3 of the System Agreement).

<sup>85</sup> *LPSC v. FERC*, 771 F.3d at 919 & n.12.

<sup>86</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 87 & n.175 (citing *LPSC v. FERC*, 771 F.3d at 919 & n.12 (recognizing that securitized costs are not includable in the cost of service)).

<sup>87</sup> *Id.* P 100.

(continued ...)

calculation.”<sup>88</sup> Accordingly, the Commission framed the question as *how* to remove securitization ADIT from the bandwidth formula calculation.<sup>89</sup> The Commission explained that securitized assets recorded in plant accounts have contra-securitized assets<sup>90</sup> that zero each other out so they are not included in the cost of service or the bandwidth formula.<sup>91</sup> However, as discussed above, unlike these accounts, securitization ADIT and contra-securitization ADIT do not zero each other out.<sup>92</sup>

26. The Commission stated that, although the Louisiana Commission claimed that contra-securitization ADIT was created to remove securitization ADIT from the Operating Companies’ books, the contra-securitization ADIT did not in fact zero out securitization ADIT because the tax bases Entergy used for ADIT calculations were not the same for the securitized and contra-securitized asset.<sup>93</sup> Consequently, the Commission required exclusion of both securitization ADIT and contra-securitization ADIT, as suggested by Entergy in its post-hearing brief.<sup>94</sup>

27. The Commission explained that, in Opinion No. 545, it had rejected Entergy’s proposal to remove both securitization ADIT and contra-securitization ADIT from the bandwidth formula calculation as beyond the scope of this proceeding because it had understood Entergy’s proposal to require a sweeping change in the way securitized assets are treated in the bandwidth formula calculation.<sup>95</sup> Also, the use of contra-accounting, generally, was not set for hearing.<sup>96</sup> Upon re-examining the issue, the Commission determined that Entergy’s proposal could be narrowly tailored to the securitization ADIT

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *E.g.*, Account 101 (plant in service), Account 108 (accumulated depreciation), and Account 403 (depreciation expenses) all have contra entries. *Id.* PP 65-66.

<sup>91</sup> *Id.* P 88.

<sup>92</sup> *Id.* P 89.

<sup>93</sup> *Id.* PP 90, 92.

<sup>94</sup> *Id.* P 101.

<sup>95</sup> *Id.* P 102.

<sup>96</sup> *Id.*

(continued ...)

costs alone.<sup>97</sup> The Commission further found that excluding both securitization ADIT and contra-securitization ADIT from the bandwidth formula calculation is consistent with the language of the bandwidth formula, which only allows inclusion in the bandwidth formula calculation of ADIT that is “generally and properly includable for cost of service purposes.”<sup>98</sup> Thus, to reiterate, the Commission concluded that, since the securitized assets, which are financed by a third party, are not includable in Entergy’s cost of service or in the bandwidth formula calculation, the securitization ADIT and the contra-securitization ADIT associated with such assets are not “properly includable for FERC cost of service purposes,”<sup>99</sup> per the bandwidth formula, and thus must be removed from the bandwidth formula calculation.<sup>100</sup>

## 5. Rehearing Request

28. On rehearing of the Rehearing Order, the Louisiana Commission argues that it is arbitrary and capricious to provide different treatment to two types of ADIT that arise from the same storm costs that were securitized.<sup>101</sup> Specifically, the Louisiana Commission contends that it is arbitrary and inconsistent to include casualty loss ADIT in the bandwidth formula calculation but exclude contra-securitization ADIT from the same bandwidth formula calculation because they both arise from the same securitized storm costs.<sup>102</sup> The Louisiana Commission adds that, in reaching its determination, the Commission relied on the incorrect premise that securitized costs are not normally reflected in FERC cost of service tariffs.<sup>103</sup> Finally, the Louisiana Commission contends that the Commission’s ADIT ruling is unjust and unreasonable and unduly discriminatory because the casualty loss ADIT resulting from securitized storm costs reduces the rate base of each affected company impacted by storms, but the partially-offsetting contra-

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.* P 103 & n.201 (quoting section 30.12 of Service Schedule MSS-3 of the System Agreement).

<sup>99</sup> *Id.* PP 86 & n.174 (citing section 30.12 of Service Schedule MSS-3 of the System Agreement), 103 & n.201 (same).

<sup>100</sup> *Id.* P 86 & n.175 (citing *LPSC v. FERC*, 771 F.3d at 919 & n.12).

<sup>101</sup> Rehearing Request at 1, 20.

<sup>102</sup> *Id.* at 20.

<sup>103</sup> *Id.* at 3-4.

