

166 FERC ¶ 61,021  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket No. EL01-88-020

v.

Entergy Services, Inc.

OPINION NO. 561-A  
ORDER DENYING REHEARING

(Issued January 17, 2019)

1. On May 17, 2018, the Commission issued an order<sup>1</sup> on Initial Decision<sup>2</sup> regarding a “bandwidth” calculation filing, covering a seven-month period in 2005, submitted by Entergy Services, Inc. (Entergy Services)<sup>3</sup> on behalf of the Entergy Operating Companies (Operating Companies)<sup>4</sup> (collectively, Entergy).<sup>5</sup> On June 18, 2018, the

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<sup>1</sup> *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, Opinion No. 561, 163 FERC ¶ 61,116 (2018).

<sup>2</sup> *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 157 FERC ¶ 63,018 (2016) (Initial Decision).

<sup>3</sup> Entergy is a wholly-owned subsidiary of Entergy Corporation.

<sup>4</sup> The five Operating Companies involved in this proceeding were, at the relevant time of the bandwidth calculation filing: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Louisiana, Inc. (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc. (Entergy New Orleans); and Entergy Gulf States, Inc. (Entergy Gulf States). At the end of 2007, Entergy Gulf States was split into Entergy Texas, Inc. (Entergy Texas) and Entergy Gulf States Louisiana, LLC (Entergy Gulf States Louisiana).

<sup>5</sup> As explained below, Entergy bandwidth calculation filings are annual filings to achieve rough production cost equalization among the Operating Companies

Louisiana Public Service Commission (Louisiana Commission) requested rehearing of that decision.<sup>6</sup> In this order, we deny the rehearing request.

## **I. Background**

2. The Commission has held that the System Agreement required that production costs be “roughly equal” among those Operating Companies participating in the System Agreement.<sup>7</sup> In Opinion Nos. 480 and 480-A, the Commission held that the Entergy System was no longer in rough production cost equalization and adopted a numerical bandwidth remedy. This bandwidth remedy achieves rough production cost equalization on the Entergy System among the Operating Companies participating in the System Agreement by not allowing any Operating Company to have production costs that are more than 11 percent above or below the Entergy System average production costs. Under the bandwidth remedy, each calendar year, the production costs of each Operating Company were calculated, with payments 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.

3. In Opinion No. 480, the Commission found that the Vidalia hydroelectric power plant (Vidalia) was an Entergy Louisiana-only resource, not a system-wide production

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participating in the Entergy System Agreement (System Agreement). The System Agreement terminated in 2016.

<sup>6</sup> Louisiana Commission June 18, 2018 Rehearing Request (Rehearing Request).

<sup>7</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 136 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006) (November 2006 Compliance Order), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007) (April 2007 Compliance Order), *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) (Louisiana Remand), *order on remand*, 137 FERC ¶ 61,047 (2011) (2011 Order on Remand), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152 (2014) (2014 Order on Rehearing), *order denying reh'g*, 153 FERC ¶ 61,034 (2015) (2015 Order Denying Rehearing), *remanded, La. Pub. Serv. Comm'n v. FERC*, 866 F.3d 426 (D.C. Cir. 2017) (2017 Remand Order) (affirming 2011 Order on Remand and 2014 Order on Rehearing).

cost that should be equalized among all the Operating Companies.<sup>8</sup> The Commission directed that the bandwidth formula exclude the capital and tax-related effects of the Vidalia tax deduction in order to avoid shifting its tax burdens and benefits to other Operating Companies. To ensure that costs associated with the Vidalia tax deduction stay in Louisiana, the Commission approved the inclusion of a footnote (Footnote 1) in the bandwidth formula which specifies, inter alia, that:

All Rate Base, Revenue and Expense items shall be based on the actual amounts on the Company's books for the twelve months ended December 31 of the previous year as reported in FERC Form 1 or such other supporting data as may be appropriate for each Company; and shall include certain regulatory adjustments ... including, but not limited to: ...  
*(3) repricing of energy associated with the Vidalia purchase power contract for [Entergy Louisiana] based on the average annual Service Schedule MSS-3 rate paid by [Entergy Louisiana], including the exclusion of the income tax savings of the Vidalia purchase power contract from ADIT and reflecting the reversal of the Vidalia capital transaction ....*<sup>9</sup>

4. In Opinion No. 480, the Commission also found that the bandwidth remedy should apply prospectively starting in calendar year 2006, with the first payments, based on calendar year 2006 production costs, occurring in 2007. Entergy subsequently submitted a compliance filing containing its proposed bandwidth formula, as part of Service Schedule MSS-3 of the System Agreement. The bandwidth formula was accepted by the

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<sup>8</sup> In 1985, Entergy Louisiana's predecessor entered into an agreement to purchase up to 94 percent of the output from Vidalia. In 2002, in recognition of the fact that the Vidalia contract rates under that agreement were expected to remain significantly above market value, Entergy Louisiana came up with a tax strategy to reduce the cost of the contract to customers resulting in a \$1.8 billion deduction that translated into a tax savings for Entergy Louisiana of approximately \$680 million. Entergy Louisiana took the Vidalia tax deduction in 2001, resulting in a Net Operating Loss for that year that Entergy Louisiana carried forward to succeeding years. The tax effect of the Net Operating Loss Accumulated Deferred Income Tax (ADIT) generated by the Vidalia tax deduction was used in part to reduce electric rates for Entergy Louisiana's customers.

<sup>9</sup> See Entergy System Agreement Service Schedule MSS-3, Ex. ESI-3 at 5 (citing Compliance Tariff at § 30.12, n.1).

Commission<sup>10</sup> to be applied prospectively for production costs incurred during calendar year 2006 and all calendar years thereafter.

5. In its remand of Opinion Nos. 480 and 480-A, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the Commission had not provided a reasonable explanation for the Commission's decision to delay implementation of the bandwidth remedy until a full year of data had become available for the 2006 test year.<sup>11</sup> In the subsequent 2011 Order on Remand, the Commission held that it would implement the bandwidth remedy on June 1, 2005, the date the Commission issued Opinion No. 480 determining that the rates were unjust and unreasonable. The Commission stated that allowing the bandwidth remedy to be implemented on June 1, 2005 is consistent with the court's direction that, absent a reasonable explanation for a delay to implement the bandwidth remedy, it would be arbitrary and capricious for the Commission to delay implementation of a just and reasonable rate.<sup>12</sup> The Commission directed Entergy to submit a compliance filing calculating the bandwidth payments and receipts for the period June 1, 2005 through December 31, 2005 (2005 period).<sup>13</sup>

6. On February 28, 2014, the Commission issued two orders in this proceeding ordering interest on bandwidth payments for the 2005 period. In the 2014 Order on Rehearing, which addressed requests for rehearing of the 2011 Order on Remand, the Commission granted the Louisiana Commission's request that interest be required on the bandwidth payments in this proceeding.<sup>14</sup> The Commission required that interest be calculated on the payment/receipt amounts as of June 1, 2006.<sup>15</sup> In a separate order, which rejected Entergy's initial compliance filing regarding bandwidth payments for the

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<sup>10</sup> See November 2006 Compliance Order, 117 FERC ¶ 61,203; April 2007 Compliance Order, 119 FERC ¶ 61,095.

<sup>11</sup> Louisiana Remand, 522 F.3d at 400.

<sup>12</sup> 2011 Order on Remand, 137 FERC ¶ 61,047 at P 34. The Commission denied a Louisiana Commission request for rehearing regarding these rulings in the 2014 Order on Rehearing. 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 33.

<sup>13</sup> 2011 Order on Remand, 137 FERC ¶ 61,047 at P 34.

<sup>14</sup> 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 42.

