170 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Gulf States Louisiana, L.L.C. — Docket No. ER15-1436-001
Entergy Arkansas, Inc.
Entergy Louisiana, LLC
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Texas, Inc.

OPINION NO. 570

ORDER ON INITIAL DECISION

(Issued January 23, 2020)

1. This case is before the Commission on exceptions to an Initial Decision[1] issued on October 23, 2018, and involves Entergy Services, Inc.'s (Entergy) proposal to include prepaid and accrued pension costs[2] in the Entergy Operating Companies'[3] transmission

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[1] *Entergy Gulf States La., L.L.C.*, 165 FERC ¶ 63,010 (2018) (Initial Decision).

[2] As explained further below, a prepaid pension cost is the amount by which cumulative contributions to a pension trust exceed cumulative pension expense, while an accrued pension cost is the amount by which cumulative pension expense exceeds cumulative contributions.

[3] The Entergy Operating Companies are Entergy Arkansas, LLC (previously Entergy Arkansas, Inc.) (Entergy Arkansas); Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, LLC (previously Entergy Mississippi, Inc.); Entergy New Orleans, LLC; and Entergy Texas, Inc. Although Entergy Gulf States Louisiana, L.L.C. was an Entergy Operating Company at the time Entergy made the filing initiating this proceeding, subsequently the assets of Entergy Gulf States Louisiana, L.L.C. and Entergy Louisiana, LLC were combined into a single entity named Entergy Louisiana, LLC.

rate base. In this order, we affirm the Initial Decision's finding that Entergy's proposal has not been shown to be just and reasonable, provide clarification on the appropriate basis for that finding, and reject Entergy's proposal, without prejudice, as discussed below.

I. Background

2. On April 1, 2015, on behalf of the Entergy Operating Companies and pursuant to section 205 of the Federal Power Act (FPA),[4] Entergy filed proposed revisions to the Entergy Operating Companies' transmission formula rate templates in Attachment O of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), to become effective June 1, 2015. As part of this filing, Entergy proposed to change the Entergy Operating Companies' transmission formula rate templates to include in rate base the prepaid and accrued pension costs for the Entergy Operating Companies' qualified defined benefit pension plans.[5]

3. On December 15, 2016, the Commission issued an order accepting Entergy's proposed formula rate changes, suspended them for a nominal period, to be effective on June 1, 2015, as requested, subject to refund, established hearing and settlement judge procedures, and consolidated Docket No. ER15-1436-000 with two related dockets for purposes of hearing and settlement judge procedures and decision.[6]

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[4] 16 U.S.C. § 824d (2018).

[5] The proposed transmission formula rate templates Entergy and MISO submitted to establish formula rates for the Entergy Operating Companies to recover their transmission revenue under the MISO Tariff upon the Entergy Operating Companies' integration into MISO as transmission-owning members on December 19, 2013 were resolved by settlement in Docket No. ER13-948-005, et al. However, the settlement in Docket No. ER13-948-005, et al. did not address the inclusion of prepaid and accrued pension costs in rate base.

[6] *Entergy Gulf States La., L.L.C.*, 157 FERC ¶ 61,201, at P 2 (2016) (December 2016 Oder) (consolidating Docket No. ER15-1436-000 with Docket Nos. ER15-1453-000 and ER16-1528-000, which addressed Entergy's submission of the amounts of its costs for Post-Retirement Benefits Other than Pensions (PBOP) to be included in the Entergy Operating Companies' annual formula rate updates to become effective on June 1, 2015, and on June 1, 2016, respectively).

4. Subsequently, settlement judge procedures were held and, on September 29, 2017, Entergy filed an offer of partial settlement that resolved all issues in the proceeding except for the inclusion of prepaid and accrued pension costs in rate base.[7] The Commission approved the partial settlement on January 18, 2018.[8]

5. On October 23, 2018, the Presiding Judge issued an initial decision (Initial Decision) on the remaining issue in this proceeding. The Presiding Judge denied Entergy's request for a determination that its proposal to include prepaid and accrued pension costs in rate base is just and reasonable. The Presiding Judge found that, among other things, Entergy provided insufficient evidence of a correlation between its prepaid pension costs and a reduction in customer rates, failed to demonstrate transparency in its proposed formula and inputs, and failed to demonstrate the reasonableness of its pension funding choices.[9]

6. On November 23, 2018, Entergy and Commission Trial Staff (Trial Staff) filed briefs on exceptions to the Initial Decision and on December 13, 2018, Entergy, Trial Staff, and Joint Customers[10] filed briefs opposing exceptions.

II. Discussion

7. For the reasons discussed below, we affirm the Initial Decision's finding that Entergy's proposal to include prepaid and accrued pension costs in the Entergy Operating Companies' transmission rate base has not been shown to be just and reasonable, clarify the appropriate basis for that finding, and reject Entergy's proposal in this proceeding.

8. We begin with an explanation of what prepaid and accrued pension costs are and when it is appropriate to include prepaid and accrued pension costs in rate base. Prepaid and accrued pension costs can arise when a utility makes contributions to fund a pension trust in order to meet employee pension plan obligations.[11] The costs associated with the pension plans that are reported on the utility's income statement are referred to as the

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[7] Entergy Transmittal, Offer of Partial Settlement, Docket No. ER15-1436-000, et al., at 3 (Sept. 29, 2017).

[8] *Entergy Ark., Inc.*, 162 FERC ¶ 61,028 (2018).

[9] Initial Decision, 165 FERC ¶ 63,010 at PP 71-72, 148.

[10] Joint Customers are Arkansas Electric Cooperative Corporation, Cooperative Energy, and East Texas Electric Cooperative.

[11] Pension plans that have no pension trust are discussed in section II.C.4.

utility's "pension expense" or "net periodic pension cost."[12] Pension expense for a given year includes new pension obligations accrued that year, interest, and the return on the assets in the trust.[13] While new pension obligations and interest increase pension expense, the return on the assets in the trust will generally decrease pension expense. A utility generally receives recovery of pension costs based on the amount of pension expense recorded on the books. Accordingly, a prepaid pension cost is the amount by which cumulative contributions to a pension trust funded by shareholders exceed cumulative pension expense. An accrued pension cost is the amount by which cumulative pension expense exceeds cumulative contributions funded by shareholders.

9. A utility may need to make contributions that exceed the pension expense amount recovered in rates, for example, to meet the requirements of pension funding laws and rules.[14] The amount that the utility's cumulative pension contributions exceed cumulative pension expense recovered from ratepayers can be considered a prepayment, or prepaid pension cost. Because the utility does not recover this prepayment or prepaid pension cost amount from ratepayers, it is required to finance the amount itself. Including the amount in rate base allows the utility to recover its financing costs.[15]

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[12] The terms pension expense and net periodic pension cost are used interchangeably if they refer to the same time period (for example, one year).

[13] Specifically, the components of pension expense are service cost, interest cost, actual return on plan assets, gain or loss, amortization of unrecognized prior service cost, and amortization of the unrecognized net obligation of asset. *Fla. Power & Light Co.*, Docket No. AC06-35-000, at 1 n.1 (2006) (delegated order); *Sw. Pub. Serv. Co.*, 65 FERC ¶ 62,242, at 64,579 (1993) (delegated order).

[14] Pension funding requirements are set forth in the Pension Protection Act of 2006, Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code. The Pension Protection Act of 2006 established accelerated funding requirements and plan restrictions if funding is below certain levels. *See* Ex. ENT-001 at 7-8 (Christmann Direct Test.); *see also Delmarva Power & Light Co.*, 160 FERC ¶ 61,102, at n.35 (2017) (*Delmarva*) ("The determination of pension expense under [Generally Accepted Accounting Principles (GAAP)] and the minimum funding requirement of a pension plan under ERISA are two separate calculations resulting in differing amounts.").

[15] Including prepaid pension costs in rate base allows the utility to earn a return on the prepaid pension cost amounts, which recovers the financing cost of the funds used to make the prepayment. *See* Ex. ENT-007 (Thomas Direct Test.) at 5-6.