(continued ...)



securitization ADIT is not reflected in that calculation.<sup>104</sup> The Louisiana Commission argues that there is no reason that ADIT related to securitized costs should be excluded from the bandwidth formula calculation, especially when it partially offsets casualty loss ADIT that is based on the same costs.<sup>105</sup>

## **B. Excluding Contra-Securitization ADIT**

### **1. Rehearing Request**

29. The Louisiana Commission asserts that it is inconsistent and arbitrary for the Commission to rule that (a) casualty loss ADIT is includable in the bandwidth formula calculation because it is based on storm costs (that were securitized), but (b) contra-securitization ADIT based on the same securitized storm costs is not includable in the bandwidth formula calculation.<sup>106</sup> The Louisiana Commission states that, when an administrative agency's order contains unexplained inconsistencies, it is arbitrary and reversible on appeal.<sup>107</sup>

30. The Louisiana Commission explains that, in the third bandwidth proceeding (Opinion No. 518), the Commission ruled that casualty loss ADIT is properly includable in the bandwidth formula calculation because the storm costs that comprise the casualty loss are included in FERC cost of service accounts, and this ruling was affirmed by the Fifth Circuit, as noted above.<sup>108</sup> The Louisiana Commission states that the Commission reaffirmed its decision on rehearing because "the cause of the casualty loss is directly attributable to expenses incurred due to storm damages."<sup>109</sup> The Louisiana Commission states that, for three of the Operating Companies, "most" of these same storm damages were securitized, and the storm cost amounts included in FERC accounts are offset

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<sup>104</sup> *Id.* at 4.

<sup>105</sup> *Id.* at 28.

<sup>106</sup> *Id.* at 20.

<sup>107</sup> *Id.* at 25 (citing *General Chemical Corp. v. United States*, 817 F.2d 844 (D.C. Cir. 1987); *Air Line Pilots Ass'n v. U.S. Dep't of Transp.*, 3 F.3d 449, 452-53 (D.C. Cir. 1993); *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1153-54 (D.C. Cir. 2011)).

<sup>108</sup> *Id.* at 21, 25 (citing Opinion No. 518, 139 FERC ¶ 61,105 at P 88; *LPSC v. FERC*, 771 F.3d at 918).

<sup>109</sup> *Id.* at 20-21 (citing *Entergy Servs., Inc.*, 145 FERC ¶ 61,047 at P 24).

(continued ...)

by contra-securitization entries included in the same accounts.<sup>110</sup> The Louisiana Commission asserts that it is inconsistent and arbitrary to exclude a category of ADIT that is based on securitized storm costs, but include another category of ADIT that is based on the same storm costs (that were later securitized).<sup>111</sup>

31. Noting that the record on storm costs was not well-developed in the third bandwidth proceeding, the Louisiana Commission states that, in this fourth annual bandwidth proceeding, Entergy drew a distinction between storm costs and casualty losses affecting pre-storm property.<sup>112</sup> The Louisiana Commission states that it argued that this distinction eliminated the justification for including casualty loss ADIT in the bandwidth formula calculation, but the Presiding Judge and the Commission ruled that this distinction made no difference.<sup>113</sup> The Louisiana Commission reasons that, therefore, the basis for including casualty loss ADIT in the bandwidth formula calculation is still that it was caused by storm losses booked in FERC cost of service accounts.<sup>114</sup>

32. The Louisiana Commission argues that the record in this case showed that the same storm costs that were used to determine the casualty losses were securitized by three of the Operating Companies.<sup>115</sup> Thus, according to the Louisiana Commission, the positive amounts entering FERC cost of service accounts are offset by contra amounts entering the same accounts.<sup>116</sup> The Louisiana Commission states that the

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<sup>110</sup> *Id.* at 21.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 21-22.

<sup>113</sup> *Id.* at 22 (citing Initial Decision, 148 FERC ¶ 63,015 at P 118; Opinion No. 545, 153 FERC ¶ 61,303 at P 82 (finding the apparent discrepancy not material); Rehearing Order, 156 FERC ¶ 61,196 at PP 111-12).

<sup>114</sup> *Id.* at 22.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

contra-securitization ADIT is related to these same storm costs and it is inconsistent to exclude any of it from the bandwidth formula calculation.<sup>117</sup>

33. The Louisiana Commission states that the contra-securitization ADIT in 2009 was not as significant as the casualty loss ADIT.<sup>118</sup> The Louisiana Commission explains that contra-securitization ADIT relates only to those storm costs and other losses that were securitized, not all of “these” (presumably casualty losses) costs.<sup>119</sup> But, the Louisiana Commission states, the casualty loss ADIT calculation includes a large portion of securitized storm costs.<sup>120</sup> The Louisiana Commission adds that the bases for both the casualty loss ADIT and contra-securitization ADIT entries are recorded in FERC cost of service accounts.<sup>121</sup>

