

126 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

NRG Energy, Inc.

Docket No. EL08-72-000

v.

Entergy Services, Inc.

ORDER DENYING COMPLAINT

(Issued January 16, 2009)

1. NRG Energy, Inc. and its affiliated companies¹ (NRG Companies) (jointly, NRG) filed a complaint under section 206 of the Federal Power Act (FPA)² against Entergy Services, Inc. (Entergy). NRG argues that a recent Entergy annual transmission rate filing,³ containing the data inputs to Entergy's formula rate for transmission service under its open access transmission tariff (OATT), includes bonus compensation paid to Entergy employees that should not be passed through to Entergy's transmission service customers. NRG contends that Entergy's rate formula, which provides for such pass-through, is no longer just and reasonable and should be changed or set for hearing.

2. The Commission denies the relief requested in the complaint. The Commission finds that NRG has not made a showing sufficient for us to find that Entergy's transmission formula rate may no longer be just and reasonable so as to warrant our ordering a hearing on the justness and reasonableness of the rate formula and resulting transmission charges.

¹ The NRG-affiliated companies operating in the Entergy control area include Louisiana Generating LLC (LaGen), Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, and NRG Power Marketing, LLC.

² 16 U.S.C. § 824e (2006).

³ Entergy's 2008 annual transmission rate filing is currently pending before the Commission in Docket Nos. ER08-1057-000 and ER08-1057-001. NRG filed a protest of the formula inputs in those dockets concurrently with the filing of this complaint.

I. Background

3. The NRG Companies are transmission customers under the Entergy OATT both on their own behalf and on behalf of LaGen's cooperative customers.

4. Entergy is the service company for Entergy Corporation, a registered public utility holding company. The formula at issue here is used to calculate its point-to-point and network transmission service rates under its OATT. Entergy's OATT requires it to annually update Entergy's transmission service rates based on the actual costs Entergy incurs for the previous calendar year to provide transmission service.

5. The formula allows Entergy to recover in its transmission rates employee payroll expenses related to its operation of its transmission system. The formula used to determine the rates was accepted as part of a settlement approved by the Commission in 2000.⁴ Since 2000, Entergy has turned over operation of the service on its transmission system to the Independent Coordinator of Transmission (ICT) and has reduced its own role in administering the transmission system.⁵

6. Entergy's OATT provides that Entergy's transmission rates are subject to refund or surcharge until the latest of: (1) the end of the 120-day period provided for in the OATT for parties to review the annual transmission rate filing, if at such time there is no outstanding, unresolved complaint; (2) the final resolution of any complaint filed; or (3) the completion of any required corrections.

II. Complaint

7. NRG argues that Entergy's transmission rate formula is not just and reasonable because it allows Entergy to include millions of dollars in bonus payments to Entergy employees that should not be passed on to transmission customers without any evidence that the payments are related to the provision of transmission service. NRG also maintains that the formula was established under a settlement in 2000, and that changes in the industry have rendered it unjust and unreasonable. First, NRG alleges that Entergy has greatly increased the bonuses it pays since 2000 and as a result these costs have become a significant rate component. Second, NRG alleges that revenues from the unregulated portion of Entergy's business have increased disproportionately to the revenues resulting from the regulated portion of the company.

⁴ *Entergy Services, Inc.*, Opinion No. 430, 85 FERC ¶ 61,163 (1998), *order on reh'g*, 91 FERC ¶ 61,153 (2000).

⁵ *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006). The ICT was given authority to grant or deny requests for transmission service, calculate available flowgate capability, administer Entergy's OASIS, and perform an enhanced planning function (integrating the plans of Entergy and other potential transmission owners to identify regional synergies).

8. NRG contends that the rates filed by Entergy include bonuses: (1) paid to employees based on the financial performance of the company, including the performance of the “unregulated” generation units; (2) that have no relation to the quality of the transmission service provided by Entergy; and (3) that are paid to employees that spend no time administering the Entergy transmission system. NRG argues that these bonuses are designed to provide Entergy executives with an incentive to increase the company’s share price, which is largely driven by profits resulting from Entergy’s “unregulated” generation assets.

