

126 FERC ¶ 61,051  
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.

Arkansas Electric Energy Consumers, Inc.

Docket No. EL08-84-000

v.

Entergy Corporation  
Entergy Services, Inc.  
Entergy Arkansas, Inc.  
Entergy Gulf States, Louisiana, Inc.  
Entergy Louisiana, L.L.C.  
Entergy Mississippi, Inc.  
Entergy New Orleans, Inc.  
Entergy Texas, Inc.

ORDER DENYING COMPLAINT

(Issued January 16, 2009)

1. This order addresses a complaint (Complaint) filed by Arkansas Electric Energy Consumers, Inc. (Arkansas Consumers),<sup>1</sup> on August 25, 2008, under section 206 of the Federal Power Act (FPA),<sup>2</sup> against Entergy Corporation and its subsidiaries, Entergy Services, Inc., and six operating utilities (collectively, Operating Companies): Entergy Arkansas, Inc.; Entergy Gulf States, Louisiana, Inc. (Entergy Gulf States); Entergy Louisiana, L.L.C.; Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc.; and Entergy, Texas, Inc. (collectively, Entergy or Respondents). Arkansas

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<sup>1</sup> Arkansas Consumers consists of industrial and agricultural concerns that buy large quantities of electricity from Entergy Arkansas, Inc. (Entergy Arkansas).

<sup>2</sup> 16 U.S.C. § 824e (2006).

Consumers raises four issues relating to the acquisition of the 789 MW Ouachita Generation Facility (the Ouachita Plant) by Entergy Arkansas and the sale of a portion of the Ouachita Plant's output to Entergy Gulf States.<sup>3</sup> In this order, the Commission denies the relief requested in the complaint.

## **Background**

### **The Entergy System Agreement**

2. The Entergy System has operated for over fifty years under some form of a System Agreement that acts as an interconnection and pooling agreement, provides for the joint planning, construction and operation of the Operating Companies' facilities, and maintains a coordinated power pool among the six companies. Pursuant to the System Agreement, the Entergy System is economically dispatched to achieve a lower cost of energy for the combined system as a whole than could be achieved by each Operating Company on a stand alone basis. As the Commission has explained, the Entergy Operating Committee (Operating Committee) administers the System Agreement and makes the major decisions, including decisions to build new generating units for the benefit of the system as a whole. It is this System Agreement that provides the contractual basis for the Operating Companies to operate as a single integrated electric system.<sup>4</sup>

3. The current System Agreement, which dates from 1982,<sup>5</sup> contains seven Service Schedules, of which two are relevant to this proceeding: Service Schedule MSS-3, "Exchange of Electric Energy Among the Companies," and Service Schedule MSS-4, "Unit Power Purchase."

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<sup>3</sup> The Entergy Operating Committee approved Entergy Arkansas' acquisition of the Ouachita Plant and the sale of one-third of the capacity and energy to Entergy Gulf States. The Commission approved the Ouachita Plant transaction in *Ouachita Power LLC, Entergy Arkansas, Inc.*, 122 FERC ¶ 62,071 (2008). The Arkansas Public Service Commission (Arkansas Commission) determined that the acquisition of the Ouachita Plant, as well as the sale of one-third of the capacity and energy to Entergy Gulf States is consistent with the public interest and therefore reasonable and prudent.

<sup>4</sup> See *Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305, at 61,646, *reh'g denied*, 32 FERC ¶ 61,346 (1985), *aff'd sub nom. Mississippi Industries v. FERC*, 808 F.2d 1525 (D.C. Cir. 1987), *rev'd and remanded*, 822 F.2d 1104 (D.C. Cir. 1987), *order on remand sub nom. System Energy Resources, Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh'g denied*, Opinion No. 292-A, 42 FERC ¶ 61,091 (1988).

<sup>5</sup> See Opinion No. 234, 31 FERC ¶ 61,305 (1985).