10. Another way a prepaid pension cost can occur is from the return on the assets in the pension trust. To the extent the utility has a formula rate that tracks the reduction in pension expense for the return on pension trust assets, the utility's rates are correspondingly reduced. The amount by which the return on pension trust assets have reduced the pension expense is used in the determination of prepaid pension cost. Because the utility cannot withdraw those gains from the pension trust and those gains reduce pension expense, the utility does not recover that portion of the reduced pension expense from ratepayers and therefore it is required to finance the amount itself. Including the amount in rate base allows the utility to recover its financing costs.[16]

11. An accrued pension cost occurs if a utility collects costs from ratepayers in excess of what the utility has contributed to its pension plans. Because the utility has collected pension costs from customers in rates but has not yet used them to contribute to the pension trust or to pay pension benefits, an accrued pension cost should reduce rate base and thereby provide a credit to customers.[17]

12. The Commission previously has approved a utility's inclusion of prepaid pension costs in rate base. In *Southern Company Services, Inc.*, the Commission explained:

> As a general matter, it is appropriate to include prepayments in rate base when they represent amounts that a utility has paid for costs that are allowed to be collected in rates in the future . . . . This is because the utility is out-of-pocket for such costs until they are recovered from ratepayers and is therefore entitled to recover its cost of financing such prepaid expenses.[18]

The Commission further stated that "when a utility's rates have been reduced by pension income [i.e., the return on assets in the pension trust], but the utility has not received such income from the external trust, it will have to finance such amount, and is entitled to include the pension income in rate base."[19] The Commission went on to accept the

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[16] *See Southern Co. Servs., Inc.*, 122 FERC ¶ 61,218, at P 21 (2008) (*Southern*), *order on clarification and compliance*, 128 FERC ¶ 61,276 (2009), *order on compliance and denying reh'g*, 131 FERC ¶ 61,120 (2010).

[17] *See* Ex. ENT-007 (Thomas Direct Test.) at 5-6; Entergy February 15, 2018 Motion for Summary Disposition at 7-8.

[18] *Southern*, 122 FERC ¶ 61,218 at P 21.

[19] *Id.* P 21.

inclusion of prepaid pension costs in rate base for the time period during which the utility had transmission formula rates that tracked the reduction in pension expense resulting from the return on pension trust assets.[20] The Commission did not accept the utility's proposed inclusion of prepaid pension costs in rate base for the time period prior to its adoption of formula rates on the grounds that the utility had not shown that its pension income actually reduced transmission rates during that time.[21]

13. The Commission has also recognized the appropriateness of including in rate base prepaid pension costs arising from contributions to the pension trust to comply with pension funding laws and rules. In *Delmarva*, the Commission rejected a challenge to a utility's annual formula rate informational update that included prepaid pension costs in rate base.[22] The Commission concluded that the utility's prepaid pension costs were prudent given the higher funding obligations under pension funding laws compared with the utility's GAAP-based accounting.[23]

14. Based on the above, we find that, as a general matter, it is just and reasonable for a utility to include prepaid pension costs in rate base when its pension expense recovered from ratepayers is less than its contributions to fund pension costs. Likewise, it is just and reasonable for a utility to include accrued pension costs in rate base when it has recovered pension expense from ratepayers in excess of its pension costs.

15. However, we find that, based on the record before us in the instant proceeding, the Presiding Judge appropriately determined that Entergy has not demonstrated that its proposed formula for calculating prepaid and accrued pension costs for its qualified pension plans[24] is just and reasonable. As discussed below, Entergy's proposed formula

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[20] *Id.* P 22.

[21] *Id.* P 23 ("Southern Companies do not, for example, explain whether their pre-May 2003 transmission rates were based on a formula, like that currently effective under Southern Companies' [Open Access Transmission Tariff], or whether pension income in any prior year was used in determining stated transmission rates.").

[22] In *Delmarva*, unlike here, the utility already had a formula rate that contained a provision allowing the inclusion of prepaid pension costs in rate base. *Delmarva*, 160 FERC ¶ 61,102 at P 13.

[23] *Id.* PP 21-22.

[24] Entergy's qualified plans have assets set aside in a trust that are drawn on to cover benefit payments and administrative expenses. The qualified plans are subject to pension funding requirements under ERISA. *See* Entergy Brief on Exceptions at 4.

for its qualified pension plans includes components that Entergy has not fully explained and that are not clearly appropriate to include in the calculation of prepaid and accrued pension costs for inclusion in rate base. Additionally, there is insufficient evidence and explanation in the record to find that Entergy's proposed inclusion of prepaid and accrued pension costs for its non-qualified pension plans[25] in rate base is just and reasonable. Finally, we find that Entergy's pension plan funding discretion does not, in and of itself, make Entergy's proposal unjust and unreasonable.

A. Inclusion of Prepaid and Accrued Pension Costs in Rate Base

1. Initial Decision

16. The Presiding Judge concluded that, although the Commission has approved the inclusion of prepaid and accrued pension costs in rate base, Entergy provided insufficient evidence of a correlation between its prepaid pension costs and reductions in customer rates during the period prepaid pensions were accumulated.[26] The Presiding Judge stated that *Southern* requires a utility to demonstrate specific, quantifiable reductions in transmission rates that correspond to specific, quantifiable prepaid pension costs during all years the prepaid pensions were incurred. The Presiding Judge found that Entergy did not quantify any benefits to ratepayers and did not provide any supporting documentation quantifying the relationship between the income earned on pension funds and the reduced pension expense to ratepayers.[27] Accordingly, the Presiding Judge concluded that Entergy had not met the requirements set forth in *Southern*.[28]

17. In addition, the Presiding Judge found that Entergy did not carry its burden of showing its prepaid pension costs are prepayments to be included in rate base under cost of service ratemaking. The Presiding Judge stated that Entergy's testimony appeared confusing, misleading, and contradictory, and that Entergy's explanations lacked supporting record evidence and detail.[29] Additionally, the Presiding Judge concluded

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[25] Entergy's non-qualified plans do not have assets set aside in a trust; payments are made from corporate assets when due. The non-qualified plans are not subject to pension funding requirements under ERISA regarding funding, eligibility, participation, documentation, and vesting. *See id.*

[26] Initial Decision, 165 FERC ¶ 63,010 at PP 71, 131.

[27] *Id.* P 130.

[28] *Id.* PP 128, 131 (citing *Southern*, 122 FERC ¶ 61,218 at PP 21, 23).

[29] *Id.* PP 114, 118.

that Entergy failed to show that Entergy's contributions to the pension trust are actually from shareholder capital.[30]

2. Brief on Exceptions

18. On exceptions, Entergy states that it provided actuarial valuation reports prepared by an independent actuary that provide a quantification of the earnings on its pension trust assets and the corresponding reduction in ratepayers' costs. Entergy then lists the expected return on plan assets and net periodic pension cost for its different pension plans. For example, Entergy states that its actuarial report for bargaining employees shows that the expected return on plan assets reduced net periodic pension cost by $72,157,571 for plan year 2016, which resulted in a net periodic pension cost of $26,662,336.[31] Entergy notes that it has submitted actuarial reports while, in *Southern*, the utility used an actuary to determine pension plan obligations and costs but did not submit the actuarial reports supporting those determinations.[32]

19. Entergy argues that its proposal satisfies the criteria set forth in *Southern* for including prepaid pension costs in rate base. Entergy states that, as in *Southern*, its contributions to its pension trusts and earnings on those contributions are no longer available to Entergy once made, and that the expected earnings on its contributions reduce the net periodic pension cost included in Entergy's transmission formula rates.[33]

20. Entergy contends that the Initial Decision inappropriately grafts Trial Staff's net benefits test onto the just and reasonable standard under section 205 of the FPA. Entergy asserts that the net benefits test is based on Commission precedent related to mergers and acquisitions under section 203 of the FPA[34] and does not apply to section 205 filings. Entergy notes that merger or acquisition applicants under section 203 of the FPA typically assert there are benefits of the transaction and submit related section 205 filings seeking to recover merger-related costs or acquisition premiums. Entergy states that those filings must demonstrate ratepayer benefits and argues that the requirement to demonstrate ratepayer benefits is specific to merger and acquisition-related filings and

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[30] *Id.* P 99.