9. NRG states that Entergy’s profits result largely from “non-regulated” power sales, rather than the transmission it provides, but that the employees receiving bonuses support both aspects of the business. It states that the formula does not apportion bonuses received by these dual-function employees and instead allows half of the bonuses to be included in transmission rates. As a result, Entergy’s transmission customers are subsidizing the large bonuses paid to Entergy senior managers for work they do for the “non-regulated” generation side of the company. NRG states that in 2007 Entergy’s unregulated nuclear units earned over \$539 million in net income while the net income from all other operations was \$682 million.⁶ Additionally, NRG states that Entergy attributes its record profits primarily to higher earnings at Entergy Nuclear Operations, Inc.

10. NRG maintains that the Arkansas Public Service Commission and the Louisiana Public Service Commission have directed Entergy to remove millions in bonus payments from its state-jurisdictional rates because these bonuses provided no benefits to ratepayers.⁷ Including these bonuses in the rates ensures that transmission customers will be charged these new higher rates regardless of whether the bonuses are earned or paid out to Entergy employees.

11. NRG also contends that the current condition of the Entergy transmission system does not justify bonus payments to Entergy executives. It states that Entergy’s transmission system has numerous constraints and cannot reliably fulfill Entergy’s firm transmission service obligations. NRG cites the increases in occurrences of Level 5 Transmission Load Relief orders (TLRs)⁸ in the first five months of 2008. This indicates an inability to meet electricity demand for a particular line because that line will cease to function if an immediate curtailment of firm load does not take place. Another example

⁶ Complaint at 10-11.

⁷ Complaint at 6-8.

⁸ TLRs are sequential actions taken during operations planning or in real time to avoid or remedy security violations on the transmission system. North American Electric Reliability Corporation (NERC) protocols dictate that Level 5 TLRs curtail firm transactions.

is an increase in redispatch of network resources experienced by Entergy's transmission customers. NRG explains that because the ICT now bears a large portion of the responsibility for the operation and functioning of the Entergy transmission system, it is improper for transmission customers to be paying bonuses to Entergy employees, who now have a reduced role in operating the transmission system.⁹

12. NRG requests that the Commission find that Entergy's transmission formula is not just and reasonable, and direct Entergy to replace the existing formula with a new one that excludes bonus payments to Entergy employees unless Entergy can show that the bonuses are based on improved functioning of the Entergy transmission system. NRG also requests that Entergy be directed to recalculate its rate formula without the bonus compensation included in the payroll expenses. Alternatively, NRG requests that the Commission set Entergy's transmission rate formula for hearing and settlement judge procedures.¹⁰

⁹ NRG's complaint states that based on its review of NERC TLR data, in 2007, there were 29 Level 5 TLRs issued on the Entergy system, resulting in the curtailment of over 47,000 MW of firm transmission service, or 18 percent of all Level 5 TLRs in the Eastern Interconnection that year. In the first five months of 2008, Entergy's ICT issued 17 Level 5 TLRs, curtailing more than 42,000 MW of firm transmission service, or 21 percent of all Level 5 TLRs in the Eastern Interconnection. Additionally, NRG states that there has been a significant increase in redispatch of network resources in the first five months of 2008, with about 16,093 MW of network resources redispatched. NRG states that in 2007, the entire Entergy region only had 2,933 MW of network resources redispatched. NRG Complaint at 8-9.

¹⁰ We note that NRG affiliates including NRG Power Marketing LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating, LLC, and NRG Sterlington Power LLC (NRG affiliates) filed a motion to intervene and to join the complaint filed by Joint Intervenors (the entities listed in P 13 of this order). The motion was filed in Docket No. EL08-91-000 (Joint Intervenors Complaint) and Docket No. EL08-72-000 (NRG Complaint), but the motion requests consolidation of the Joint Intervenors Complaint with a rate case pending in Docket No. ER08-1057-000 (Entergy Rate Case). The motion also states that it "supports" the Joint Intervenors' motion to consolidate the two complaint proceedings. However, the Joint Intervenors Complaint did not move to consolidate the two complaint cases, but rather moved to consolidate the Joint Intervenors Complaint with the Entergy Rate Case. Instead, the Joint Intervenors Complaint states that the Joint Intervenors "would not oppose" consolidation of their complaint, the Entergy Rate Case and the NRG Complaint. Therefore, there is no motion to consolidate the two complaint cases before the Commission, and because there is no need for an intervention in this proceeding we will address the NRG affiliates' motion to intervene in the proceeding for the Joint Intervenors Complaint, which is currently pending before the Commission.