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

2005 period, the Commission, inter alia, agreed with the Louisiana Commission's argument that payments/receipts for the 2005 period must include interest.<sup>16</sup>

7. On April 29, 2014, as amended on May 7, 2014 and May 23, 2014, Entergy submitted a compliance filing calculating bandwidth payments and receipts for the 2005 period. With regard to interest calculations, Entergy stated that it had computed interest on the payments and receipts based on the calculations included in its compliance filing. Entergy stated that interest was compounded quarterly from June 1, 2006 through May 14, 2014, the date upon which its current compliance filing payments will be made. On October 15, 2015, the Commission issued an order<sup>17</sup> accepting and suspending Entergy's proposed rates and establishing hearing and settlement judge procedures.<sup>18</sup>

8. The proceeding went to hearing, and on November 7, 2016, the Presiding Judge issued an Initial Decision addressing, among other things: (1) whether interest on payments related to the 2005 period should be accrued from June 1, 2005, the first day of the 2005 period, or from June 1, 2006, the date that those payments should have been made;<sup>19</sup> and (2) whether Entergy Louisiana's Net Operating Loss ADIT is attributable to Energy Louisiana's 2001 Vidalia tax deduction, and if so, whether it is appropriate to exclude Entergy Louisiana's Net Operating Loss ADIT recorded in Account 190 caused by the Vidalia tax deduction from the 2005 bandwidth calculation.<sup>20</sup>

9. The Presiding Judge found that the appropriate start date for interest on bandwidth payments in this proceeding is June 1, 2006<sup>21</sup> and that a portion of Entergy Louisiana's Net Operating Loss ADIT must be excluded from the ADIT input variable of the bandwidth formula to the extent that the ADIT is properly attributable to the Vidalia tax

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<sup>16</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,153 at P 30 (2014 Order Rejecting Compliance Filing). The 2014 Order Rejecting Compliance Filing found that interest was required but did not specify a start date.

<sup>17</sup> *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 153 FERC ¶ 61,032 (2015) (Hearing Order), *reh'g denied*, 155 FERC ¶ 61,118 (2016), *aff'd*, *Ark. Pub. Serv. Comm'n v. FERC*, 712 Fed. App'x 3 (D.C. Cir. 2018).

<sup>18</sup> Hearing Order, 153 FERC ¶ 61,032 at PP 1, 22.

<sup>19</sup> Initial Decision, 157 FERC ¶ 63,018 at PP 29-42.

<sup>20</sup> The Presiding Judge also addressed additional issues, but they are not relevant to the rehearing request addressed in this order.

<sup>21</sup> Initial Decision, 157 FERC ¶ 63,018 at P 42.

deduction.<sup>22</sup> The Commission affirmed these decisions in Opinion No. 561.<sup>23</sup> As to the Net Operating Loss ADIT, the Commission found that (1) the bandwidth formula requires the exclusion of capital and tax related effects of the Vidalia tax deduction in order to avoid shifting tax burdens and benefits to other Operating Companies, and (2) a portion of Entergy Louisiana's 2005 state Net Operating Loss carryforward ADIT balance recorded in Account 190 as of December 31, 2005 is attributable to the Vidalia tax deduction and is properly excluded from the 2005 bandwidth calculation.<sup>24</sup>

## II. Discussion

### A. Interest Effective Date

10. On rehearing, the Louisiana Commission argues that the Commission should reconsider the decision to deny interest for the period between the effectiveness of the bandwidth remedy in 2005 and June 1, 2006, the date on which Opinion No. 561 finds that interest should commence.<sup>25</sup> Specifically, the Louisiana Commission argues that the Commission failed to take into account the D.C. Circuit's 2017 Remand Order, in which the D.C. Circuit held that payments under the bandwidth tariff roughly equalize costs for the prior cost measurement period rather than prospectively. The Louisiana Commission states that payments under the bandwidth tariff achieve rough equalization in 2005, which is the period in which customers overpaid production costs and lost the use of their money. The Louisiana Commission argues that full compensation requires interest for the delayed payment, beginning in 2005.<sup>26</sup> The Louisiana Commission cites to several orders and witness testimony for the propositions that June 1, 2005 is the effective date of the bandwidth remedy and customers lost the use of their funds in 2005.<sup>27</sup>

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<sup>22</sup> *Id.* P 75.