4. Service Schedule MSS-3 accounts for the exchange of energy among the Operating Companies on an after-the-fact basis (after actual dispatch has occurred).<sup>6</sup> After the actual dispatch, Entergy's System Planning and Operations organization determines whether an Operating Company had more or less energy available to it (from its own generation output and its purchases) than its actual load in that hour. Under the accounting procedures of Service Schedule MSS-3, each Operating Company retains its least expensive energy to serve its own load and any excess energy from its resources that was dispatched in that hour is allocated to the Operating Companies that are net buyers in that hour. Only after the needs of an Operating Company's own customers have been met will the excess energy that the Operating Company generated be allocated to other Operating Companies. The sum of the Service Schedule MSS-3 payments and receipts for all of the Operating Companies for any individual hour is zero.<sup>7</sup>
5. Service Schedule MSS-4 includes formulas for calculating the payment by one Operating Company to another for the sale of capacity and energy from designated system generation resources. During the term of a Service Schedule MSS-4 transaction, the resource is considered to be under the control of the purchasing Operating Company for purposes of cost responsibility and allocation of energy under the System Agreement. In cases where the Operating Committee decides that one Operating Company should sell a portion of its capability to another Operating Company, the transaction is conducted pursuant to Service Schedule MSS-4.<sup>8</sup>
6. On December 19, 2005, pursuant to section 1.01 of the System Agreement, Entergy Arkansas notified the other five Operating Companies that it would withdraw

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<sup>6</sup> Service Schedule MSS-3 contains a formula rate that allows the seller of the energy to recover incremental operation and maintenance expenses and incremental sulfur dioxide costs.

<sup>7</sup> Service Schedule MSS-3 also includes the formula for calculating each Operating Company's total production costs and the bandwidth payments.

<sup>8</sup> Service Schedule MSS-4 contains a formula rate that allows the seller to be reimbursed for operating, maintenance, and fuel costs of operating the unit relating to the portion of the unit sold. In addition, the purchaser is obligated to pay a return on the seller's unamortized investment and a repayment of the seller's investment in the unit, relating to the portion of the plant sold for the designated period the plant is sold.

from the System Agreement in ninety-six months (December 31, 2013), or earlier, as authorized by this Commission.<sup>9</sup>

### **Entergy Arkansas' Acquisition of the Ouachita Plant**

7. After submitting its notice of withdrawal from the System Agreement, Entergy Arkansas obtained authorization from the Arkansas Commission to acquire the Ouachita Plant. The Arkansas Commission considered the two alternatives open to Entergy Arkansas to meet its need for additional generation resources with load-following capability: either purchase the Ouachita Plant or purchase power from the short-term purchased power market, until December 2013, when Entergy Arkansas has indicated it intends to leave the System Agreement. On June 27, 2008, the Arkansas Commission found that Entergy Arkansas should not rely on the short-term purchased power market for its load-following needs. It found that the Ouachita Plant, which will provide Entergy Arkansas with approximately 526 MW, represents the lowest cost, long-term combined cycle gas turbine presently available. It concluded that acquisition of the Ouachita Plant, designation of two-thirds of the plant's capacity as retail, and a life-of-unit sale to Entergy Gulf States of one-third of the plant's capacity were in the public interest.

### **Arkansas Consumers' Complaint**

8. Arkansas Consumers alleges that: (1) allocation of one-third of the Ouachita Plant's output to Entergy Gulf States violates section 4.01 of the System Agreement; (2) Entergy Arkansas' retail customers will be forced to subsidize other Operating Companies and their customers, in violation of FPA section 206; (3) Entergy Arkansas' notice of intent to withdraw from the System Agreement necessitates a Commission directive that Entergy may no longer plan acquisitions of generation on the basis of a single, integrated system; and (4) the two-thirds of the Ouachita Plant's output that is dedicated to retail service should be a resource for Entergy Arkansas solely.

### **Notice and Responsive Pleadings**

9. Notice of the Complaint was published in the *Federal Register*, 73 Fed. Reg. 52,338 (2008), with Respondents' answer, comments, interventions, and protests due on or before September 15, 2008. The Commission granted Entergy's motion to extend the due date for these filings to September 29, 2008. On that date, Entergy filed its answer (Answer).

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<sup>9</sup> Section 1.01 of the Entergy Operating Agreement states, in pertinent part: "[A]ny company may terminate its participation in the Agreement by ninety-six (96) months written notice to the other Companies hereto."

10. Notices of intervention were filed by: the Mississippi Public Service Commission; the Arkansas Commission; and the Louisiana Commission. Motions to intervene were filed by: the Council of the City of New Orleans (New Orleans); Union Electric Company, a subsidiary of the Ameren Corporation; the NRG Companies, consisting of five subsidiaries of NRG Energy, Inc., i.e., NRG Power Marketing LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC; Occidental Chemical Corporation.