13. Notice of NRG's complaint was published in the *Federal Register*, 73 Fed. Reg. 39,012 (2008), with interventions and answers due on or before July 17, 2008. Arkansas Electric Cooperative Corporation, the Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, and South Mississippi Electric Power Association (collectively, Joint Intervenors) filed a timely joint motion to intervene and comments. Notices of intervention were filed by the Arkansas Public Service Commission and the Council of the City of New Orleans. Entergy filed an answer to the Complaint and NRG filed an answer to Entergy's answer.

III. Arguments Raised

A. Joint Intervenors' Comments

14. Joint Intervenors state that they have been unable to obtain sufficiently detailed information regarding Entergy's inclusion of executive bonus compensation in the rate formula for transmission service under Entergy's OATT. They agree with NRG that it is inappropriate for Entergy's OATT rate to include executive bonus compensation that is related to "unregulated" merchant generation or that is tied to financial performance of unregulated subsidiaries. They argue that the only executive bonus compensation that is appropriate to collect under the OATT rate formula is bonus compensation tied to performance of the transmission function. Joint Intervenors urge the Commission to investigate NRG's claims.

B. Entergy's Answer

15. Entergy states that NRG's complaint should be dismissed because it fails to meet the burden of proof under section 206 of the FPA to show that the formula is unjust and unreasonable. Entergy states that NRG's complaint contains unsupported allegations based on erroneous assumptions, and that no affidavit or substantial evidence was included with the complaint. Entergy argues that NRG describes the bonuses at issue in several different ways, such as bonuses to employees from the unregulated portion of Entergy's business, incentive compensation paid to shared employees, and all bonus compensation paid to Entergy employees. Entergy states that because of these different descriptions, it is unable to determine exactly which incentive compensation amounts are at issue.

16. Furthermore, Entergy maintains that NRG does not quantify any dollar values or cite to the workpapers submitted by Entergy with its 2008 annual formula transmission rate update in Docket No. ER08-1057. Entergy states that in that docket it filed extensive workpapers with schedules and other information attached that it used in applying the OATT formula. Entergy argues that NRG does not challenge any specific cost item or explain what cost items are in dispute.

17. Entergy refutes NRG's argument that the rates should not include bonuses without evidence that those payments are related to providing transmission service. Entergy's OATT rates do not include any production payroll expense accounts numbers, but rather, only include payroll account numbers related to the transmission function.¹¹ Entergy further states that there are no generation-related costs or costs attributable to the unregulated nuclear business in the OATT rate.¹²

18. Entergy states that its formula is just and reasonable. Contrary to NRG's contention throughout its complaint that Entergy is rolling non-transmission related bonuses into the transmission rate base, both the point-to-point and network formulas include the variable transmission rate base, and no employee compensation or bonus amounts are included in the transmission rate base. Instead, Entergy states that employee payroll and compensation, including incentive compensation, is put in the non-rate base variable total transmission expense. Entergy says that NRG's argument that the current transmission rates allow Entergy to book half of the bonuses received by shared employees into its transmission rate base is wrong. Entergy maintains that shared employees track their time based on project codes and that their labor costs are assigned by function so that only transmission-related activities are charged to transmission accounts and included in the OATT rate formula. Entergy also challenges NRG's contention that even though the annual rate redetermination is based on the prior year's actual historical costs, which are reported in the FERC Form No. 1, by including the incentive cost component, transmission customers will be charged higher rates regardless of whether bonuses were earned or paid. Entergy states that the OATT rate formula is based on actual costs and does not include any post-test year projections or adjustments to the payroll amounts and only includes compensation amounts actually booked in the test year. Additionally, Entergy contends that its 2008 rates are lower than the settlement rates pending before the Commission in the 2007 rate redetermination in Docket No. ER07-927-000.¹³

19. Entergy states that NRG's allegation that the OATT rate formula includes embedded bonuses based on Entergy's financial performance, which in part is based on functions such as nuclear units, is false. The formula transmission rates do not include any payroll-related costs of Entergy Nuclear Operations, Inc. or Entergy Operations, Inc., which are the centralized service company affiliates that provide management and operation and maintenance services for nuclear plants owned by Entergy or other affiliates. Entergy states that it provides services such as financial, legal, human

¹¹ Entergy's Answer at 7.