<sup>23</sup> Opinion No. 561, 163 FERC ¶ 61,116 at P 16.

<sup>24</sup> *Id.* P 82.

<sup>25</sup> Rehearing Request at 1.

<sup>26</sup> *Id.* at 9-10.

<sup>27</sup> *Id.* at 11-13. The Louisiana Commission points to two October 15, 2015 orders which it argues require interest from June 1, 2005, and that such a start date was required to ensure full compensation: 2015 Order Denying Rehearing, 153 FERC ¶ 61,034 at P 17 and *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 153 FERC ¶ 61,033, at P 16 (2015). The Louisiana Commission also cites to its own witness testimony which states, "To make customers whole, interest should begin accruing as the disparate costs were

11. We disagree. As the Commission noted in Opinion No. 561, recent orders concerning interest and the bandwidth formula require that interest be effective June 1 of the year following the test year.<sup>28</sup> In the 2014 Order on Rehearing, the Commission unambiguously ordered that “interest be calculated on the payment/receipt amounts from June 1, 2006 until the date of the Entergy Intra-System Bill that will reflect the bandwidth recalculation amounts for the seven-month 2005 period.”<sup>29</sup> No party sought rehearing of the Commission’s ruling on the effective date for interest. Moreover, as the Commission discussed in Opinion No. 561, to the extent any language in any prior orders is ambiguous, including language in the 2015 orders denying rehearing cited by the Louisiana Commission, the Commission clarified that June 1, 2006 is the correct date; the 2015 orders denying rehearing only address the question of whether interest should apply, and not the date from which interest should apply.<sup>30</sup>

12. In terms of the D.C. Circuit remand in 2017, we disagree that the D.C. Circuit’s statement, “FERC retroactively applied its Remedy such that it cured any severe disparities from June 1, 2005 onward,” means that the effective date for interest is June 1, 2005 rather than June 1, 2006. In that decision, the D.C. Circuit denied the Louisiana Commission’s petition for review, finding that the Commission has deference in designing the bandwidth remedy and that the Louisiana Commission’s arguments regarding application of the bandwidth remedy were without merit.<sup>31</sup> Moreover, there was no discussion of interest in that decision.

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incurred and payments to remedy the undue disparities became due” and to a Commission Trial Staff witness who the Louisiana Commission argues conceded that calculating interest beginning on June 1, 2006 would not “ensure full compensation for the payment of unduly discriminatory rates.” Rehearing Request at 13 (citing Ex. LC-7, Futral Direct Testimony at 41 and Tr. 361:15-21, 362:20-25 (Sammon)).

<sup>28</sup> Opinion No. 561, 163 FERC ¶ 61,116 at PP 39-48.

<sup>29</sup> 2014 Order on Rehearing, 146 FERC ¶ 61,152 at P 42. The “seven-month 2005 period” refers to June 1, 2005 through December 31, 2005.

<sup>30</sup> Opinion No. 561, 163 FERC ¶ 61,116 at P 41.

<sup>31</sup> 2017 Remand Order, 866 F.3d at 430 (“[The Louisiana Commission] offers no basis for undermining the great deference we owe to FERC in fashioning the Bandwidth Remedy the way it did.”); *id.* (“We have reviewed [the Louisiana Commission’s] remaining arguments challenging FERC’s decision to proceed as it did on remand and find they are all without merit.”).