34. The Louisiana Commission asserts that there is no dispute that the hurricane-induced storm costs were securitized by Entergy Louisiana, Entergy Gulf States, and Entergy Texas.<sup>122</sup> The Louisiana Commission reiterates that these securitized storm costs were the basis for casualty loss calculation and constitute the securitized losses.<sup>123</sup>

35. The Louisiana Commission adds that Entergy witness Rory L. Roberts confirmed that the casualty loss ADIT is related primarily to the cost of storms and that contra-securitization ADIT relates to the storm costs:

Q: It’s your understanding that the costs that were securitized in Louisiana were all of the restoration costs associated with the storms, including capital costs,

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.* (citing Ex. ESI-103 at 107 (Entergy Louisiana Casualty Loss ADIT-Fed (\$190,465,289); Entergy Louisiana Contra-Securitization ADIT-FED (\$104,083,036)).

<sup>119</sup> *Id.* We note that, while the meaning of “these” costs is unclear, in context, it appears to refer to casualty losses.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> The Louisiana Commission explains how the Operating Companies created contra-plant, contra-accumulated depreciation, and contra-ADIT subaccounts to exactly offset the amounts that were sold and securitized, but still left the securitized amounts on the Operating Companies’ accounting books in the plant in service, accumulated depreciation, and ADIT accounts. *See id.* at 22-23 (citing Ex. LC-101 (Kollen) at 19-20).

(continued ...)

operation and maintenance costs, removal costs, and any other associated costs, correct?

A: Yes.<sup>[124]</sup>

36. The Louisiana Commission states that, thus, the *same costs* that are the basis for including casualty loss ADIT in the bandwidth formula calculation were securitized, giving rise to contra-securitization ADIT.<sup>125</sup> The Louisiana Commission argues that, given this relationship, it is arbitrary to treat inconsistently ADIT categories that proceed from the same source.<sup>126</sup>

37. The Louisiana Commission states that, when the Louisiana Commission initially linked the casualty loss ADIT to the contra-securitization ADIT in this case, Entergy responded by arguing that the casualty loss ADIT was not caused by storm losses, but was simply a tax calculation reflecting a loss of fair market value of assets.<sup>127</sup> The Louisiana Commission states that this was Entergy's distinction and the Louisiana Commission asserts this distinction conflicted with Entergy's evidence in the third bandwidth filing, Docket No. ER09-1224, so the Louisiana Commission asked the Commission to reconsider the ruling concerning the casualty loss ADIT.<sup>128</sup> The Louisiana Commission states that the Commission has now ruled that Entergy's distinction makes no difference, such as, in the Rehearing Order when the Commission stated that the "includability of casualty loss ADIT in the bandwidth formula calculation is contingent on casualty losses (or rather storm costs on which the casualty losses are based) being included in bandwidth eligible accounts."<sup>129</sup>

38. The Louisiana Commission argues that the Rehearing Order thus eliminated the only asserted basis for distinguishing casualty loss ADIT and contra-securitization ADIT.<sup>130</sup> The Louisiana Commission states that FERC included casualty loss ADIT in the bandwidth formula calculation because it was based on storm costs. The storm

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<sup>124</sup> *Id.* at 23 (citing Tr. at 231-32).

<sup>125</sup> *Id.* at 23.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 23-24.

<sup>128</sup> *Id.* at 24 (Opinion No. 545, 153 FERC ¶ 61,303 at P 82).

<sup>129</sup> *Id.* (citing Rehearing Order, 156 FERC ¶ 61,196 at P 112).

<sup>130</sup> *Id.* at 24.

(continued ...)

costs were securitized by three of the Operating Companies. The Louisiana Commission contends that, if securitization is a reason to remove expenses and ADIT, then the casualty loss ADIT for these companies should also be removed. The Louisiana Commission reasons that, if the casualty loss ADIT is includable in the bandwidth formula calculation because it was based on storm costs that are includable in the bandwidth formula calculation, then the contra-securitization ADIT should be included because it is based on the same storm costs—which were securitized—and the contra entries should enter the bandwidth formula calculation.<sup>131</sup>

## 2. Commission Determination

39. We deny rehearing. Contrary to the Louisiana Commission’s argument, it is reasonable to include casualty loss ADIT in the bandwidth formula calculation but exclude contra-securitization ADIT from the same calculation. Casualty losses are included in the Operating Companies’ cost of service because the Operating Companies incurred expenses due to storm damage to property that was on the books at the time of the storms.<sup>132</sup> Because casualty loss ADIT is directly related to casualty losses, which are included in the bandwidth formula calculation, pursuant to the ADIT variable in the bandwidth formula, casualty loss ADIT is includable in the bandwidth formula calculation.<sup>133</sup> In stark contrast, securitized assets are not included in the Operating Companies’ cost of service and, thus, contra accounts were created to remove them, resulting in the exclusion of securitized assets from the bandwidth formula calculation.<sup>134</sup> Contra-securitization ADIT is computed on the contra-securitized assets, which were created to remove securitized assets from the cost of service and serve to “zero out” securitized assets in the bandwidth formula calculation such that they do not affect the transfer of equalization payments among the Operating Companies under the bandwidth formula.<sup>135</sup> Thus, because the securitized assets are not includable in cost of service in

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<sup>131</sup> *Id.*

<sup>132</sup> *See LPSC v. FERC*, 771 F.3d at 903 (stating that “[t]o the extent storm damage costs are amortized to expense accounts included in the bandwidth formula calculation (production storm damage expense), such costs are included in a [FERC] cost of service rate”) (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 234).