¹² *Id.* at 7-8.

¹³ The Commission recently approved the settlement on July 29, 2008. *Entergy Services, Inc.*, 124 FERC ¶ 61,100 (2008).

resources, accounting and regulatory services for the Entergy Operating Companies.¹⁴ This arrangement was approved by the Securities and Exchange Commission in 1963, and the Commission accepted Entergy's form of service agreement, finding the methods of cost allocation to be just and reasonable under section 205 following the enactment of the Public Utility Holding Company Act of 2005.¹⁵

20. Entergy also argues that NRG fails to recognize that in Order No. 684 the Commission revised its accounting regulations to add specific provisions for centralized service companies.¹⁶ Order No. 684 provides that companies can use a cost accumulation system, including schedules and worksheets, to account for charges billed to single and groups of associate and non-associate companies. Entergy states that its company billing processes and procedures comply with Order No. 684 because Entergy maintains an electronic time tracking and cost accumulation system, which provides a single point of entry for all project codes. When a particular department determines that a new project or service is being initiated, the project cost allocation is used by the department to set up the project code. A billing method is determined for each project. Entergy states that it always bills its services to the Entergy Operating Companies at cost, with no profit added, based on cost causation. Entergy maintains a time entry system, under which every two weeks employees account for their time by recording the number of hours worked using specific project codes. These reports are reviewed by the employees' immediate supervisors. Entergy explains that each time an Entergy employee charges an hour of time to a project code that project code is assigned an hour's worth of the employee's compensation cost, benefits cost, and labor-related costs. Entergy states that the accounting system assigns labor costs so that only transmission-related activities are charged to transmission accounts.

21. Entergy further maintains that Entergy and the Entergy Operating Companies have accounting procedures and systems in place to ensure that there is no cross-subsidization between functions and subsidiaries; thus, transmission customers are not subsidizing others. Entergy states that these accounting procedures are audited by both internal and

¹⁴ Entergy's Answer at 10. The Entergy Operating Companies are: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy New Orleans, Inc., Entergy Mississippi, Inc. and Entergy Texas, Inc. The generating resources and bulk transmission facilities of the six Entergy Operating Companies are jointly planned and operated as a single electrical system serving a single electrical load and are collectively referred to herein as the "Entergy System." Entergy's Answer at 1, n.2.

¹⁵ *Id.* Entergy cites *Entergy Services, Inc.*, 117 FERC ¶ 61,288 (2006).

¹⁶ *Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005*, Order No. 684, FERC Stats. & Regs., Regulations Preambles 2006-2007 ¶ 31,229, at P 125-26 (2006).

external auditors to ensure compliance with the Sarbanes-Oxley Act of 2002,¹⁷ and have been reviewed in an evidentiary hearing in Docket No. ER07-682.¹⁸ Entergy states that Entergy and Entergy Operating Companies fill out the FERC Form No. 1 so that labor costs are classified among generation, distribution and transmission.

22. Entergy disputes NRG's argument that bonuses should be eliminated from incentive compensation, stating that employee compensation is tied to individual employee performance. Entergy states that it and the Entergy Operating Companies design their total annual compensation based on nationally recognized third-party surveys that evaluate compensation levels. Because they compete with other companies for talent based on total compensation, if incentive compensation is not allowed, the remaining level of compensation would place them below the market median.

23. Entergy also refutes NRG's claim that the compensation plan does not reward employees for running an efficient transmission system. Entergy states that the incentive plan for the transmission function includes a balance of operational, reliability, cost containment, and earnings-based incentives. Entergy also counters NRG's claim that the only allowable bonuses should be those related to improving the functioning of the transmission system. Such an approach would not necessarily alter the overall level of compensation, but would change the manner in which it is determined. Entergy asserts that if the overall compensation level is reasonable, it would be meaningless to change the performance targets if the end result is to achieve the same level of compensation.

