



## 5th Circuit Denies Louisiana Public Service Commission's Petition for Review of FERC's Entergy Bandwidth

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Reading Time : **3 min**

In the petition, LPSC challenged (1) FERC's interpretation of Service Schedule MSS-3 of the System Agreement, which contains the formula rate, as requiring formula inputs to be the "actual amounts" reported on FERC Form 1 filings, (2) FERC's "reversal" of its prior interpretation that annual bandwidth implementation proceedings could be used to challenge unjust and unreasonable cost inputs into the formula and, (3) FERC's ruling that casualty loss deferred taxes should be included in the 2008 bandwidth calculations. The 5th Circuit denied all of these appeals.

First, upholding FERC's interpretation that the tariff requires the "actual amounts" from FERC Form 1 filings, the court pointed to the plain language of Footnotes 1 and 2 of Service Schedule MSS-3, which states that "All Rate Base, Revenue and Expense items shall be based *on the actual amounts* on the Company's books," and "Rate Base values shall be based *on the actual balances* on the Company's books."<sup>2</sup> The court concluded that FERC's interpretation is "a plain reading of the System Agreement . . . and is not arbitrary or irrational."<sup>3</sup>

Second, the 5th Circuit addressed LPSC's challenge to FERC's reversal of its position regarding the proper scope of bandwidth implementation proceedings, where FERC ultimately concluded that challenges to the justness and reasonableness of formula inputs *cannot* be raised in bandwidth implementation proceedings. Previously, FERC had indicated that it *would* review the justness and reasonableness of cost inputs in the annual bandwidth proceedings.

The 5th Circuit upheld FERC's actions, despite conceding that FERC's "early orders" stated that challenges to formula inputs could be raised in bandwidth implementation proceedings.<sup>4</sup> The 5th Circuit reasoned that FERC "corrected its previous interpretation in its very first ruling on an annual bandwidth proceeding . . . changed its interpretation in light of its gained experience conducting annual bandwidth proceedings, explained its new interpretation of the System Agreement, and consistently has interpreted the System Agreement after the change." The court concluded that "FERC offered a reasoned explanation for its approach; no more is required."<sup>5</sup>

Finally, the 5th Circuit denied LPSC's appeal of FERC's ruling that Entergy must include casualty loss Accumulated Deferred Income Taxes (ADIT) in its third bandwidth calculation. LPSC challenged FERC's decision on the grounds that (1) LPSC did not receive notice that casualty loss ADIT would be included, and (2) FERC failed to provide a rational basis for its inclusion. Addressing each challenge, the 5th Circuit first found that LPSC did in fact have notice, stating, "*After Entergy submitted its filing letter, FERC issued Op. No. 505, which, in response to LPSC's challenge, held that Entergy must include storm-related NOL ADIT in eligible accounts in the bandwidth formula. . . LPSC was certainly on notice that Entergy's justification for excluding casualty loss ADIT . . . was no longer valid.*"<sup>6</sup> The court then found that FERC's decision was reasonable, since "FERC thoroughly explained its reasons for including casualty loss ADIT amounts in the bandwidth calculation," citing the plain language of the System Agreement, which "which expressly requires that ADIT amounts recorded in FERC account 282 [including the casualty loss ADIT in this proceeding] be included in the bandwidth formula to the extent they are includable for cost-of-service purposes."<sup>7</sup>

The 5th Circuit's decision (as revised November 18, 2014) is available [here](#).

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<sup>1</sup> *La. Pub. Serv. Comm'n v. FERC*, No. 13-60874, slip op. at 3 (5th Cir. Nov. 14, 2014); *see also La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, 146 FERC ¶ 61,152 at P 3 (2014).

<sup>2</sup> *La. Pub. Serv. Comm'n v. FERC*, No. 13-60874, slip op. at 13 (5th Cir. Nov. 14, 2014) (emphasis added).

<sup>3</sup> *Id.* at 14.

<sup>4</sup> *Id.* at 15.

<sup>5</sup> *Id.* at 16.

<sup>6</sup> *Id.* at 23 (emphasis in original).

<sup>7</sup> *Id.* at 25.

## Categories

Energy Regulation, Markets & Enforcement

Transmission

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