<sup>133</sup> *Id.* at 918.

<sup>134</sup> *See supra* P 9 and notes 31, 32, 123.

<sup>135</sup> Rehearing Order, 156 FERC ¶ 61,196 at PP 88-96.

(continued ...)

the bandwidth formula, per the ADIT variable of the bandwidth formula, contra-securitization ADIT is not includable in the bandwidth formula calculation.

40. On rehearing of the Rehearing Order, the Louisiana Commission reprises a contention it had abandoned at the post-hearing briefing stage of this proceeding, before issuance of the Initial Decision.<sup>136</sup> At that time, the Louisiana Commission maintained, as it had in the third bandwidth proceeding, that if casualty loss ADIT continues to be included in the bandwidth formula calculation, then Entergy should also include the contra-securitization ADIT entries on the books of Entergy Gulf States, Entergy Louisiana, and Entergy Texas in order to offset those casualty loss ADIT entries.<sup>137</sup>

41. The Presiding Judge found, however, that contra-securitization ADIT may not be used to offset casualty loss ADIT.<sup>138</sup> While both casualty loss ADIT and contra-securitization ADIT are associated with storm costs,<sup>139</sup> they are not the result of each other.<sup>140</sup> The casualty loss ADIT is associated with the investment on the Operating Company's books at the time of the storm, whereas the contra-securitization ADIT is associated with costs that were incurred after the storm, and therefore do not offset the casualty loss ADIT.<sup>141</sup> Entergy's tax expert, Rory L. Roberts, testified at the hearing that casualty loss tax deductions were not securitized.<sup>142</sup> Specifically, the casualty loss entries of Entergy Gulf States, Entergy Louisiana, and Entergy Texas that are included in the bandwidth formula calculation were not securitized and therefore did not give rise to the

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<sup>136</sup> Initial Decision, 148 FERC ¶ 63,015 at P 253.

<sup>137</sup> *Id.* P 250 & n.550 (citing Ex. LC-101 at 18:16-22 (Kollen Dir. and Ans. Test.)).

<sup>138</sup> *Id.* P 258.

<sup>139</sup> *Id.* P 251 & n.553.

<sup>140</sup> *Id.* P 251 & n.554 (citing Ex. ESI-113 at 4:20-22).

<sup>141</sup> *Id.* P 251 & n.555 (citing Entergy Initial Post-Hearing Br. at 33; Ex. ESI-113 at 4:18-5:13).

<sup>142</sup> *Id.* P 258 & n.569 (citing Tr. at 225:9-15 (Roberts)).

contra-securitization ADIT entries the Louisiana Commission singled out.<sup>143</sup> As Entergy insisted without dispute, the casualty loss ADIT entries that the Louisiana Commission pointed to are not, in fact, the securitized assets that correspond to the contra-securitization ADIT entries in Account 282.<sup>144</sup> The Operating Companies did not securitize casualty losses as they did the other storm restoration costs that were incurred after the hurricanes.<sup>145</sup> Entergy explained that the storm restoration costs were financed with proceeds from securitization (that is, not financed by the Operating Companies), and through contra-accounting, netted to zero for the purpose of the bandwidth formula calculation.<sup>146</sup> Because the securitized storm restoration costs—the securitized assets—were netted from the cost of service in this bandwidth formula calculation, the associated contra-securitization ADIT is not generally and properly includable for FERC cost of service purposes and should not be included in the bandwidth formula calculation.<sup>147</sup> Therefore, Entergy reasonably excluded contra-securitization ADIT from the bandwidth formula calculation.

42. We agree with the Presiding Judge’s determination that “the casualty loss ADIT that is included in the bandwidth [formula] calculation *cannot* be the corresponding entry to the contra-securitization ADIT[.]”<sup>148</sup> While both casualty loss ADIT and contra-securitization ADIT are related to storm costs, they are not the result of one another and are not based on the same underlying category of assets.<sup>149</sup> Specifically, the casualty loss ADIT is associated with damage to the investment on the Operating Companies’ books at the time of the storm, and these casualty losses were not securitized. In contrast, contra-

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<sup>143</sup> *Id.* P 252 & n.551 (Entergy Initial Post-Hearing Br. at 33-34). Indeed, the Presiding Judge struck portions of pre-filed testimony that failed to support the Louisiana Commission’s assertion that “similar” contra entries were made to any casualty loss account that would also generate a corresponding contra-securitization ADIT entry. *See* Order on Strike Motion, Docket No. ER10-1350-001, at PP 12-16 (Feb. 27, 2014).