[31] Entergy Brief on Exceptions at 18 (citing Ex. ENT-002 at 27, 64-65).

[32] *Id.* n.23.

[33] *Id.* at 33-34.

[34] 16 U.S.C. § 824b.

has never been applied to prepaid pension cost filings.[35] Entergy also contends that Trial Staff acknowledged that there is no general requirement for rate increase filings to benefit customers and that there are other costs included in rate base for which there is no net benefits test, such as allowance for funds used during construction and pollution control construction work in progress.[36]

21. Entergy also argues that its testimony demonstrates that its prepaid pension cost contributions are made from shareholder capital. First, Entergy states that it is uncontested that prepaid pension costs are the cumulative pension contributions in excess of cumulative pension expenses included in rates; therefore, by definition prepaid pension costs are shareholder contributions. Second, Entergy states that the company's cash is the source of all investments included in rate base and that whether something is funded by shareholders or ratepayers does not turn on the source of the cash. Entergy asserts that if it has paid for a cost that has not been included in rates, it is appropriately considered a shareholder-funded item.[37]

3. Briefs Opposing Exceptions

22. Trial Staff argues that Entergy's reiteration of its evidence does not meet the requirements of *Southern*. Trial Staff argues that although Entergy's actuarial reports purport to show a reduction in net pension costs, they do not "quantify the net savings to ratepayers as a result of the earnings on the [Qualified] trust reducing pension costs for each year."[38] Trial Staff maintains that the expected return on plan assets is an input into the calculation of net periodic pension cost but is not a function of prepaid pension costs, given that the return is based on market changes and occurs regardless of whether Entergy has made contributions. Additionally, Trial Staff asserts that Entergy acknowledged that its proposal will lead to a net increase in transmission rates.[39]

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[35] Entergy Brief on Exceptions at 29.

[36] *Id.* at 29-30.

[37] *Id.* at 42-44.

[38] Trial Staff Brief Opposing Exceptions at 6-7 (citing Initial Decision, 165 FERC ¶ 63,010 at P 130).

[39] *Id.* at 7-8, 18-19 & n.22.

23. Trial Staff notes that, although the Commission authorized the inclusion of certain prepaid pension costs in rate base in *Southern*, the Commission also denied inclusion of more than two-thirds of the utility's prepaid pension costs because the utility did not show those costs reduced transmission rates. Trial Staff argues that Entergy similarly has failed to make the showing required in *Southern*.[40]

24. In addition, Trial Staff disputes that prepaid pension costs are cumulative pension contributions in excess of cumulative pension costs. Trial Staff contends that Entergy failed to provide any evidence that its prepaid pension costs are funded by shareholder capital and asserts that Entergy's witnesses admitted prepaid and accrued pension costs could be funded by ratepayers.[41]

25. Joint Customers assert that the Initial Decision correctly found that Entergy did not provide supporting documentation quantifying the relationship between pension income and reduced pension expense for ratepayers.[42] Joint Customers argue that Entergy has not shown that the level of pension plan funding is commensurate with benefits to ratepayers, and states that over a three-year period they estimate charges to Joint Customers will increase by $1,271,000. Joint Customers also contend that Entergy's incurred pension costs are not the amounts determined in the actuarial reports because, according to Joint Customers, Entergy's witness acknowledged the actuarial reports are only used as a guide. Therefore, Joint Customers assert, the actuarial reports do not provide accurate quantification or demonstration of benefits to ratepayers. Additionally, Joint Customers argue that Entergy contradicts itself by stating that there is a quantifiable correlation between prepaid pension costs and a reduction in customer rates while at the same time acknowledging that it has not analyzed customer benefits.[43]

4. Commission Determination

26. As a general matter, and consistent with *Southern*, we find that it is just and reasonable for a utility to include prepaid pension costs in rate base when its pension expense recovered from ratepayers is less than its contributions to fund pension costs. Likewise, it is just and reasonable for a utility to include accrued pension costs in

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[40] *Id.* at 18-19 (citing *Southern*, 122 FERC ¶ 61,218 at P 24).

[41] *Id.* at 29-31.

[42] Joint Customers Brief Opposing Exceptions at 20.

[43] *Id.* at 8-9.

rate base when it has recovered pension expense from ratepayers in excess of its pension costs.

27. The Presiding Judge found that Entergy had not demonstrated that its proposal to include prepaid pension costs in rate base was just and reasonable because Entergy did not demonstrate: (1) a correlation between its prepaid pension costs and a reduction in transmission rates; and (2) a net benefit to ratepayers.[44] Although, as discussed later in this order, we agree with the Presiding Judge's determination that Entergy did not meet its burden under section 205 of the FPA to show that its proposal is just and reasonable, we do not agree that Entergy was required to make these specific showings. Accordingly, we clarify in this section what support Entergy must provide to demonstrate that its prepaid and accrued pension costs should be included in rate base.

28. First, we note that Entergy is proposing to include a line item to reflect prepaid and accrued pension costs in the Entergy Operating Companies' transmission formula rate templates. If the Commission approves the inclusion of that line item, Entergy would then be required under the MISO formula rate protocols to provide specific prepaid pension cost amounts in its annual formula rate informational updates. Interested parties would be able to challenge the prudency of such amounts at that time,[45] as was the case in *Delmarva*. Therefore, we find that Entergy does not need to quantify or support specific prepaid pension costs in this proceeding to establish a line item in its formula rate.[46]

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[44] *See* Initial Decision, 165 FERC ¶ 63,010 at PP 71-72, 148.

[45] MISO's formula rate protocols, which apply to the Entergy Operating Companies, specify that Formal Challenges to a transmission owner's formula rate can include "the prudence of actual costs and expenditures." MISO Tariff, Attachment O, Formula Rate Protocols, section IV, Challenge Procedures.

[46] *See, e.g.*, *Old Dominion Elec. Coop.*, 158 FERC ¶ 61,045, at P 105 (2017) (stating unpopulated placeholder accounts "reflect practices common in Commission-accepted transmission formula rates and there is no reason to believe they will produce unreasonable results"); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 36 (2007) (allowing a utility to include in a transmission formula rate a placeholder that would allow the company to recover transmission rate incentives to the extent that the Commission approved those incentives in a separate section 205 filing). We make no findings at this time about whether it would be just and reasonable for the Entergy Operating Companies to include in their formula rates the specific prepaid pension cost amounts Entergy provided in the record.

29. Second, with regard to whether Entergy's proposed formula rate line item meets the requirements of *Southern*, the Entergy Operating Companies currently have transmission formula rates that track their pension expenses through Account No. 926, Employee Pensions and Benefits. For Entergy's qualified plans, one of the inputs used to calculate pension expense is the return on trust assets.[47] A return on trust assets reduces the pension expense for these plans, and the reduced pension expense is reflected in a corresponding reduction to formula rates. This is similar to the situation in *Southern*, where the Commission found that the utility had justified including prepaid pension costs in rate base because it had formula rates that tracked the reduction in pension expense resulting from the return on trust assets.[48] Thus, for purposes of including a line item in the Entergy Operating Companies' current formula rate templates, we find that *Southern* does not require a further demonstration of a correlation between Entergy's prepaid pension costs and a reduction in transmission rates.[49]

30. Third, we note that the requirement in *Southern* to show a reduction in rates relates specifically to a return on trust assets reducing pension expense. We disagree with Trial Staff's assertion that the expected return on plan assets is an input into the calculation of net periodic pension cost but is not a function of prepaid pension costs. All contributions into a pension fund, including those that qualify as prepaid pension costs, increase a pension fund's plan assets and accordingly increase the expected return. As Trial Staff noted, the expected return on plan assets is then used in the calculation of net periodic pension cost. Accordingly, these contributions may properly be considered prepaid pension costs to the extent the utility is not able to recover them in rates.