13. While the Louisiana Commission argues that “interest on bandwidth payments has always run from the effective date,”<sup>32</sup> the cases cited to by the Louisiana Commission do not support the Louisiana Commission’s position. Rather, the cases are consistent with the Commission’s approach here, i.e., requiring interest be effective June 1 of the year following the test year.<sup>33</sup> To further explain, the bandwidth calculation uses a historical test period, and the payments and receipts calculated based on that test period occur beginning June 1 of the year following the test period. Thus, it is appropriate to use a June 1, 2006 effective date to calculate interest, as it is a year following the test period and the date that bandwidth payments should have been made. This approach is consistent with the general proposition, reflected in cases cited by the Louisiana Commission,<sup>34</sup> that the purpose of interest is to make the recipient whole for the time value of money that it otherwise would have available: In this case, given how the remedy is designed, the recipients would not have had use of any of the funds until after the 2005 period.<sup>35</sup> The Louisiana Commission fails to recognize the unique nature of the bandwidth formula and the broad discretion the Commission holds to fashion remedies, including the interest for the applicable time period.<sup>36</sup>

14. Finally, we disagree with the Louisiana Commission that the Commission erred in finding that it would be “mathematically impossible” to calculate interest for the period

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<sup>32</sup> Rehearing Request at 15-17.

<sup>33</sup> *Entergy Servs. Inc.*, 139 FERC ¶ 61,104, at P 13 (2012) (indicating interest for the 2006 period should be calculated beginning June 1, 2007); *Entergy Servs. Inc.*, 142 FERC ¶ 61,011, at P 21 (2013) (indicating interest for the 2007 period should be calculated beginning June 1, 2008).

<sup>34</sup> Rehearing Request at 14 (citing *Entergy Servs., Inc.*, 156 FERC ¶ 61,112, at P 10 (2016); *PJM Interconnection, LLC*, 156 FERC ¶ 61,090, at P 31 (2016); *H.Q. Energy Servs. v. NYISO*, 113 FERC ¶ 61,184, at P 40 (2005); *Pub. Serv. Co. of Colo.*, 82 FERC ¶ 61,058, at 61,215 (1998); *PJM Interconnection, LLC*, 156 FERC ¶ 61,090 (2016)).

<sup>35</sup> The Louisiana Commission states that, because consumers “had their money” until Entergy assessed excessive production costs in 2005, those consumers lost the time value of those funds beginning when they paid those excessive costs. *Id.* at 18.

<sup>36</sup> *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (“[T]he breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions.”); *see also Ariz. Corp. Comm’n v. FERC*, 397 F.3d 952, 956 (D.C. Cir. 2005) (noting that FERC “wields maximum discretion” when choosing a remedy).

beginning June 2005.<sup>37</sup> The Louisiana Commission argues that Opinion No. 561 fails to explain how the inability to calculate interest on the “first day” of the remedy makes this case different from any other case in which the Commission requires a recalculation of rates. The Louisiana Commission states that interest can never be calculated until the Commission determines the correct rate calculation for the period in question. However, the Louisiana Commission’s argument mischaracterizes Opinion No. 561. The issue is not whether we can determine the amount of payments due on June 1, 2005 to calculate interest beginning June 1, 2005. Rather, as the Commission set forth in Opinion No. 561, the issue is that the amounts of the transfer payments were unknowable until the applicable test period was completed, and thus, it would be impossible to establish as of the very first day of that period which Operating Companies would be making payments, which would be receiving payments, or even if payments were to be made at all. As discussed above, the Commission requires interest to compensate for the time value of money based on when recipients would otherwise have had use of the funds.<sup>38</sup> The Operating Companies would not have had use of any of the funds until after the 2005 period. Accordingly, any reference to “impossibility” refers to “computing interest for payments to be made on a date before the Operating Companies would make or receive payments.”<sup>39</sup>