<sup>144</sup> Initial Decision, 148 FERC ¶ 63,015 at P 258 & n.568 (citing Entergy Initial Post-Hearing Br. at 33-34; Ex. ESI-113 at 4:9-5:13 (Peters Reb. Test.)).

<sup>145</sup> *Id.* P 251 & n.552 (citing Entergy Initial Post-Hearing Br. at 33; Ex. ESI-125 at 5:13-20 (Roberts Reb. Test.)).

<sup>146</sup> *Id.*

<sup>147</sup> Entergy Initial Post-Hearing Br. at 33.

<sup>148</sup> Initial Decision, 148 FERC ¶ 63,015 at P 258.

<sup>149</sup> *Id.*

(continued ...)

securitization ADIT arises from securitized storm restoration costs. As the Commission stated in the Rehearing Order:

According to Entergy, casualty loss ADIT arising from storm costs is associated with the investment on the Operating Company's books at the time of the storm, whereas contra-securitization ADIT entries arising from storm costs are associated with costs that were incurred after the storm, and thus constitute different types of costs that do not offset the casualty loss ADIT.<sup>[150]</sup>

43. Further, casualty loss ADIT and contra-securitization ADIT are not related and warrant different treatment because the casualty losses that give rise to casualty loss ADIT are included in the cost of service, whereas the securitized assets that prompted the creation of contra-securitization ADIT are not. Unlike securitized storm restoration costs, casualty losses recorded in bandwidth eligible accounts are includable for cost of service purposes in the bandwidth formula.<sup>151</sup> As the Commission and Fifth Circuit agreed, casualty loss ADIT amounts are directly attributable to casualty losses.<sup>152</sup> Because the casualty losses are recorded in a bandwidth eligible account, therefore generally and properly includable for cost of service purposes, casualty loss ADIT should be included in the bandwidth formula calculation.<sup>153</sup>

44. In contrast to casualty losses in bandwidth eligible accounts, which are included in the cost of service, securitized assets are not included in the Operating Companies' cost of service in the bandwidth formula because, as explained above, a third party (financial institution) incurs these expenses.<sup>154</sup> Accordingly, Entergy created a contra or negative

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<sup>150</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 67 n.135 (citing Initial Decision, 148 FERC ¶ 63,015 at P 25 & n.555 (citing Entergy Initial Post-Hearing Br. at 33; Ex. ESI-113 at 4:18-5:13)).

<sup>151</sup> *LPSC v. FERC*, 771 F.3d at 918 (citing Opinion No. 505, 130 FERC ¶ 61,023 at P 234; Opinion No. 518, 139 FERC ¶ 61,105 at PP 84, 88).

<sup>152</sup> *Id.* (citing *Entergy Servs., Inc.*, 145 FERC ¶ 61,047 at P 24 (explaining that neither the Louisiana Commission nor Entergy disputed that casualty loss is the result of storm damages [casualty losses] and that Louisiana Commission expert witness Bruce Louiselle's testimony supported this conclusion)).

<sup>153</sup> *Id.*

<sup>154</sup> *See supra* P 8 and note 27.

(continued ...)



asset to remove these securitized assets from the Operating Companies' cost of service, including the bandwidth formula calculation.<sup>155</sup>

45. Because securitized assets are not included in the cost of service in the bandwidth formula, it is reasonable to exclude the ADIT associated with securitized assets from bandwidth formula calculations as well.<sup>156</sup> Therefore, we reaffirm the Commission's determination in the Rehearing Order that contra-securitization ADIT is not "properly includable" in the bandwidth formula calculation because the securitized assets that gave rise to contra-securitization ADIT are not included in the bandwidth calculation.

46. So, while casualty loss ADIT is not related to contra-securitization ADIT, securitization ADIT—ADIT arising from the securitized post-storm restoration costs—is related to contra-securitization ADIT, which was created to zero out the securitization ADIT.<sup>157</sup> However, because the basis Entergy used for securitization ADIT was the value of the physical assets that were securitized, but the basis Entergy used for contra-securitization ADIT was zero (rather than the negative amount of the physical assets), unlike other securitized and contra-securitized accounts, securitization ADIT and contra-securitization ADIT do not zero each other out. Accordingly, the Commission determined that the simplest and fairest way to ensure that the securitization ADIT and contra-securitization ADIT did not affect the bandwidth formula calculation equalization payments was to exclude both securitization ADIT and contra-securitization ADIT from the bandwidth formula calculation. We reaffirm that determination here.