11. The Arkansas Commission, the Louisiana Commission, and New Orleans filed protests.

## **Discussion**

### **A. Procedural Matters**

12. 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 motions to intervene serve to make the entities filing them parties to this proceeding.

### **B. Arkansas Consumers' Complaint**

#### **1. Ouachita Plant Output and the System Agreement**

##### **a. Arkansas Consumers' Arguments**

13. Arkansas Consumers alleges that allocation of one-third of the Ouachita Plant's output to Entergy Gulf States violates the System Agreement. In particular, it relies on section 4.01 (Obligations; Production Facilities), which, in referenced part, provides: "Each Company shall normally own, or have available to it under contract, such generating capability and other facilities as are necessary to supply all of the requirements of its own customers."

14. Arkansas Consumers cites November 17, 2006 testimony by Entergy Arkansas, before the Arkansas Commission, that Entergy Arkansas is short 1,462 MW when comparing the capacity it controls with peak retail load plus reserves, and that Entergy Arkansas needs 1,141 MW of high load-factor load-following capacity so that it can match, on an ongoing operational basis, the generation output with its customers' load.<sup>10</sup>

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<sup>10</sup> November 17, 2006, Direct Testimony of . . . Kurtis W. Castleberry . . . Entergy Arkansas, Inc., before the Arkansas Public Service Commission (Castleberry Phase I Testimony), Ex. 2 *in* Arkansas Consumers' Complaint.

15. Arkansas Consumers argues that allocating one-third of the Ouachita Plant's capacity to Entergy Gulf States means that Entergy Arkansas will still have far less high load-factor load following capacity than it needs.<sup>11</sup> Because Entergy Arkansas will be short the capacity it needs, Arkansas Consumers maintains that the Operating Committee's decision to allocate one-third of the Ouachita Plant's 789 MW output to Entergy Gulf States, instead of dedicating the entire 789 MW to Entergy Arkansas, violates the System Agreement's provision that each Operating Company be able to supply all its customers' requirements.

**b. Reply Arguments**

16. Entergy answers that Entergy Arkansas is still part of the Entergy System, and therefore is still governed by the System Agreement, which requires single system planning. It states that the Operating Committee applied appropriate planning principles and considered the needs of the Entergy System and each Operating Company when, after considering the relative needs of Entergy Arkansas and Entergy Gulf States, it divided the output of the Ouachita Plant between the two companies.<sup>12</sup> Entergy explains that both Operating Companies needed load-following capability, a need that continues for both even with the acquisition of the Ouachita Plant and division of its output. Entergy states that all of each Operating Company's generation resources, including the two-thirds of the Ouachita Plant's output assigned to Entergy Arkansas, are subject to the terms of the System Agreement, including Service Schedule MSS-3. This schedule, Entergy states, provides the method of pricing energy exchanged among the Operating Companies. Further, it explains, Entergy Gulf States will bear Ouachita Plant costs under Service Schedule MSS-4, which provides the basis for unit power purchases between the companies. Entergy points out that both the Arkansas Commission and the Louisiana Commission approved the Operating Committee's structuring of the Ouachita Plant transaction, including apportioning its output.<sup>13</sup>

17. The Louisiana Commission also takes issue with Arkansas Consumers' position. It cites section 3.01 of the System Agreement, which outlines the agreement's objective of planning to achieve economies for the Entergy System as a whole and to equalize, among the Operating Companies, any imbalance of costs associated with the

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<sup>11</sup> Complaint at P 31-33.

<sup>12</sup> Entergy Answer at 9-10, *citing New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985) (utility managers have broad discretion to conduct business affairs; the appropriate test of a utility's prudence is whether a reasonable utility management, acting in good faith, would have so acted).

<sup>13</sup> Entergy Answer at 11-12.

construction, ownership, and operation of such facilities as are used for the mutual benefit of all the companies. It further points out that section 3.02 provides that economies of scale and integrated operations require that the system's generation and transmission facilities be planned, constructed, and operated on a coordinated basis. The Louisiana Commission maintains that the Ouachita Plant transaction furthers these goals. It states that Arkansas Consumers claims but does not demonstrate how the acquisition by Entergy Gulf States of load-following capacity violates section 4.01 of the System Agreement. It adds that Entergy Gulf States needs load-following capacity for its customers, and the Ouachita Plant transaction makes additional capacity available to it under contract.