**B. Vidalia Tax Deduction and Net Operating Loss ADIT**

15. We affirm the Commission’s finding in Opinion No. 561 that it is appropriate to exclude from the 2005 bandwidth calculation Net Operating Loss ADIT recorded in Account 190 that is attributable to the Vidalia tax deduction. As the Commission explained in Opinion No. 561, the pertinent provision of the bandwidth formula is Footnote 1, which states that “[a]ll Rate Base, Revenue and Expense items . . . shall include certain retail regulatory adjustments . . . *including the exclusion of the tax savings of the Vidalia purchase power contract from ADIT* and reflecting the reversal of the capital transaction. . . .”<sup>40</sup> The Commission explained that Footnote 1 strives to fulfill the

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<sup>37</sup> Rehearing Request at 17-18. The Louisiana Commission argues that the Commission assumes that the interest on bandwidth payments and receipts has been calculated based on daily or hourly production cost disparities in the cost measurement period, but instead, the payments for any remedy period have been spread ratably over seven months, with interest calculated on each month’s payments separately. *Id.* at 17.

<sup>38</sup> Opinion No. 561, 163 FERC ¶ 61,116 at P 46.

<sup>39</sup> Entergy Brief Opposing Exceptions at 16-17.

<sup>40</sup> Opinion No. 561, 163 FERC ¶ 61,116 at P 85 (citing Ex. ESI-3 at 4 n.1 (emphasis added)).

Commission's "long-stated aim" concerning the Vidalia tax transaction that costs associated with Vidalia must stay in Louisiana.<sup>41</sup> The Commission determined in Opinion No. 561 that a portion of Entergy Louisiana's 2005 Net Operating Loss ADIT was, in fact, attributable to the Vidalia tax deduction, and accordingly excluded it from the bandwidth calculation per the terms of Footnote 1.<sup>42</sup>

16. On rehearing, the Louisiana Commission argues that the exclusion of Entergy Louisiana's Net Operating Loss ADIT attributable to the Vidalia transaction from the 2005 bandwidth calculation is inconsistent with Opinion No. 480 and Footnote 1. The Louisiana Commission explains that, in Opinion No. 480, the Commission ruled that the excess cost of Vidalia and the "substantial tax *benefits* associated with the Vidalia project" should be excluded from the bandwidth calculation.<sup>43</sup> The Louisiana Commission argues that Opinion No. 480 adopted a "trade-off," i.e., a large amount of excess costs associated with Vidalia would be excluded each year from the bandwidth calculation, but there would be no rate base reduction related to the Vidalia tax proceeds, thereby allowing Entergy Louisiana to maintain a "fully-funded rate base."<sup>44</sup> The Louisiana Commission argues that the benefit of liability ADIT is the cash produced through the deduction, which is normally used to reduce rate base.<sup>45</sup> The Louisiana Commission argues that the benefit as of 2005 was the net of the Vidalia ADIT and any Net Operating Loss ADIT caused by Vidalia.<sup>46</sup> The Louisiana Commission argues that excluding both is unjust and unreasonable because it imposes a rate base reduction for

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<sup>41</sup> *Id.* P 85.

<sup>42</sup> *Id.* P 82.

<sup>43</sup> Rehearing Request at 7 (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 184 (emphasis added)).

<sup>44</sup> *Id.* at 19.

<sup>45</sup> *Id.* at 8.

<sup>46</sup> The Louisiana Commission states that the ADIT for Vidalia in Account 283 was \$654 million in 2005 and the Commission found that \$56 million of Net Operating Loss ADIT was an "offset" to the Vidalia ADIT. *Id.* at 24 (citing Opinion No. 561, 163 FERC ¶ 61,116 at P 87). The Louisiana Commission argues that the net benefit was \$598 million and only that amount should be excluded from the rate base. *Id.*

Vidalia, related to an amount that had not been realized and has produced no benefit for anyone.<sup>47</sup>