### **C. Securitized Storm Costs and Cost of Service**

#### **1. Rehearing Request**

47. Next, the Louisiana Commission argues that the Rehearing Order proceeds from the erroneous assumption that the securitized storm costs of Entergy Louisiana, Entergy Gulf States, and Entergy Texas are not included in the cost of service.<sup>158</sup> The Louisiana Commission states that, on the contrary, securitized storm costs are included in FERC cost of service tariffs that permit the billing of costs to third parties that use the

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<sup>155</sup> See *supra* P 9.

<sup>156</sup> Cf. *LPSC v. FERC*, 771 F.3d at 918.

<sup>157</sup> Initial Decision, 148 FERC ¶ 63,015 at P 249.

<sup>158</sup> Rehearing Request at 25.

(continued ...)

securitized assets.<sup>159</sup> Indeed, the Louisiana Commission asserts that securitized costs are generally includable in FERC cost of service accounts, and that this is the test for including ADIT in the bandwidth formula calculation.<sup>160</sup> The Louisiana Commission states that “it would require a complaint proceeding to ensure inclusion of securitized storm costs in the [b]andwidth [c]alculation, however, because Entergy records the contra entries on its books and the [b]andwidth [f]ormula calls for the use of accounting data.”<sup>161</sup> The Louisiana Commission states that, as the production portion of the securitized plant is relatively small, the Louisiana Commission has not pursued this issue.<sup>162</sup>

48. The Louisiana Commission asserts that the Rehearing Order rests on the further erroneous assumption that “[t]he securitized assets, which were financed by a third party, are not included in Entergy’s cost of service or in the bandwidth formula because it would be unreasonable to require Entergy’s customers to pay for costs that Entergy did not incur.”<sup>163</sup> But, according to the Louisiana Commission, that statement is incorrect because Entergy’s transmission tariffs *do include* securitized costs so that ratepayers receive credit for transmission assets that they support.<sup>164</sup> The Louisiana Commission states that the Commission has at least twice approved settlements requiring the inclusion of securitized costs in transmission rates.<sup>165</sup> The Louisiana Commission argues that Entergy’s filings respecting those costs make clear that Entergy contended the costs are properly includable.<sup>166</sup>

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 25-26.

<sup>161</sup> *Id.* at 25.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* (citing Rehearing Order, 156 FERC ¶ 61,196 at P 87).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* (citing *Entergy Servs., Inc.*, 133 FERC ¶ 61,189 (2010); *Entergy Servs., Inc.*, 137 FERC ¶ 61,175 (2011)).

<sup>166</sup> *Id.* (citing *Entergy Servs., Inc.*, 131 FERC ¶ 61,186, at PP 3-7 (2010)).

49. The Louisiana Commission adds that the vast majority of storm costs that are jurisdictional to FERC are included in transmission tariffs,<sup>167</sup> noting that, as between transmission and production, the transmission portion of costs is far greater than the production portion. The Louisiana Commission states that both the casualty loss ADIT and the contra-securitization ADIT are computed based on these storm costs, including securitized storm costs.<sup>168</sup> Thus, the Louisiana Commission reasons, it is *not* correct to find that the securitized storm costs do not enter FERC cost of service.<sup>169</sup>

50. The Louisiana Commission states that, additionally, the Commission has held that the securitized costs of abandoned production plant (Little Gypsy) are properly includable in the bandwidth formula calculation.<sup>170</sup>

51. The Louisiana Commission argues that the only reason to exclude securitized costs is if the pertinent rates are being assessed to the same ratepayers who pay those costs because ratepayers should not be billed a second time for costs they already pay.<sup>171</sup> But, the Louisiana Commission insists, parties or ratepayers who do not pay the securitized costs have no basis to escape responsibility for costs that are incurred to provide them service.<sup>172</sup> The Louisiana Commission asserts that, in the bandwidth formula calculation—a tariff designed to prevent undue discrimination—it is unjust and unreasonable not to provide credits for includable costs to customers who pay them.<sup>173</sup>

## 2. Commission Determination

52. We disagree with the Louisiana Commission's contention that Entergy's securitized storm costs are included in the cost of service for bandwidth formula calculation purposes. Even if the Louisiana Commission is correct that the securitized

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<sup>167</sup> *Id.* at 26-27.