18. The Arkansas Commission points out that the Ouachita Plant transaction is contingent upon the sale of one-third of the plant to Entergy Gulf States. Accordingly, it asks the Commission not to permit Arkansas Consumers to place at risk the economic benefits flowing to Arkansas ratepayers from the Ouachita transaction because of Arkansas Consumers' "all or nothing" litigation strategy.

**c. Commission Determination**

19. We find that the purchase of the Ouachita Plant by Entergy Arkansas and allocation to Entergy Gulf States of one third of the energy and capacity of the plant does not violate section 4.01 of the System Agreement. Contrary to Arkansas Consumers' arguments, the purchase and allocation of the Ouachita Plant capacity is in accord with the terms and conditions of the System Agreement.

20. Arkansas Consumers notes correctly that section 4.01 requires each Operating Company to own or have available to it, under contract, sufficient capacity to serve its customers. This language, however, must be read in the context of the entire System Agreement. For example, section 4.01 also requires each Operating Company to furnish the Operating Committee with estimates of its annual peak load for the next succeeding 10-year period or such period as may be required, along with estimates of its available capacity. The Operating Committee then determines a generation addition plan to provide capacity for the projected system load.<sup>14</sup> In the instant case, Entergy Arkansas

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<sup>14</sup> See Commission's discussion of section 4.01 in prior *Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305 at 61,650-51, *reh'g denied*, 32 FERC ¶ 61,233 (1985) (Section 4.01 of the System Agreement makes each operating company responsible for owning or purchasing capability necessary to meet the requirements of its own customers. In our view, this requirement does not indicate autonomy insofar as final decisions to add generating facilities is concerned. While the companies may have an obligation to volunteer for new units recommended by the Operating Committee or may propose to build units to meet their native load, this does not negate the fact that the overall generation addition plan is reached by consensus of the Operating Committee,

(continued...)

determined its need for load-following capacity and developed a plan to acquire the Ouachita Plant, for meeting a portion of that need.

21. Further, section 5.06(c) of the System Agreement requires the Operating Committee to determine the amount of and require installation of adequate reserves to assure, so far as practical, the continuous supply of capacity and energy to the major load centers of the Entergy System. Here, with respect to the Ouachita Plant's output, the Operating Committee determined that the interests of the entire Entergy System required that this capacity be divided between Entergy Arkansas and Entergy Gulf States, even though Entergy Arkansas, like Entergy Gulf States, will continue to need additional load-following capacity in the future.<sup>15</sup>

22. We conclude that the Operating Committee acted to meet its obligations under both section 4.01 and section 5.06(c) of the System Agreement. Entergy Arkansas determined its need for capacity and the Operating Committee acted to fill that need, balancing the needs of the entire Entergy System, including the needs of Entergy Gulf States, as required by the System Agreement. Thus, we deny Arkansas Consumers' complaint on this point.

## **2. Ouachita Plant Output and FPA section 206**

### **a. Arkansas Consumers' Arguments**

23. Arkansas Consumers complains that the Ouachita Plant transaction violates FPA section 206's prohibition of any rate, charge or classification that is unduly discriminatory or preferential. In Arkansas Consumers' view, the Operating Committee assigned the acquisition costs of the Ouachita Plant to Entergy Arkansas but required Entergy Arkansas to transfer one-third of the plant's capacity to Entergy Gulf States. Therefore, it argues, "[Entergy Arkansas]' retail customers will be forced to subsidize the operation of [Entergy Gulf States], which will receive, through the system, benefits associated with the Ouachita Plant without paying for them."<sup>16</sup> It further argues: "Entergy expects to use the Ouachita Plant to serve system load despite the stated

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and that any proposed new units are approved by the Committee consistent with the overall system objectives).

<sup>15</sup> We note that all of Entergy Arkansas' current requirements are being met under the System Agreement and Arkansas Consumers has not shown otherwise. We also note that both the Arkansas and Louisiana Commissions have reviewed the transaction and have found it to be just and prudent.