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[47] *See, e.g.*, Ex. ENT-002 at 27, 64 (actuarial report for Entergy's bargaining employee pension plans for plan year 2016, showing return on assets as a component of pension expense).

[48] *Southern*, 122 FERC ¶ 61,218 at P 22 ("Because Southern Companies' [Open Access Transmission Tariff] formula rates track the reduction in pension expense resulting from pension income, and therefore result in reduced rates, the Commission concludes that Southern Companies have justified inclusion of the jurisdictional portion of such prepaid pensions in rate base.").

[49] To the extent that, in a future filing, Entergy seeks to include in rate base specific prepaid and accrued pension cost amounts resulting from a return on trust assets for particular years, it should demonstrate that it had formula rates that tracked the reduction in pension expense resulting from the return on trust assets for each year (or otherwise demonstrate that the return actually reduced transmission rates during that time). *See id.* PP 22-23.

31. Fourth, as discussed above, it is just and reasonable to include in rate base prepaid pension costs that the utility cannot recover from ratepayers, because the utility is out-of-pocket for those costs and must finance them itself. In *Southern* the Commission did not require the utility to demonstrate a net rate reduction, but only required a demonstration that there was a reduction in rates corresponding to the reduction in pension expense resulting from earnings on the pension trust.[50] Likewise, Entergy is not required, pursuant to *Southern* or other Commission precedent, to show that its inclusion of prepaid pension costs in rate base will result in net benefits or net savings to ratepayers. Additionally, we find that the net benefits test that the Commission has applied in the context of proceedings involving acquisition adjustments and other merger and acquisition-rated expenses requiring a utility to demonstrate ratepayer benefits is inapplicable to this proceeding, which addresses Entergy's section 205 of the FPA proposal to include prepaid pension costs in rate base.

32. Finally, as discussed in more detail above, we find that it is just and reasonable to include in rate base prepaid pension costs, appropriately defined as cumulative pension contributions in excess of cumulative pension expenses, and financed by shareholders and not ratepayers.[51] Thus, for these and the other reasons discussed above, it is just and reasonable for Entergy to include its prepaid pension costs in rate base, to the extent Entergy can support the method by which it calculates prepaid pension costs. We examine Entergy's proposed method for calculating prepaid and accrued pension costs in the next section of this order.

B. Entergy Proposed Formula

33. Entergy states that its independent actuary calculates prepaid pension costs by taking the pension plan's Funded Status[52] (which is Fair Value of Plan Assets[53] minus

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[50] *Id.* P 21 ("If [the] reduction in pension expense is used in determining a utility's rates, there will be a corresponding reduction in the amounts collected from ratepayers. . . . [W]hen a utility's rates have been reduced by pension income, but the utility has not received such income from the external trust, it will have to finance such amount, and is entitled to include the pension income in rate base.").

[51] *See supra* PP 8-14.

[52] Funded status refers to the extent to which the plan's liabilities are covered by plan assets.

[53] As a general matter, the fair value of plan assets is the fair value of the funds invested to pay pension obligations. For purposes of Entergy's formula, Entergy does not explain in its briefs the specific inputs it uses for Fair Value of Plan Assets, but Entergy provided as an exhibit an actuarial disclosure that appears to identify the inputs. The

Projected Benefit Obligation[54]) for the year and then backing out Unrecognized Gains/Losses.[55] This can be reflected in the following formula:

> Prepaid or (Accrued) Pension Cost = Fair Value of Plan Assets – Projected Benefit Obligation + Unrecognized Net (Gain) or Loss[56]

34. Entergy's formula rate workpaper for calculating prepaid and accrued pension costs is Workpaper 21. Workpaper 21 includes line items for monthly values for Funded Status, Unrecognized Gains/Losses, and prepaid and accrued pension costs for the qualified and non-qualified pension plans.[57]

1. <u>Initial Decision</u>

35. The Presiding Judge concluded that Entergy's proposed formula for calculating prepaid and accrued pension costs "is ill-defined and lacks transparency."[58] The Presiding Judge stated that Entergy failed to explain where information in its actuarial reports comes from and how the information feeds into the monthly amounts included in

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exhibit appears to indicate that Fair Value of Plan Assets is comprised of the previous year-end Fair Value of Plan Assets, the actual return on assets, employer contributions, employee contributions, acquisition, settlements, and benefits paid. *See* Ex. ENT-024 (actuarial disclosure for qualified pension plans).

[54] As a general matter, a projected benefit obligation is the actuarial present value as of a date of all benefits attributed by the pension benefit formula to employee service rendered before that date. For purposes of Entergy's formula, Entergy does not explain in its briefs the specific inputs it uses for Projected Benefit Obligation, but Entergy's actuarial disclosure appears to indicate that Projected Benefit Obligation is comprised of the previous year-end Projected Benefit Obligation, service cost, interest cost, acquisition and amendments, curtailments, settlement lump sum payments, special termination benefits, actuarial gain/loss, employee contributions, benefits paid, and reclassification adjustment. *See id.*

[55] Entergy Brief on Exceptions at 20-21.

[56] Initial Decision, 165 FERC ¶ 63,010 at P 81.

[57] *See, e.g.*, Ex. ENT-014 at 3 (unpopulated Workpaper 21 for Entergy Arkansas).

[58] Initial Decision, 165 FERC ¶ 63,010 at P 113; *see also* Trial Staff Initial Brief at 6-7.

Workpaper 21. The Presiding Judge noted that the actuarial reports are not public documents and Trial Staff's assertion that information from the reports is manipulated in ways not explained in Workpaper 21. The Presiding Judge found that Entergy failed to include information in its subaccounts for Workpaper 21 and that inputs to Workpaper 21 cannot be reconciled with publicly available information.[59] Additionally, the Presiding Judge found that it is difficult to ascertain whether Fair Value of Plan Assets is directly tied to Entergy's actual contributions to the pension trust because Entergy does not provide its actual contributions to the pension trust in Workpaper 21.[60]

36. The Presiding Judge found that each component of Entergy's proposed formula is based on actuarial determinations and forecasts, which the Presiding Judge stated may be estimates, theoretical, or speculative. The Presiding Judge concluded that Entergy's reliance on actuarial determinations does not lead to a formula that is clearly understandable and transparent, and therefore Entergy did not show its proposed formula or the inputs to the formula are just and reasonable.[61] Furthermore, the Presiding Judge stated that two Commission orders cited by Trial Staff suggest that the Commission does not allow the use of actuarial determinations by themselves to justify current expenses or future allowances, and that, by not responding to Trial Staff, Entergy appeared to concede the argument.[62]

37. The Presiding Judge stated that Entergy's witness discussed a "roll forward analysis" that could be used to calculate prepaid and accrued pension costs based on actual costs, but Entergy chose not to use it.[63]

38. Additionally, the Presiding Judge stated that Entergy's witness conceded that Entergy would need to make additional disclosures for customers to determine whether its proposed formula is just and reasonable, such as calling out the accrual value of each

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[59] *Id.* PP 112-113.

[60] *Id.* P 83.

[61] *Id.* PP 90-91.

[62] *Id.* P 88 (citing *El Paso Nat. Gas Co.*, 145 FERC ¶ 61,040, at P 53 (2013) (*El Paso*); *Williston Basin Interstate Pipeline Co*., 56 FERC ¶ 61,104, at 61,370-71 (1991) (*Williston*)).

[63] *Id.* P 90.

of the Entergy Operating Companies, breaking out components in Workpaper 21, and providing more explicit accrued values for certain items.[64]

2. Briefs on Exceptions

39. Entergy maintains that the inputs to Workpaper 21 used to calculate prepaid and accrued pension costs are in the record and can be pulled from the Entergy Operating Companies' FERC Form No. 1 reports. Entergy states that Funded Status and Unrecognized Gains/Losses are included in Workpaper 21, and that the amounts are the same as in the FERC Form No. 1 reports.[65] For example, Entergy states that, for Entergy Arkansas' qualified plans in 2016, the Workpaper 21 values for Funded Status ($412,717,572) and Unrecognized Gains/Losses ($701,773,616) match up with the values in the FERC Form No. 1 for Funded Status ($412,718,000) and Unrecognized Gains/Losses ($701,774,000).[66]

40. Entergy states that its actual contributions to the pension trust are contained in the actuarial reports submitted in the record. For example, Entergy explains that its actuarial report for bargaining employees shows that Fair Value of Assets includes cash contributions of $69,123,500 for 2015.[67] Additionally, Entergy states that the contributions for the plans for each Entergy Operating Company are in the record and are reported in the FERC Form No. 1. For example, Entergy explains that the contributions for Entergy Arkansas' various pension plans as of December 31, 2015 total $92,419,106, which is the same amount as in Entergy Arkansas' FERC Form No. 1.[68]

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[64] *Id.* P 89 (citing Tr. 341:21-23 (Hunt)).