<sup>168</sup> *Id.* at 27.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* (citing *Entergy Ark., Inc.*, 153 FERC ¶ 61,183 (2015), *reh'g denied*, 155 FERC ¶ 61,153 (2016)).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

(continued ...)

asset amounts are billed to “third parties” under FERC tariffs,<sup>174</sup> the securitized assets are not costs the Operating Company incurs. The costs are instead financed by a third party (financial institution). The securitization costs are therefore not “generally and properly includable for FERC cost of service purposes” in the Operating Companies’ cost of service and thus not “generally and properly includable” in the bandwidth formula calculation.<sup>175</sup> As the Presiding Judge pointed out, during the third bandwidth proceeding, an Entergy expert explained how the Operating Companies used securitization as a tool for financing and recovering storm losses:

When [storm] costs are securitized those costs are not included in the ‘cost of service.’ Rather the storm costs are effectively sold to another entity that thereby acquires the right to recover those costs. Consequently, those costs and related tax effects are not includable in the cost of service.<sup>[176]</sup>

53. All parties agreed (and no party objected to the fact) that Entergy excluded the securitized storm restoration costs from the cost of service.<sup>177</sup> That is not an issue here on rehearing. The fact that securitized costs are recovered from customers in transmission rates is not relevant to whether it is appropriate to include contra-securitization ADIT in the bandwidth formula. What is relevant is the fact that the bandwidth formula does not include the costs of securitized assets, and therefore the securitization ADIT should not be included.<sup>178</sup> Similarly, the fact that the securitized

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<sup>174</sup> *See id.* at 25.

<sup>175</sup> Initial Decision, 148 FERC ¶ 63,015 at P 265.

<sup>176</sup> *Id.* P 246 & n.544 (citing Ex. ESI-29 at 13:10-15 from Docket No. ER09-1224 (Louiselle Final Test.) (Mar. 23, 2010)).

<sup>177</sup> Rehearing Order, 156 FERC ¶ 61,196 at PP 65 & n.129 (quoting Initial Decision, 148 FERC ¶ 63,015 at P 246 & n.544 (citing Ex. ESI-29 at 13:10-115 from Docket No. ER09-1224 (Louiselle Final Test.) (Mar. 23, 2010))), 88 (“When these accounts are netted, the net result is zero; there are no securitized assets (or contra-securitized assets) in the cost of service or the bandwidth formula. This is uncontroversial.”).

<sup>178</sup> Moreover, settlements requiring the inclusion of securitized costs in transmission rates, *see supra* note 166 and cases cited therein, are not precedential. *See LPSC v. FERC*, 771 F.3d at 918 (FERC’s approval of a settlement does not have precedential effect.) (citing *Entergy Servs., Inc.*, 128 FERC ¶ 61,275, at PP 8-11 (2009);

(continued ...)

abandoned plant costs of Little Gypsy<sup>179</sup> are included in the bandwidth formula calculation has no bearing on whether it is reasonable to exclude the contra-securitization ADIT from the bandwidth formula calculation. The contra-securitization ADIT is related to securitized storm restoration costs that are excluded from the bandwidth formula calculation. Thus, including the securitized costs of abandoned production plant—costs that are unrelated to the contra-securitized asset—in the bandwidth formula calculation does not mandate including contra-securitization ADIT as well.

54. The salient question here is whether, given that securitized storm restoration costs are excluded from the cost of service for purposes of the bandwidth formula calculation, it is reasonable to also exclude the associated ADIT from the bandwidth formula calculation. According to Entergy witness Rory L. Roberts, “[t]he contra-asset is not really an asset. It [is] an entry to remove the asset.”<sup>180</sup> Securitized assets and contra-securitized assets both have associated ADIT.<sup>181</sup> If included in the bandwidth formula calculation, however, contra-securitization ADIT would not zero out the securitization ADIT.<sup>182</sup> The Louisiana Commission has not explained why contra-securitization ADIT—the ADIT on a contra-securitized asset that was created to zero out a securitized asset—is “generally and properly” includable in the cost of service such that it must be included in the bandwidth formula calculation.

#### **D. Equity**

##### **1. Rehearing Request**

55. The Louisiana Commission contends that it is inequitable and unreasonable to include casualty loss ADIT that is based on securitized storm costs to reduce the cost of service in the bandwidth formula calculation, but not include offsetting contra-

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*Consol. Gas Supply Corp.*, 14 FERC ¶ 61,291, at 61,567 (1981) (“It is [FERC’s] well established policy that settlements do not have precedential effect.”)).

<sup>179</sup> *Entergy Ark., Inc.*, 153 FERC ¶ 61,183 at P 123 (finding that the Little Gypsy Repowering Project was designed to meet the needs of the entire Entergy system, therefore Little Gypsy cancellation costs (for which the Louisiana Commission approved securitization) are production costs, which are appropriately included in the bandwidth formula).

<sup>180</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 65 & n.127.

<sup>181</sup> *Id.* P 67 & n.133.

<sup>182</sup> *Id.* P 68.