<sup>16</sup> Complaint at P 2, P 28.

intention to acquire the plant to serve [Entergy Arkansas]' load-following needs. . . . Assigning all of the costs of acquisition and operation of the plant to [Entergy Arkansas]'s retail customers will result in a substantial subsidy to the other [Entergy Operating Companies] paid for by [Entergy Arkansas]' retail customers."<sup>17</sup>

24. Arkansas Consumers supports its contentions of unlawful subsidy by reference to Entergy Arkansas' appearances before the Arkansas Commission. It alleges that Entergy Arkansas officials' testimony demonstrates that: (1) until Entergy Arkansas withdraws from the System Agreement, it will dispatch the Ouachita Plant to satisfy the Entergy System's need for economic capacity rather than its own specific, demonstrated need for load-following capacity; and (2) other Operating Companies have acquired gas-fired, load-following type generation in the last few years without sharing ownership of this capacity with Entergy Arkansas.<sup>18</sup> From this testimony, Arkansas Consumers concludes that the Ouachita Plant will be dispatched as a base load power plant, if it is the Entergy System's most economic available resource, and not as a load-following plant, as was represented before the Arkansas Commission.<sup>19</sup>

25. Arkansas Consumers also complains that the purchase of the Ouachita Plant was not Entergy Arkansas' least cost option, and posits that a long-term power purchase agreement would have been less expensive. Arkansas Consumers believes that Entergy Arkansas acquired the Ouachita Plant to benefit the other Operating Companies, an unlawful subsidy in violation of section 206.<sup>20</sup>

#### **b. Reply Arguments**

26. Entergy submits that Arkansas Consumers has not met its burden, under section 206, of showing, based on substantial evidence, that the existing rate provision is unjust or unreasonable, and that the proposed change is just and reasonable.<sup>21</sup>

27. Entergy denies that the Ouachita Plant's acquisition costs will be borne solely by Entergy Arkansas without recovery from Entergy Gulf States, and also that Entergy Arkansas ratepayers will subsidize Entergy Gulf States. According to Entergy, the sales

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<sup>17</sup> *Id.* P 31.

<sup>18</sup> *Id.* P 21-24.

<sup>19</sup> *Id.* P 21-24.

<sup>20</sup> *Id.* P 30-35.

<sup>21</sup> Entergy Answer at 6, citing *Sithe/Independence Power Partners, L.P. v. FERC*, 165 F.3d 944, 949 (D.C. Cir. 1999).

to Entergy Gulf States of one-third of the Ouachita Plant's capacity and associated energy will be made under the formula rates in Service Schedule MSS-4, which are designed to recover the costs associated with unit power sales among the Operating Companies.<sup>22</sup> Entergy explains that the formula rates' payment requirements include reimbursement for operating, maintenance, and fuel costs, a return on the unamortized investment, and repayment of investment in the unit. Entergy states that to the extent that Arkansas Consumers objects to the sale of Ouachita output to Entergy Gulf States, it is objecting to the terms of Service Schedule MSS-4, which it should have done either in the proceeding adopting that service schedule or in the proceeding where Entergy filed the Ouachita Plant Service Schedule MSS-4 Agreement.<sup>23</sup> Entergy points out that Arkansas Consumers does not even discuss the Service Schedule MSS-4 formula, much less submit any evidence challenging the formula rates.

28. The Arkansas Commission, the Louisiana Commission, and New Orleans all refute Arkansas Consumers' claims that Entergy Arkansas customers are subsidizing other Operating Companies' customers. Specifically, the Arkansas Commission states that the Ouachita Plant's energy and capacity are not free to Entergy Gulf States but constitute a Service Schedule MSS-4 transaction under which Entergy Arkansas is paid its full costs for Entergy Gulf States' one-third share of the plant. New Orleans states that Arkansas Consumers' claim that a plant purchase was chosen over a power purchase agreement so as to benefit other Operating Companies is incorrect.<sup>24</sup>

29. The Louisiana Commission also counters Arkansas Consumers' objection that the Ouachita Plant will be dispatched to the Entergy System and not used to serve Entergy Arkansas' load-following needs, by pointing out that the Entergy System has only one load. The Louisiana Commission explains that resources are dispatched in economic order to meet load with costs allocated on an hourly basis. At the end of each month, an after-the-fact accounting distributes the costs for running the system. The Louisiana Commission maintains that this does not produce a subsidy; each company gets allocated the benefits of the units it owns when the after-the-fact bills are calculated.<sup>25</sup>

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<sup>22</sup> Entergy Answer at 12-13.

<sup>23</sup> Entergy refers to Entergy Services' filing, on February 28, 2008, in Docket No. ER03-753-000, which notified the Commission that Entergy Arkansas and Entergy Gulf States had entered into a transaction pursuant to Service Schedule MSS-4.

<sup>24</sup> New Orleans' Protest at 5.

<sup>25</sup> Louisiana Commission's Protest at P 19.