17. We dismiss the Louisiana Commission's arguments that Opinion No. 480 approved using a "fully-funded rate base for Entergy Louisiana as the trade-off for disallowing all excess Vidalia costs"<sup>48</sup> and that the purpose of the bandwidth tariff is to ensure that "rate base is not reduced."<sup>49</sup> As an initial matter, neither Opinion No. 480 nor the bandwidth tariff speak to a "fully-funded rate base," nor does the Louisiana Commission's request for rehearing offer any specific definition as to what is meant by that term. Instead, Opinion No. 480 found that the Vidalia contract was not entered into for the benefit of the Entergy system as a whole, and therefore associated costs and benefits of that contract should remain in Louisiana.<sup>50</sup> Accordingly, the purpose of Footnote 1 of the bandwidth formula was to exclude from the bandwidth tariff the income tax effects which include both deferred tax liabilities and deferred tax assets related to the Vidalia transaction to ensure that the tax effects of the transaction stay in Louisiana. The purpose is not to ensure that Louisiana ratepayers are held harmless, as the Louisiana Commission appears to suggest.<sup>51</sup>

18. We also dismiss the Louisiana Commission's argument that the exclusion of Net Operating Loss ADIT related to the Vidalia transaction unjustly and unreasonably penalizes Entergy Louisiana customers.<sup>52</sup> The Louisiana Commission argues that excluding both the Vidalia ADIT and the Net Operating Loss ADIT would exclude \$56

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<sup>47</sup> *Id.* at 8.

<sup>48</sup> *Id.* at 19.

<sup>49</sup> *Id.* at 20.

<sup>50</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 174.

<sup>51</sup> We note that, under normal circumstances, excluding a cost or expense and its related tax effect reduces rates charged to customers. However, under the mechanics of the System Agreement, the opposite is true. Under the bandwidth formula the lower cost providers, and by extension their retail customers, must make transfer payments to the higher cost providers when certain conditions are met under the bandwidth formula. Therefore, the inclusion of additional production costs, expenses, and related deferred tax asset amounts (i.e., Account 190 balances) in the bandwidth tariff by an Operating Company helps to reduce or even eliminate a transfer payment that it may need to make to another Operating Company.

<sup>52</sup> Rehearing Request at 26.

million of legitimate production investment from Entergy Louisiana's rate base.<sup>53</sup> The Louisiana Commission explains that the Commission, in Opinion No. 480, relied on a retail Louisiana tax settlement<sup>54</sup> when making its determinations regarding the Vidalia transaction.<sup>55</sup> The Louisiana Commission asserts that this settlement provided for certain guaranteed and contingent credits to be provided to ratepayers, and that the cash benefit of the settlement would not be used to reduce the Entergy Louisiana rate base for retail ratemaking. The Louisiana Commission contends that the Commission's findings in Opinion No. 561 effectively impute \$56 million of Vidalia ADIT into the rate base as a reduction, disregarding the Commission's consideration of the Louisiana tax settlement in Opinion No. 480.<sup>56</sup>

19. We find that the Louisiana Commission's argument is not relevant to whether any portion of Entergy Louisiana's Account 190 Net Operating Loss balance as of December 31, 2005 that is attributable to the Vidalia tax deduction should be excluded from the 2005 bandwidth calculation. As the Commission noted in Opinion No. 480, "[t]o allow Louisiana to shift costs of [the Vidalia contract] to other states on the Entergy system and not accept responsibility for its own decision making is inappropriate."<sup>57</sup> How a tax settlement was structured in Louisiana regarding the flow of benefits from Entergy Louisiana to ratepayers was a decision made at the retail level and cannot override the Commission's decision to exclude the costs and benefits of the Vidalia transaction from the bandwidth calculation. Although the Louisiana tax settlement was mentioned by the Commission in Opinion No. 480 as evidence that significant tax benefits from the Vidalia transaction have accrued solely to the benefit of Louisiana ratepayers,<sup>58</sup> the Commission's findings in Opinion No. 561 in no way contradict any of

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<sup>53</sup> *Id.* at 21-26.