[65] Entergy Brief on Exceptions at 20-21.

[66] *Id.* at 21 (citing Ex. ENT-042 at 1 (Workpaper 21 December 2016 values); Ex. ENT-032 at 7 (FERC Form No. 1 values as of December 31, 2016)).

[67] Entergy Brief on Exceptions at 23 (citing Ex. ENT-002 at 25 (actuarial valuation report); Ex. ENT-024 at 2 (actuary's end-of-year disclosures)).

[68] Entergy Brief on Exceptions at 24 (citing Ex. ENT-024 at 1-3 (actuary's end-of-year disclosures); Ex. ENT-032 at 7 (FERC Form No. 1); Ex. JC-017 at 3-8 (tables showing employer contributions).

41. Entergy states that Fair Value of Assets is found in the actuarial reports by Entergy Operating Company and by plan. For example, the total Fair Value of Assets for bargaining employees for 2015 is $872,281,035.[69]

42. Entergy argues that actuarial reports are routinely used in ratemaking proceedings involving retirement benefits, including pensions. For example, Entergy states that its annual filings submitted under section 205 of the FPA use similar actuarial studies to determine PBOP costs to be recovered in formula rates.[70] Entergy contends that it is not reasonable to find actuarial analysis used to determine prepaid pension costs inappropriate for ratemaking when actuarial analyses are used and accepted by the Commission to determine PBOP costs included in rates. Furthermore, Entergy argues that it is not reasonable for Trial Staff and Joint Customers to accept the actuary's calculation of net periodic pension cost and at the same time argue the actuary's determination of prepaid and accrued pension costs is inappropriate for ratemaking. Entergy states that net periodic pension costs and prepaid and accrued pension costs are based on the same actuarial analysis, and that prepaid and accrued pension costs are simply the cumulative net periodic pension costs and cash contributions over time.[71] Moreover, Entergy argues that the Presiding Judge's reliance on *El Paso* and *Williston* is misplaced because those cases involved the inclusion of pension expense in the test period for a stated rate where the company had made no contributions to the pension trust during the test period.[72]

43. Entergy asserts that its actuarial valuation reports are public documents, noting that the reports for plan years 2016 and 2017 were submitted into the record in this proceeding. Entergy also states that it already includes actuarial reports supporting its PBOP costs in its annual formula rate updates and would be willing to provide actuarial reports supporting its prepaid and accrued pension costs as well.[73]

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[69] Entergy Brief on Exceptions at 26-28 (citing Ex. ENT-002 at 25, 28, 63 (actuarial valuation report for bargaining employees); Ex. ENT-024 at 2, line 3(f) (actuary's end-of-year disclosures)).

[70] Entergy Brief on Exceptions at 34-35 (citing *Entergy Ark., Inc.*, Docket No. ER17-1549-000 (Jan. 18, 2018) (delegated order) (accepting Entergy's PBOP filing)).

[71] *Id.* at 35, 37-38.

[72] *Id.* at 38-39.

[73] *Id.* at 19-20.

44. Entergy also argues that the Presiding Judge incorrectly found that there is an alternative formula for calculating prepaid and accrued pension costs. Entergy states that the roll forward analysis referenced by Entergy's witness did not refer to a different formula.[74]

45. In addition, Entergy contends that the allegation that it manipulated the information taken from the actuarial reports is incorrect and that neither Trial Staff nor the Presiding Judge articulate a reason for the allegation. Entergy maintains that it provided exhibits demonstrating where the information in Workpaper 21 is located in its actuarial reports.[75]

46. In response to the Presiding Judge's statement that Entergy's witness conceded that additional disclosures were needed to evaluate whether its proposed formula is just and reasonable, Entergy states that its witness was referring to information that is in the record. Entergy states that its witness discussed how the record evidence might be broken out or displayed differently, but that all of the items discussed are in the FERC Form No. 1. Entergy states that, in its annual formula rate updates, it could include pages or columns in Workpaper 21 to break out contribution amounts, cost accruals, and the location of the inputs in the FERC Form No. 1.[76]

3. <u>Briefs Opposing Exceptions</u>

47. Joint Customers and Trial Staff argue that Commission policy requires formula rates and their inputs to be transparent and based on publicly available data.[77] Joint Customers and Trial Staff contend that Workpaper 21 sets forth monthly inputs for Funded Status and Unrecognized Gains/Losses, but Entergy's actuarial reports only contain annual values. Trial Staff and Joint Customers state that Entergy's

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[74] *Id.* at 40-42.

[75] *Id.* at 53-54 (citing Exs. ENT-021 through ENT-030).

[76] *Id.* at 54-56.

[77] Joint Customers Brief Opposing Exceptions at 11; Trial Staff Brief Opposing Exceptions at 11-12 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 83 (2013) ("Both a formula rate and its inputs must be transparent; it is essential to their being just and reasonable. The formula rate's inputs, including supporting documentation and allocations, should be either taken directly from publicly available data such as the FERC Form No. 1, or be reconcilable to publicly available data such as FERC Form No. 1, by the application of clearly identified and supported documentation.")).

witness acknowledged that the monthly values cannot be derived from publicly available information.[78]

48. Additionally, Trial Staff asserts that each component of Entergy's prepaid and accrued pension cost calculation is derived by an actuary, and the actuarial reports are not public documents. Trial Staff also contends that the amounts in Workpaper 21 are not taken directly from the FERC Form No. 1, and that Entergy presented insufficient justification for the translation of amounts from the actuarial reports to the FERC Form No. 1.[79] Joint Customers assert that Entergy acknowledged its proposed formula rate template only has high-level summarized information with some reference to the FERC Form No. 1.[80]

49. Trial Staff argues that actual pension trust contributions are not the same as Fair Value of Assets. Trial Staff also asserts that the formula in Workpaper 21 for calculating prepaid and accrued pension costs is not based on actual contributions. Trial Staff contends that Fair Value of Assets is affected by factors other than contributions, such as changes in market value of the trust assets, actuarial assumptions, and differences between actuarial projection and actual experience. Trial Staff also argues that Entergy's proposed formula and the actuarially-determined inputs to the formula were based on estimates, subject to variances, and are inherently speculative.[81] Joint Customers argue that, while Fair Value of Plan Assets may bear some indirect relationship to Entergy's cash contributions, the other factors in Entergy's formula seem to bear no relationship to costs Entergy actually incurs. Joint Customers assert that the Workpaper 21 Entergy provided does not include Entergy's actual contributions to the pension trust.[82]

50. Trial Staff argues that, even if actuarial reports are appropriately used to determine net periodic pension costs and the amount of contributions made each year, Entergy has not explained why it is appropriate to use actuarial reports to determine contributions in excess of net periodic pension costs. Further, Trial Staff argues that Entergy did not cite to any precedent that supports using actuarial reports to determine prepaid pension costs for rate purposes or any precedent contrary to *El Paso* or *Williston*. Trial Staff asserts

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[78] Joint Customers Brief Opposing Exceptions at 11-12; Trial Staff Brief Opposing Exceptions at 12-13 (citing Tr. 210:14-211:2 (Christmann)).

[79] Trial Staff Brief Opposing Exceptions at 13-14.

[80] Joint Customers Brief Opposing Exceptions at 12 (citing Tr. 344:1-3 (Hunt)).

[81] Trial Staff Brief Opposing Exceptions at 15-16.