**c. Commission Determination**

30. We disagree with Arkansas Consumers' claim that Arkansas ratepayers will unfairly subsidize the other Operating Companies. Significantly, Arkansas Consumers ignores how the System Agreement treats the Operating Companies as a single system and assigns costs to the Operating Companies through the operation of Service Schedules MSS-3 and MSS-4.

31. Arkansas Consumers incorrectly asserts that Entergy Gulf States will receive capacity and energy from the Ouachita Plant at no cost. Under the System Agreement, the sale of capacity and energy from the Ouachita plant to Entergy Gulf States is conducted under Service Schedule MSS-4. This Commission-accepted service schedule includes formulas for deriving cost-based rates for the sale of capacity and energy from one Operating Company to another that have been accepted as providing proper compensation among the Operating Companies. Therefore, no subsidization, as implied by Arkansas Consumers, occurs between Entergy Arkansas' customers and Entergy Gulf States' customers.

32. We also emphasize that Service Schedule MSS-3 prices energy exchanged among the Operating Companies and allocates, on an hourly basis, energy from the lowest cost source available. It allocates the cost of energy of an Operating Company whose generation exceeds that company's load, on an hour-by-hour basis, to an Operating Company that produced less than its load. For sellers, these transactions provide opportunities to earn additional revenue, and to lower customer rates, from capacity that temporarily exceeds native load capacity requirements. As we explained above, only after the needs of an Operating Company's own customers have been met will the excess energy that Operating Company generated be allocated to other Operating Companies. Further, Service Schedule MSS-3 contains a formula rate that allows the seller of excess energy to recover its incremental operation and maintenance and sulfur dioxide costs. Thus, if any of the Ouachita Plant is used for the benefit of the other Operating Companies, Entergy Arkansas and its ratepayers will be compensated through the Service Schedule MSS-3 energy exchange and there is no subsidy.

33. We find that the rates embodied in Service Schedules MSS-3 and MSS-4 properly compensate Entergy Arkansas and its ratepayers for any of the Ouachita Plant's capacity and energy that is purchased for use by the other Operating Companies and that no subsidization occurs as asserted by Arkansas Consumers.

**3. Entergy System Planning**

**a. Arkansas Consumers' Arguments**

34. Arkansas Consumers asks the Commission to determine that Entergy can no longer plan generation acquisitions on a single system basis. Entergy Arkansas should be

excluded from generation acquisition planning because its expected 2013 withdrawal from the System Agreement has not occasioned, at present, a corresponding modification in Entergy's resource acquisition principles and criteria.<sup>26</sup>

**b. Reply Arguments**

35. Entergy answers that Entergy Arkansas continues to be a member of the System Agreement and is therefore bound contractually by its terms, which require the Operating Committee to engage in single system planning. To do otherwise would require amendment to the System Agreement. Entergy states that once Entergy Arkansas and Entergy Mississippi gave notice of their intended withdrawals from the System Agreement, the Operating Committee did begin to reflect these notices in its long-term planning process. However, this did not mean stopping long-term resource planning entirely nor excluding the departing company from the long-term planning and acquisition process. Entergy states also that termination issues should be considered at such time as the Commission receives filings regarding the effects of the two Operating Companies' withdrawal.<sup>27</sup>

36. The Louisiana Commission states that until a new System Agreement is approved and appropriate protective measures and remedies are in place, the obligations of the current System Agreement remain in effect.<sup>28</sup> Arkansas Consumers' request that Entergy Arkansas be excluded from system planning for generation resources would abrogate the System Agreement's rights and obligations, without maintaining a rough equalization of the Entergy System's production costs nor establishing a just and reasonable share of Entergy Arkansas' share of existing costs and liabilities. Entergy Gulf States would be deprived of needed resource arrangements that other Operating Companies and regulators of retail rates have deemed appropriate. Arkansas Consumers has presented no evidence that justifies this result.<sup>29</sup>

**c. Commission Determination**

37. We will deny Arkansas Consumers' request that we determine that Entergy can no longer plan generation acquisitions on a single system basis. Until Entergy Arkansas leaves the System Agreement, it continues to be part of the System Agreement and is thus bound by its terms. In that regard, to require the entire output of the Ouachita Plant to be

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<sup>26</sup> Complaint at P 36.

<sup>27</sup> Answer at 7-8.

<sup>28</sup> Louisiana Commission's Protest at P 10.