24. Entergy states that the Commission and state commissions have allowed incentive compensation in rates. It cites *Williams Natural Gas Company*, in which the Commission concluded that the gas company could recover cash bonus amounts paid to executives as well as accrued cash awards through its cost-of-service rate, emphasizing that these costs are "known and measurable."¹⁹ Entergy states that the incentive compensation amounts included in its OATT are known, measurable and based on actual, recorded data, not on projections. Entergy distinguishes the rejection of bonuses by the Arkansas Public Service Commission and the Louisiana Public Service Commission,

¹⁷ Pub. L. No. 107-204, 116 Stat. 745 (2002).

¹⁸ The issues in Docket No. ER07-682 included the functionalization of payroll and other costs and the inclusion of service company costs in rates. The presiding Administrative Law Judge noted in the initial decision that the instructions for FERC Form No. 1 provide that labor cost can be classified among the various utility functions required by FERC Form No. 1.

¹⁹ 77 FERC ¶ 61,277, at 62,179 (1996), *order on reh'g*, 80 FERC ¶ 61,158 (1997) (*Williams*).

stating that those cases involved retail proceedings that developed rolled-in rates that recover the cost of all functions. Entergy maintains that NRG has not shown that these disallowed amounts are included in Entergy's 2008 formula transmission rate filing.

25. Entergy further points out that other regulatory jurisdictions have taken positions contrary to those of Arkansas and Louisiana. As an example, Entergy cites the Nevada Public Utility Commission, which permitted the Nevada Power Company to fully recover its short-term incentive compensation payments.²⁰ Also, Entergy cites the West Virginia Commission, which has recognized incentive compensation as another motivation for employees to maintain an efficient system, aside from maximizing stockholder wealth, which in the end benefits both stockholders and ratepayers.²¹

26. Entergy argues that contrary to NRG's assertions, use of a financial target is appropriate because it contributes to the efficient operation of the transmission system. Entergy explains that when a company is financially healthy it can raise capital at a lower cost. Also, Entergy states that utility companies have incentives to increase financial performance by focusing on cutting costs and operating more efficiently because the rates are regulated. Companies that are not financially healthy will likely experience greater costs, which in turn will be passed on to customers.

27. Entergy also disagrees with NRG's argument that Level 5 TLRs and redispatch of network resources in the first five months of 2008 indicate that the performance of the transmission system does not merit bonuses. NRG has not shown a nexus between these events and the 2008 formula transmission rate filing. Entergy also argues that NRG's use of such data to support its complaint does not satisfy NRG's burden of proof under section 206. Raw TLR figures do not include factors that must be addressed for a valid analysis of TLR events, such as differences in market structures for different regions, the number of independent power producers on a particular system, transmission provider use of voluntary dispatch to avoid the use of the TLRs, relative number of megawatts of transmission reservations, relative number of transmission schedules, consistency between the use of the network service and network customers' projected uses, and consideration of weather. Entergy also argues that NRG overlooks the causes of a number of Level 5 TLRs in 2008, such as severe storms. Entergy has been working closely with the ICT to minimize the number of TLR events, Entergy Operating Companies have made significant investments in their transmission system, and Entergy's transmission system is in full compliance with applicable reliability standards.

²⁰ *Nevada Power Co.*, Docket No. 06-11022 (Nevada Public Utilities Commission July 17, 1007).

²¹ *Re West Virginia – American Water Co.*, Case No. 03-0353-W-42T (Public Service Commission of West Virginia Jan. 2, 2004).

28. Entergy also argues that the Commission should deny NRG's request for an evidentiary hearing because NRG has not presented any evidence to support its claims.

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention, and the timely, unopposed joint motion to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept NRG's answer and will, therefore, reject it.

B. Analysis

31. Section 206 of the FPA requires a complainant to satisfy a dual burden in order to obtain the relief it seeks in a complaint.²² The complainant must establish that the current rate is unjust and unreasonable and the complainant must then establish that its alternative rate proposal is just and reasonable.²³ Based on the information provided, and without prejudice to NRG submitting a new complaint on these issues, we find that NRG has not met its burden of demonstrating that Entergy's existing rate formula is unjust and unreasonable.