[82] Joint Customers Brief Opposing Exceptions at 14-15.

that cost-of-service principles like the requirement that out-of-period costs be known and measurable apply to both stated and formula rates.[83] Joint Customers argue that the Presiding Judge only found that, in this proceeding, Entergy's reliance on actuarial determinations did not satisfy its burden of proof, and did not reject the use of actuarial determinations in ratemaking generally.[84]

51. Joint Customers assert that Commission policy requires formula rates to be transparent and based on verifiable, publicly available data, such as the FERC Form No. 1. Joint Customers state that without the ability to verify and replicate calculations, utilities have the potential to exercise discretion in calculating rates.[85] Joint Customers argue that Entergy's actuarial reports are internal documents that would not have been publicly available if not for this proceeding. Trial Staff contends that Entergy's witness acknowledged that Entergy's actuarial reports are not all public. Further, Trial Staff argues that the public availability of two years of actuarial reports is insufficient because Entergy proposes to include prepaid pension costs in rate base that have accumulated over 10 to 18 years or more.[86] Joint Customers state that it is unclear that Entergy's proposal to provide actuarial reports with its annual filings would address the issues with its prepaid pension cost proposal.[87]

52. Trial Staff asserts that Entergy's witness testified it was possible to create a roll forward analysis that tracks actual contributions, that does not depend on actuarial determinations, and would demonstrate conceptually Entergy's claim that prepaid pension costs are the result of timing differences between when contributions are made and when they are recognized. Trial Staff states that, even without Entergy's witness' admission, it should be possible to calculate prepaid and accrued pension costs based on actual contributions and without reliance on actuarial determinations. Trial Staff argues that Entergy has not explained why summing past contributions that have not been recovered would be inappropriate or impossible.[88] Similarly, Joint Customers state that

[83] Trial Staff Brief Opposing Exceptions at 21-23.

[84] Joint Customers Brief Opposing Exceptions at 20-21 (citing Entergy Brief on Exceptions at 34).

[85] *Id.* at 9-10 (citing, *e.g.*, *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 54 (2010)).

[86] Trial Staff Brief Opposing Exceptions at 10-11.

[87] Joint Customers Brief Opposing Exceptions at 10.

[88] Trial Staff Brief Opposing Exceptions at 25-29.

Entergy's witness did not indicate that a roll forward analysis was impossible or incorrect, but only stated why it was problematic.[89]

53. With regard to its claims that Entergy manipulated the inputs to Workpaper 21, Trial Staff notes that Entergy has actuarial reports for each of the five separate pension plans that apply across all of Entergy Corporation, but that the information in the actuarial reports must be allocated among the five Entergy Operating Companies, then the information from the five companies and five actuarial reports must be combined and converted into monthly amounts in each Entergy Operating Company's Workpaper 21. Trial Staff characterizes this as data separation, recombination, and monthly allocation that must occur for Entergy to populate Workpaper 21. Trial Staff asserts that the exhibits Entergy provided (Exs. ENT-021 through ENT-030) are spreadsheets with minimal clarifying explanation.[90]

54. Trial Staff asserts that Entergy's witness' concession that additional disclosures were necessary amounts to an admission that Workpaper 21 lacks the necessary transparency to be just and reasonable.[91]

4. <u>Commission Determination</u>

55. We affirm the Initial Decision's finding that Entergy did not demonstrate that its proposal is just and reasonable. In its April 1, 2015 filing, Entergy proposed to include a line item associated with its prepaid and accrued pension costs in rate base of each Entergy Operating Company's transmission formula rate. Entergy stated in that filing that it would "provide sufficient workpapers to support the calculations."[92] Accordingly, in order for the Commission to accept Entergy's proposal, Entergy must demonstrate that the inclusion of that line item, including the methodology of the supporting workpaper(s), is just and reasonable. Entergy's principal workpaper is Workpaper 21, which provides the formula for the qualified and non-qualified pension plans.[93]

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[89] Joint Customers Brief Opposing Exceptions at 24-25.

[90] Trial Staff Brief Opposing Exceptions at 35-36.

[91] *Id.* at 38-39.

[92] Entergy Transmittal, Docket No. ER15-1436-000, at 10 (filed Apr. 1, 2015).

[93] We discuss the non-qualified plans in section II.C below.

56. We find that Entergy has not demonstrated that its proposed formula for calculating prepaid pension costs is just and reasonable. As explained above, a prepaid pension cost is the amount by which cumulative contributions to a pension trust exceed cumulative pension expense. Consistent with this definition, the appropriate way to calculate prepaid pension costs includable in rate base would be to calculate the cumulative differences between each year's pension contributions made by Entergy and pension expenses. Entergy proposes to use a different formula (i.e., Funded Status minus Unrecognized Gains and Losses). Although Entergy asserts that this formula leads to the same end result,[94] we find that Entergy has not adequately supported this claim.

57. Specifically, Entergy's proposed formula includes components that Entergy has not fully explained and that may not be appropriate to include in the calculation of prepaid pension costs to be included in rate base. For instance, although Entergy argues that it is reasonable to calculate prepaid pension costs by starting with the plan's Funded Status and backing out Unrecognized Gains/Losses,[95] Entergy does not adequately explain what comprises Unrecognized Gains/Losses or why backing out those amounts to compute prepaid pension costs in rate base yields a just and reasonable result.[96] Without additional explanation, we are unable to evaluate whether Unrecognized Gains/Losses are an appropriate component to include in the calculation of prepaid pension costs to be included in rate base.

58. Furthermore, Entergy does not explain why using the Funded Status is an appropriate methodology to calculate prepaid pension costs in rate base. Entergy explains that Funded Status equals Fair Value of Plan Assets minus Projected Benefit Obligation, but Entergy does not explain why using Funded Status and Unrecognized Gains/Losses yields the same result as calculating cumulative employer contributions and cumulative pension expense. In some instances, it may be inappropriate to use Funded Status for calculating prepaid pension costs. For example, Entergy's actuarial disclosure includes a line item for employee contributions for the calculation of Fair Value of Plan

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[94] *See, e.g.*, Entergy Initial Brief at 8-9.

[95] Entergy Brief on Exceptions at 20-21 ("The formula is reasonable: when you start with funded status and then back out *what has not been recorded on the financial statements* (*i.e.*, the unrecognized gains and losses), what you are left with is *what has been recorded on the financial statements* – the cumulative contributions net of cumulative accrued net periodic pension cost . . . .") (emphasis in original).

[96] Entergy indicates that Unrecognized Gains/Losses are a component of Funded Status, Entergy Reply Brief at 8-9, but it is unclear why, for purposes of calculating prepaid and accrued pension costs to be included in rate base, backing out these amounts produces a just and reasonable result.

Assets, which is a component of Funded Status. However, employee contributions to a pension trust are not shareholder financed funds that the utility has paid out of pocket.[97] Consequently, it would not be just and reasonable for Entergy to include amounts that employees contribute to pension plans in rate base and earn a return on such amounts.

59. Under section 205 of the FPA, Entergy has the burden to demonstrate that its proposal is just and reasonable, and we find that Entergy has not met that burden. Therefore, we reject Entergy's proposed formula rate template line item for qualified prepaid and accrued pension costs without prejudice to Entergy making a future filing that adequately demonstrates that its proposal, including its methodology for calculating prepaid and accrued pension costs, is just and reasonable.

60. Although we are rejecting Entergy's proposal, we clarify here that Commission precedent does not bar the use of actuarial reports to calculate a utility's pension expense and the contributions needed to meet its pension obligations under pension funding laws and rules. In *El Paso* and *Williston* the Commission discussed use of actuarial reports to estimate future pension costs of a utility with stated rates that proposed a test period adjustment to include pension costs that had not been incurred during the test period.[98] Because Entergy has formula rates, the *El Paso* and *Williston* findings involving costs incurred outside of the stated rate test period are not applicable to the instant proceeding.