(continued ...)

securitization ADIT based on the same costs.<sup>183</sup> The Louisiana Commission argues that the inclusion of casualty loss ADIT in the bandwidth formula calculation works a substantial hardship on customers who bear the cost of storms. According to the Louisiana Commission, these customers must pay the costs, but virtually none of the costs enter the bandwidth formula calculation. The Louisiana Commission states that, in this case, for Entergy Louisiana, the costs of Hurricanes Gustave and Ike amount to \$392.3 million.<sup>184</sup> Of that, less than two percent affected production assets, the Louisiana Commission explains, and Entergy excludes even those costs because they were securitized and consumers pay the securitized costs separately.<sup>185</sup> The Louisiana Commission states that Entergy included \$221 million of casualty loss ADIT in the bandwidth formula calculation and the formula functionalized 39.57 percent to the variable costs rate base and 16.61 percent, or more than \$124 million, to the fixed cost rate base.<sup>186</sup> The Louisiana Commission states that this amount reduced Entergy Louisiana's rate base in the bandwidth formula calculation, and thus, consumers received no credit for the costs they paid to repair storm damage, and they were penalized by millions of dollars in the bandwidth formula calculation through the inclusion of casualty loss ADIT produced as a result of the storms.<sup>187</sup>

56. The Louisiana Commission argues that contra-securitization ADIT would offset some of the rate base reduction that results from including casualty loss ADIT in the bandwidth formula calculation. It argues that the inclusion of contra-securitization ADIT would offset some of the "bandwidth harm" that customers suffer because they must pay the enormous cost of storms.<sup>188</sup> The Louisiana Commission maintains that including the harm, but not the benefit, is highly inequitable.<sup>189</sup>

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<sup>183</sup> Rehearing Request at 28.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* (citing Ex. ESI-103 at 107 (Cas. Loss-Fed and State); 18 (NPPR); 20 (PPRXN)).

<sup>187</sup> *Id.* at 28-29.

<sup>188</sup> *Id.* at 29.

<sup>189</sup> *Id.*

## 2. Commission Determination

57. It is not inequitable or unreasonable to include casualty loss ADIT in the bandwidth formula calculation but exclude contra-securitization ADIT (as well as securitization ADIT). Contrary to the Louisiana Commission's contention, contra-securitization ADIT does not "offset" casualty loss ADIT because casualty losses were not securitized.<sup>190</sup> We reiterate our determination, consistent with the finding of the Presiding Judge, that the casualty loss ADIT that is included in the bandwidth formula calculation cannot be the corresponding entry to the contra-securitization ADIT amounts in question.<sup>191</sup> Given these facts, it would be unreasonable to include contra-securitization ADIT to "offset" casualty loss ADIT.

58. Moreover, the balance of equities lie with excluding contra-securitization ADIT. As discussed above, contra accounts were created to zero out securitized assets from the bandwidth formula calculation.<sup>192</sup> And both securitized assets and contra-securitized assets have associated ADIT. However, due to the difference in bases Entergy used to calculate securitization ADIT and contra-securitization ADIT, there is two or three times as much contra-securitization ADIT than securitization ADIT, depending on the Operating Company.<sup>193</sup> Therefore, contra-securitization ADIT does not zero out securitization ADIT.<sup>194</sup> If all contra-securitization ADIT were fully included in the bandwidth formula calculation, over \$130 million of contra-securitization would be added to rate base for bandwidth formula calculation purposes.<sup>195</sup> It strikes us as

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<sup>190</sup> Initial Decision, 148 FERC ¶ 63,015 at P 258.

<sup>191</sup> *Id.*; *see supra* PP 39-46.

<sup>192</sup> Rehearing Order, 156 FERC ¶ 61,196 at P 88.

<sup>193</sup> *Id.* P 68 & n.139.

<sup>194</sup> *Id.* P 68.

<sup>195</sup> *Id.* P 99 & n.195 (identifying "more than \$134 million of ADIT associated with securitization"). Including contra-securitization ADIT in the bandwidth formula calculation would increase the production costs of Operating Companies that have contra-securitization ADIT, whereas the production costs of Operating Companies that do not have contra-securitization ADIT, such as Entergy Arkansas, *see id.* P 99 & n.196, would remain the same. Thus, including contra-securitization ADIT in the bandwidth formula calculation would increase the allocation of production costs from Operating Companies that have contra-securitization ADIT to Operating Companies that do not have contra-securitization ADIT.

(continued ...)

unreasonable and inequitable that contra-securitization ADIT intended to negate another obligation<sup>196</sup> should have such million dollar repercussions.

The Commission orders:

The Louisiana Commission's Rehearing Request is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>196</sup> Even “[t]he Louisiana Commission claims that contra-securitization ADIT was created to ‘remove’ ADIT from the Operating Companies’ books.” *Id.* P 89 & n.180 (citing Initial Decision, 148 FERC ¶ 63,015 at P 249 & n.549 (citing Tr. at 243:2-13) (Roberts)).