32. NRG contends that there have been changes in the industry that make Entergy's rate formula no longer just and reasonable. However, NRG has not provided any evidence that would support its argument. First, it has not submitted affidavits, documents, or testimony that would attest to the accuracy of its allegations, and such evidence is required by our rules.²⁴ Second, NRG alleges that Entergy has greatly increased the bonuses it has paid since 2000 and as a result these costs have become a significant and unreasonable rate component. NRG, however, provided no specific data to support this claim. Further, the mere fact that Entergy's costs may have increased does not necessarily lead to a conclusion that Entergy's rate formula is unjust and unreasonable. Indeed, Commission precedent supports recovery of reasonable costs

²² 16 U.S.C. § 824e (2006).

²³ See *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Michigan Electric Transmission Co.*, 116 FERC ¶ 61,164, at P 12 (2006).

²⁴ 18 C.F.R. § 385.206(b)(8) (2008).

associated with bonuses.²⁵ Third, NRG argues that revenues from the unregulated portion of Entergy's business have increased disproportionately to the revenues resulting from the regulated portion of Entergy's business. We find that NRG has provided no support for this statement. Moreover, NRG has failed to demonstrate that an increase in Entergy's unregulated business necessarily adversely affects the justness and reasonableness of Entergy's regulated rate formula.

33. In regard to NRG's other arguments, NRG claims that non-transmission related expenses have been rolled into Entergy's rate calculations, but, provides no specific evidence to support this allegation. Further, we note, Entergy has provided a full explanation of its incentive plan for transmission function performance, which indicates that financial incentives are provided for a full range of factors associated with providing quality transmission service at reasonable costs. In addition, it has provided a full explanation of its practices for accounting for and allocating costs among utility functions, and the Commission previously accepted Entergy's form of service agreement and cost allocation methods, finding them to be just and reasonable.²⁶ NRG has provided no basis to conclude that these allocation methods no longer ensure that only transmission-related expenses are included in Entergy's transmission rates or that they are otherwise unjust and unreasonable.

34. NRG also argues that the transmission system was not reliable in 2007, and that transmission customers should not have to pay for bonuses given to Entergy employees in light of Entergy's poor service. NRG cites Level 5 TLR occurrences and redispatch of resources to resources to serve network and native load as proof. Entergy responds by stating that such occurrences were due to circumstances beyond its control, such as severe weather conditions. We find that NRG's mere reliance on occurrences of TLR events and redispatch of network resources, without considering the factors that led to such events, is insufficient to show that Entergy may have provided a level of service that would justify the Commission finding the bonuses unreasonable, and not appropriately recovered from ratepayers.

²⁵ See *Williams*, 77 FERC ¶ 61,277 at 62,179. Thus, it is irrelevant how state commissions may treat such costs. See, e.g., *Barton Village Inc.*, 100 FERC ¶ 61,244, at P 12 (2002) ("Under the Federal Power Act ... the Commission has exclusive jurisdiction over [] wholesale power sales rates ... [t]hus, we have no legal obligation to review, much less rely on, the findings of the [state]."); *Louisiana Pub. Serv. Comm'n v. Entergy Serv., Inc.*, 76 FERC ¶ 61,168, at 61,955 (1996) ("a ratemaking methodology proposed at the retail level ... does not govern the Commission's determination of the appropriate ratemaking methodologies to be used in developing wholesale rates") (citations omitted), *reh'g denied*, 80 FERC ¶ 61,282 (1997), *rev'd on other grounds*, 184 F.3d 892 (1999).

²⁶ *Entergy Services, Inc.*, 117 FERC ¶ 61,288 (2006).

35. As mentioned above, the complainant has the burden in filing a complaint. Our regulations make it clear that a complainant must provide support for their allegations underlying the complaint. Complainants may do so through documents or by filing affidavits providing factual support for their allegations.²⁷ As demonstrated above, NRG has failed to provide support for its allegations. Based on the lack of evidence provided by NRG and Entergy's explanation of its employee compensation, allocation and accounting practices with respect to transmission-related expenses, we find that NRG has failed to demonstrate that Entergy's formula is no longer just and reasonable.

36. We clarify that we are dismissing this complaint without prejudice to NRG filing a new complaint with adequate evidence. If a new complaint is filed, we will consider that complaint on its merits.