C. Non-Qualified Pension Plans

1. Initial Decision

61. The Presiding Judge determined that, contrary to an argument raised by Trial Staff, the inclusion of prepaid pension costs for Entergy's non-qualified plans was within the scope of the proceeding. The Presiding Judge found that the costs associated with the non-qualified plans bear on the justness and reasonableness of rates and that the Presiding Judge had discretion to consider the non-qualified plans because the Commission did not dispose of the issue or explicitly refuse to set it for hearing. The Presiding Judge stated

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[97] *See supra* section II.A.4.

[98] *El Paso*, 145 FERC ¶ 61,040 at PP 46, 48-53 ("The critical element is that the rate component must be spent or a liability must be imposed during the test period and any deviation must be adequately justified. In this instance, El Paso seeks to recover costs that it did not actually pay during the base period or the adjustment period, but which an actuary found necessary to fund El Paso's future pension benefits because of temporary and extreme economic conditions existing at the time."); *Williston*, 56 FERC at 61,371 (". . . Williston seeks to recover costs which the record reflects were not actually paid during the base test period or the adjustment period.").

that Entergy currently has no trust or prepaid costs associated with the non-qualified plans, and therefore did not demonstrate that including prepaid pension costs for its non-qualified plans is just and reasonable.[99]

62. Additionally, the Presiding Judge did not require Entergy to deduct from rate base accrued pension costs for its non-qualified plans, but stated that Trial Staff could make a referral to the Commission's Office of Enforcement if it has concerns about Entergy's treatment of accrued pension costs.[100]

2. Brief on Exceptions

63. Trial Staff asserts that the record establishes that Entergy's accrued pension costs for its non-qualified plans are costs collected from ratepayers in excess of what Entergy has paid out under the plans. Trial Staff maintains that the record is ripe for a decision and that Trial Staff referring the issue to the Commission's Office of Enforcement would be an extraordinary and unnecessary step.[101]

3. Brief Opposing Exceptions

64. Entergy notes that part of its proposal is to include accrued pension costs for the non-qualified plans in rate base. However, Entergy asserts that it is unreasonable for Trial Staff to recommend the inclusion of accrued pension costs in rate base without also accepting the inclusion of prepaid pension costs in rate base. Entergy maintains that while accrued pension costs can be characterized as an interest-free loan from ratepayers to Entergy, prepaid pensions costs are an interest-free loan or credit from Entergy to the qualified pension plans. Entergy states that the Presiding Judge's rejection of Entergy's proposal applies to the entirety of its proposal to include prepaid and accrued pension costs in rate base for the qualified and non-qualified plans. Entergy states that, if its filing is rejected, the Entergy Operating Companies' formula rates would revert to the status quo prior to Entergy's filing. Furthermore, Entergy states that to the extent Trial Staff is recommending the Commission take action beyond Entergy's proposal, it is outside the scope of this proceeding and legally improper.[102]

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[99] Initial Decision, 165 FERC ¶ 63,010 at PP 119-124.

[100] *Id.* n.267.

[101] Trial Staff Brief on Exceptions at 4-5.

[102] Entergy Brief Opposing Exceptions at 7-10.

4. **Commission Determination**

65. We find that Entergy has not adequately supported its proposal to include in rate base its prepaid and accrued pension costs for its non-qualified plans.

66. As a general matter, accrued pension costs are costs collected from ratepayers in excess of what the utility has contributed to the pension plans and should therefore be included as a reduction to rate base. However, there is insufficient evidence and explanation in the record to find that Entergy's proposed inclusion of prepaid and accrued pension costs for its non-qualified plans in rate base is just and reasonable. Neither Entergy nor Trial Staff has adequately explained, for instance, how accrued pension costs arise for Entergy's non-qualified plans, or why Entergy would collect costs from ratepayers in excess of what Entergy has contributed to its non-qualified plans.[103] Unlike with the qualified plans, there is no pension trust associated with the non-qualified plans — payments are made from corporate assets when they become due — and the plans are not subject to pension funding requirements under ERISA.[104] Without further support and explanation, we cannot find that Entergy's inclusion of prepaid and accrued pension costs for its non-qualified plans is just and reasonable.

67. Additionally, Entergy's proposed formula for calculating prepaid and accrued pension costs for its non-qualified plans includes components that Entergy has not fully explained and has not demonstrated to be appropriate to include in the calculation of prepaid and accrued pension costs. For instance, similar to its qualified plans, Entergy's proposed methodology for calculating prepaid and accrued pension costs for its non-qualified plans, shown in Workpaper 21, removes Unrecognized Gains/Losses.[105] Entergy does not explain what comprises Unrecognized Gains/Losses or why removing them in the calculation of prepaid and accrued pension costs to be included in rate base produces a just and reasonable result. Without a more detailed explanation, we are unable to evaluate whether removing Unrecognized Gains/Losses is appropriate in the calculation of prepaid and accrued pension costs to be included in rate base for the non-qualified plans.

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[103] Entergy's witness states that "payments to participants receiving non-qualified pension benefits can result in an accrued pension cost (i.e., net cumulative pension costs being greater than net cumulative contributions)," but does not further elaborate. Ex. ENT-015 at 13 (Christmann Rebuttal Test.).

[104] Entergy Brief on Exceptions at 4 (citing Ex. ENT-001 at 3 (Christmann Direct Test.)).

[105] *See* Ex. ENT-014 at 3 (unpopulated Workpaper 21 for Entergy Arkansas).

68. Moreover, Entergy's witness asserts that while payments to participants receiving non-qualified pension benefits can result in an accrued pension cost, contributions or payments to its non-qualified plans cannot result in prepaid pension costs because the benefits are paid to participants as they become due.[106] Indeed, based on Entergy's explanation of the non-qualified plans, prepaid pension costs should not arise from the non-qualified plans given that there is no pension trust associated with the non-qualified plans. However, column K in Workpaper 21 appears to contemplate that there may be a prepaid pension cost for the non-qualified plans.[107] Entergy does not explain the contradiction between this explanation and Workpaper 21, which appears to contemplate the possibility of prepaid pension costs for non-qualified plans with no pension trust.

D. Other Issues

1. Initial Decision

69. The Presiding Judge found that Entergy has discretion over the level at which it funds its pension plans, that it failed to place concrete limits on its discretionary funding, and that its discretionary funding explanations lacked transparency. The Presiding Judge noted that Entergy did not have a policy statement or other documents describing how it exercises its pension funding discretion. Therefore, the Presiding Judge concluded, Entergy had not shown its pension funding was reasonable or prudent. Additionally, the Presiding Judge stated that, because greater funding of the pension plans results in greater rate increases, Entergy must justify the impact on customers. The Presiding Judge found that Entergy has tax incentives to increase funding up to the maximum, tax-deductible limit. The Presiding Judge also stated that there were some years where Entergy collected pension costs from customers but did not fund the pension plans.[108]

70. In response to Entergy's argument that Commission orders accepting settlements indicate the Commission is not opposed to including prepaid and accrued pension costs in rate base,[109] the Presiding Judge found that, while settlements are not binding on the Commission or precedential, they may be deemed persuasive.[110]

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[106] Ex. ENT-015 at 13 (Christmann Rebuttal Test.).

[107] *See* Ex. ENT-014 at 3 (unpopulated Workpaper 21 for Entergy Arkansas).

[108] Initial Decision, 165 FERC ¶ 63,010 at PP 100-108.

[109] Entergy Initial Brief at 25.

[110] Initial Decision, 165 FERC ¶ 63,010 at P 135.