<sup>54</sup> The Louisiana Commission opened an investigation into the Vidalia contract in 1999 which was subsequently settled in 2002. Pursuant to that settlement, Entergy Louisiana would share with Entergy Louisiana customers a portion of an accelerated deduction that Entergy Louisiana believed it could take over the remaining life of the contract, until 2031. Opinion No. 480, 111 FERC ¶ 61,311 at P 183 (citing Ex. CNO-1 at 5-6).

<sup>55</sup> Rehearing Request at 22 (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 183).

<sup>56</sup> *Id.* at 26.

<sup>57</sup> Opinion No. 480, 111 FERC ¶ 61,311 at P 174.

<sup>58</sup> *Id.* PP 183-184.

the Commission's findings in Opinion No. 480, despite the Louisiana Commission's arguments to the contrary.

20. Finally, we disagree with the Louisiana Commission that the Commission erroneously calculated the Vidalia ratio of ADIT because a one-year calculation is supposed to involve only those tax deductible costs *incurred* in the single year.<sup>59</sup> Specifically, the Louisiana Commission argues that by focusing only on 2001, Opinion No. 561 fails to consider that the Vidalia deductions as of 2005 could not have produced a Net Operating Loss nearly as large as the Commission assumes in excluding Net Operating Loss ADIT from the rate base.<sup>60</sup> The Louisiana Commission argues that the Commission should instruct Entergy to use the ratio of incurred expenses for Vidalia in 2001 to all incurred tax deductible expenses in 2001. Alternatively, the Louisiana Commission argues that, if the Commission wishes to develop a ratio including in one year the effects of all future forecasted losses related to Vidalia, it should at least include all the deductions that actually affected the amount of the Net Operating Loss ADIT as of 2005.<sup>61</sup>

21. The Louisiana Commission raised these same arguments in its Brief on Exceptions<sup>62</sup> and the Commission addressed them in Opinion No. 561.<sup>63</sup> Accordingly,

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<sup>59</sup> Rehearing Request at 26-32 (emphasis supplied by the Louisiana Commission).

<sup>60</sup> *Id.* at 32. The Louisiana Commission states that the Commission relies on a calculation of the Vidalia deduction that was substantially inaccurate as of 2005 because of intervening changes in market prices. The Louisiana Commission asserts that a forecast in 2001 of all future losses for Vidalia should not be compared to a single year's deductible expenses and then used to impose a disallowance in rates effective four years later. *Id.* The Louisiana Commission also notes that the Commission's repeated reference to incurred expenses in Opinion No. 505-A and the subsequent order reflects its requirement that the includable Net Operating Loss ADIT ratio be developed using the expenses actually recognized on the books in the same year the Net Operating Loss was recognized. *Id.* at 27 (citing *Entergy Servs., Inc.*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012) and *Entergy Servs., Inc.*, 145 FERC ¶ 61,045 (2013)).

<sup>61</sup> The Louisiana Commission states that the deductions in the years 2001-2005 amounted to \$13.3 billion and about \$1.053 billion of the Vidalia deduction contributed to the 2005 Net Operating Loss ADIT. Rehearing Request at 30.

<sup>62</sup> Opinion No. 561, 163 FERC ¶ 61,116 at P 71 (citing Louisiana Commission Brief on Exceptions at 59).

<sup>63</sup> *Id.* PP 91-96.

we will not repeat those arguments here except to note that Opinion No. 505-A specifically requires the expenses at issue to be compared to “total expenses incurred during the period the Net Operating Loss was recognized.”<sup>64</sup> The Vidalia tax deduction was recognized in 2001, not 2001 through 2005, and therefore the total deductible expenses in this calculation are limited to that year. The Louisiana Commission provides no argument on rehearing to persuade us to modify this finding.

The Commission orders:

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>64</sup> Opinion No. 505-A, 139 FERC ¶ 61,103 at P 60.