The Commission orders:

NRG's complaint is hereby denied, as discussed above.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Commissioner Moeller concurring with a separate statement to be issued at a later date.

Commissioner Wellinghoff dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁷ 18 C.F.R. § 385.206(b)(8) (2008).

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FEDERAL ENERGY REGULATORY COMMISSION

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KELLY, Commissioner, *dissenting in part*,

This order addresses a complaint filed by NRG Energy, Inc. and its affiliated companies¹ (NRG) against Entergy Services, Inc. (Entergy). NRG states that a recent Entergy annual transmission rate filing includes bonus compensation paid to Entergy employees based on the financial performance of unregulated generation units. NRG further argues that the financial performance of these generation units is not related to the provision of transmission service. Based on my review of the record evidence, Entergy has not provided a clear answer to this argument. Before ruling on the complaint, the Commission should require Entergy to inform us as to whether the transmission rate formula permits the recovery of bonuses that are tied to the performance of unregulated generation and not tied to the provision of transmission service.

For this reason, I respectfully dissent in part.

Suedeem G. Kelly

¹ The NRG-affiliated companies operating in the Entergy control area include Louisiana Generating LLC (LaGen), Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, and NRG Power Marketing, LLC.

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WELLINGHOFF, Commissioner, dissenting:

NRG Energy, Inc. and its affiliated companies¹ (NRG) filed a complaint against Entergy Services, Inc. (Entergy). NRG asserts that executive bonus compensation paid to Entergy employees should not be passed through to Entergy's transmission service customers.

NRG argues that the state of Entergy's transmission system does not justify bonus payments. NRG states that there were 29 level 5 Transmission Loading Relief orders (TLRs) issued on the Entergy system in 2007, resulting in curtailment of 47,000 MW of firm transmission service. In the first five months of 2008, 17 level 5 TLRs were issued curtailing 42,000 MW of firm transmission service. NRG avers that these Entergy TLRs represent 18 percent and 21 percent of all Level 5 TLRs called in the Eastern Interconnect during the respective periods. In addition to the TLRs, NRG states that redispatch of network service are increasing. NRG indicates that redispatch of network service increased from 3,866 MW in 2007 to 16,093 MW in the first five months of 2008.²

NRG also argues that bonuses paid to Entergy employees, including transmission employees, are based on the financial performance of the company, including the performance of the "unregulated" generation units. As an example, NRG states Entergy's unregulated nuclear units earned over \$539 million in net income in 2007. By contrast, NRG states that the 2007 net income from all of Entergy's other operations (including regulated and unregulated wholesale power sales, transmission system

¹ The NRG-affiliated companies in the Entergy control area include Louisiana Generating LLC, Bayou Cove Peaking LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, and NRG Power Marketing LLC.

² Complaint at 8-10.

revenues, and retail utility operations) was \$682 million. In addition, NRG states that Entergy itself attributes its record profits primarily to higher earnings at Entergy Nuclear Operations. Thus, NRG concludes that any bonuses based on financial performance result in Entergy's transmission customers subsidizing the operations of Entergy's unregulated subsidiary.³

Joint Intervenors⁴ urge the Commission to investigate NRG's claims. Joint Intervenors state that they have been unable to obtain sufficiently detailed information regarding Entergy's executive bonus compensation that is passed through to Entergy's transmission customers. Joint Intervenors agree with NRG that only executive bonus compensation that is appropriate to be collected from transmission customers is bonuses tied to the performance of the transmission system.

NRG and Joint Intervenors have raised serious questions as to the appropriate level of executive bonuses that should be passed through to Entergy's transmission customers. I would have established a hearing of NRG's and Joint Intervenors' concerns. The complaint process is important to the Commission fulfilling our responsibilities under the FPA to ensure that rates are just and reasonable. I am concerned that the Commission's rejection of the complaint under the circumstances of this case will discourage customers from availing themselves of our complaint process.

For these reasons, I respectfully dissent.

Jon Wellinghoff
Commissioner

³ Complaint at 10-11.

⁴ Joint Intervenors include Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency and its members, The Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and the Public Service Commission of Yazoo City of Yazoo, Mississippi.