2. **Briefs on Exceptions**

71. Entergy states that its funding discretion is not unlimited and that its goal is to fully fund its pension plans at the 100 percent level and to not let the funding levels fall below 80 percent. Entergy asserts that its largest pension plans had funding percentages of around 74 percent in 2016 (without accounting for interest rate stabilization). Entergy states that maximum and minimum required contributions are determined by the requirements set forth in ERISA and the Internal Revenue Code, and are calculated by Entergy's independent actuary and set forth in the actuarial reports. Furthermore, Entergy notes that it already has the treatment requested in this proceeding at the retail level but has not funded pensions at a greater level than necessary. Additionally, Entergy asserts that pension funding competes with other corporate funding needs, and that its witness was asked about the discretion to fund at the maximum tax deductible level and stated that in her 20 years of pension accounting experience for the Entergy Operating Companies she had never been in a discussion where Entergy had considered the maximum tax-deductible contribution.[111]

72. Entergy states that if it made larger contributions to its pension funds it could lead to greater prepaid pension costs that would increase rates, but at the same time the larger earnings on those larger contributions would reduce rates. Additionally, Entergy states that it does not have a tax incentive to make larger contributions because its proposal provides customers with the full tax benefit through the inclusion of the associated Accumulated Deferred Income Taxes (ADIT) in rate base. Moreover, Entergy asserts that all of the precedent cited in the Initial Decision regarding the demonstration of specific, measurable, and substantial customer benefits before a utility can recover discretionary expenditures in excess of cost all involve merger-related or asset transfer-related costs.[112]

73. Entergy argues that Trial Staff and the Presiding Judge's statements about years in which Entergy made no contributions to pension plans are erroneous because they did not consider the prior funding levels of the plans. Entergy asserts that, in the years when it made no contributions, the reason was that preexisting funding levels approached or exceeded the fully funded 100 percent level. For example, Entergy notes that, while Entergy Louisiana made no contributions in 2002, its pension funding percentage in 2001 was 119 percent.[113]

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[111] Entergy Brief on Exceptions at 49-52.

[112] *Id.* at 30.

[113] *Id.* at 45-48, 50.

74. Trial Staff argues that the terms of the settlements Entergy cited in support of its proposal and the Commission's order approving the settlements made clear that the settlements were not intended to be treated as precedential. Additionally, Trial Staff asserts that Commission precedent states that settlements are not precedential and that settlements can be approved if fair and reasonable and in the public interest, a standard that does not require a determination that the settlement is just and reasonable.[114]

75. Additionally, Trial Staff requests that the Commission clarify that its regulations do not allow utilities to meet their burden of proof through improper rebuttal testimony or extra-record evidence. Trial Staff notes that after Entergy submitted its direct testimony Trial Staff and Joint Customers filed a motion for summary disposition in which they argued that Entergy had provided a fundamental lack of evidence.[115]

3. Briefs Opposing Exceptions

76. With regard to discretionary funding of Entergy's pension plans, Trial Staff and Joint Customers assert that Entergy has no concrete pension funding limits. Trial Staff asserts that the range between the minimum and maximum contribution amounts is so broad that it may as well be unlimited.[116] Joint Customers and Trial Staff maintain that Entergy's witness acknowledged that there is a tax benefit to increasing pension plan funding up to the maximum tax-deductible limit, and Joint Customers assert that this is illustrated by Entergy contributing $24 million above the required minimum amount in 2016.[117] Trial Staff asserts that Entergy did not provide testimony in support of its reported ADIT balances, while Joint Customers state that the inclusion of ADIT in rate

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[114] Trial Staff Brief on Exceptions at 6-8 (citing *Transcon. Gas Pipe Line Corp.*, 130 FERC ¶ 61,043, at P 53 (2010), *reh'g denied*, 139 FERC ¶ 61,002, at P 62 (2012); 18 C.F.R. § 385.602(g)(3) (2019)).

[115] *Id.* at 8-10. The Presiding Judge denied the motion for summary disposition. Initial Decision, 165 FERC ¶ 63,010 at P 70.

[116] Trial Staff Brief Opposing Exceptions at 33 (stating that in 2016 the minimum contribution level was approximately $168 million and the maximum tax-deductible contribution level was about $3.975 billion).

[117] Joint Customers Brief Opposing Exceptions at 25-26 (citing Tr. 166:5-15 (Christmann)); Trial Staff Brief Opposing Exceptions at 33-34 (citing Tr. 166:5-15 (Christmann)).

base provides only a small benefit to customers.[118] Trial Staff argues that Entergy does not deny that it has collected pension costs from customers without making pension contributions. Trial Staff contends that, going forward, Entergy could incur prepaid pension costs without making contributions to its pension funds.[119]

77. In response to Trial Staff's arguments regarding the precedential value of settlements, Entergy argues that neither it nor the Presiding Judge claimed the cited settlements were precedential. Rather, Entergy asserts, Entergy and the Presiding Judge indicated that the Commission issued orders that accepted settlements containing provisions that allowed for inclusion of prepaid and accrued pension costs in rate base, and that those orders indicate that including prepaid and accrued pension costs in rate base is not antithetical to Commission policy. Entergy contends that the Commission must still review uncontested settlements, and it does not ignore its ratemaking policy simply because the settlement was uncontested.[120]

78. In response to Trial Staff's requested clarification regarding improper rebuttal testimony or extra-record evidence, Entergy notes that Trial Staff's exception did not identify the alleged improper rebuttal testimony. Moreover, Entergy asserts that Trial Staff had the opportunity to submit discovery and cross-examine witnesses on its rebuttal testimony, and could have moved to submit rebuttal testimony or strike the alleged improper rebuttal testimony. Entergy maintains that its rebuttal testimony properly responded to Trial Staff's and Joint Customers' testimony. Additionally, Entergy states that it did not rely on extra-record evidence because references to FERC Form No. 1 or SEC10-K reports are routine in Commission pleadings.[121]

4. <u>Commission Determination</u>

79. We find that Entergy's pension plan funding discretion does not, in and of itself, make Entergy's proposal unjust and unreasonable. Entergy states that it aims to fully fund its pension plans at the 100 percent level and to not let the funding levels fall below 80 percent.[122] Entergy is not required to provide a policy statement or other documents describing how it exercises its pension funding discretion. As discussed above, while we

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[118] Trial Staff Brief Opposing Exceptions at 33-34; Joint Customers Brief Opposing Exceptions at 26-27.

[119] Trial Staff Brief Opposing Exceptions at 32.

[120] Entergy Brief Opposing Exceptions at 15-16.

[121] *Id.* at 17-21.

[122] Entergy Brief on Exceptions at 49-50.

are rejecting Entergy's proposal to include a line item for prepaid and accrued pension costs in rate base, we note that, to the extent a utility has a line item for prepaid or accrued pension costs in its transmission formula rate and customers are concerned the utility has funded its pension plans at levels that are not prudent, they may challenge the utility's pension funding levels when the utility files its annual transmission formula rate updates.

80. Because our decision in this order does not rely on Commission orders approving settlements, we need not address Trial Staff's exception regarding the precedential value of settlement orders in this proceeding. Additionally, because we are rejecting Entergy's proposal to include a line item for prepaid and accrued pension costs in rate base, we need not address Trial Staff's exception regarding whether Entergy submitted improper rebuttal testimony or extra-record evidence.

E. Conclusion

81. For the reasons discussed above, we find that Entergy has not demonstrated that its proposal to include prepaid and accrued pension costs in rate base is just and reasonable. This finding is without prejudice to Entergy making a future filing that adequately demonstrates that its future proposal, including its methodology for calculating prepaid and accrued pension costs, is just and reasonable. We direct Entergy to make a compliance filing with revised tariff records in eTariff format to remove the line item for prepaid and accrued pension costs in rate base within 30 days of this order to reflect the Commission's action in this order.[123]

82. We direct Entergy to make refunds with interest in accordance with section 35.19(a) of the Commission's regulations within 30 days of the date of this order.[124] We also direct Entergy to file a refund report detailing the principal amounts collected from its customers within 45 days of the date of this order.

The Commission orders:

(A) The Initial Decision's finding that Entergy's proposal has not been shown to be just and reasonable is hereby affirmed, as discussed in the body of this order.

(B) Entergy is hereby directed to file a compliance filing within 30 days of the issuance of this order, as discussed in the body of this order.

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[123] *See Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

[124] 18 C.F.R. § 35.19a (2019).

(C) Entergy is hereby directed to provide refunds, with interest calculated pursuant to 18 C.F.R. § 35.19a, within 30 days of the date of this order, for the period from June 1, 2015 through the date of this order, as discussed in the body of this order.

(D) Entergy is hereby directed to file a refund report within 45 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.