<sup>29</sup> Arkansas Commission's Protest at P 20.

designated as solely an Entergy Arkansas resource would be contrary to the decision of the Entergy Operating Committee made pursuant to the terms of the System Agreement. The Operating Committee authorizes power transfers that benefit the system as a whole instead of just one Operating Company and its customers.

38. Until Entergy files a revised System Agreement, based on the actual withdrawal of Entergy Arkansas (or Entergy Mississippi) from the System Agreement, the existing System Agreement remains in effect and the parties remain bound by its terms and conditions. We are not addressing here any issues arising out of the planned withdrawal of Entergy Arkansas from the System Agreement, as the Commission has stated that any consideration of those issues would be premature.<sup>30</sup> The Operating Committee and Entergy Arkansas properly followed the mandates of sections 4.01 and 5.06(c) of the System Agreement. Entergy Arkansas remains a party to the System Agreement and the Entergy Operating Committee must continue to plan generation acquisitions on a single system basis that includes Entergy Arkansas.

#### **4. Ouachita Plant Designation**

##### **a. Arkansas Consumers' Arguments**

39. Arkansas Consumers argues that because all the costs of the Ouachita Plant are assigned to Entergy Arkansas' retail customers,<sup>31</sup> this Commission must follow the precedent established in Opinion No. 480 concerning the Vidalia Plant and declare that the Ouachita Plant is not a resource for the Entergy System but for Entergy Arkansas only.<sup>32</sup> Such designation would mean that, for as long as Entergy Arkansas participates in the System Agreement, energy and capacity from the Ouachita Plant would be sold into the Entergy exchange at some reasonable FERC-set rate. It would mean also that when Entergy Arkansas leaves the System Agreement, the other Operating Companies would lose any right to share in the Plant's output unless they entered into a successor agreement.<sup>33</sup>

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<sup>30</sup> *Louisiana Pub. Serv. Comm'n v. Entergy*, 119 FERC ¶ 61,224 (2007). Entergy and Entergy Arkansas recognize that they must consider the withdrawals in their planning processes and neither is acting as if the contract will not end. *See* Entergy Answer at 7.

<sup>31</sup> Presumably, Arkansas Consumers meant to say two-thirds of the costs of the plant.

<sup>32</sup> Complaint at P 37.

<sup>33</sup> Complaint at 17 n.8.

**b. Reply Arguments**

40. Entergy answers that, as the Commission has previously found, the Vidalia Plant transaction was not, unlike the Ouachita Plant transaction, arranged as part of Entergy's overall system planning.<sup>34</sup>

41. The Louisiana Commission further distinguishes the Vidalia Plant situation. In Opinion No. 480, the Commission re-priced Vidalia costs to be a production cost for Entergy Louisiana only under the bandwidth remedy calculation. The re-pricing did not result in a different dispatch of the Entergy System; the Vidalia Plant continues to be dispatched for the mutual benefit of all the Operating Companies, under the System Agreement. Designating the Ouachita Plant as only an Entergy Arkansas resource would mean that Entergy Gulf States would have to pay its full share of this plant's costs, under Service Schedule MSS-4, but have to exclude those costs from its production costs for purposes of the bandwidth remedy. Reciprocally, Entergy Arkansas could then include all of the Ouachita Plant's costs in its costs while paying only its two-thirds share, because of compensation under Service Schedule MSS-4.<sup>35</sup>

42. New Orleans points out that nothing in the System Agreement states that an Operating Company's submittal of notice to withdraw lifts the requirements of the System Agreement. The System Agreement obliges the Operating Committee to develop generation plans for the entire system, including Entergy Arkansas, on a least-cost basis. This obligation as it relates to Entergy Arkansas cannot be ignored until the company's withdrawal becomes effective in 2013. It would be inappropriate now to require changes just to Entergy's resource acquisition principles without considering the adjustments that will need to be made to all other aspects of the System Agreement to assure that all rates, going forward, for all of the Operating Companies, are just and reasonable.<sup>36</sup>

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<sup>34</sup> Answer at 17, 12, *citing Louisiana Pub. Serv. Comm'n v. Entergy Services, Inc., Opinion No. 480*, 111 FERC ¶ 61,311, at P 173-184 (2005) (Opinion No. 480), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282, at P 70-76 (2005) (Opinion No. 480-A), *order on compliance filing*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd*, *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

<sup>35</sup> Louisiana Commission's Protest at P 22.

<sup>36</sup> New Orleans' Protest at 8-9. New Orleans continues that, in the past, the other Operating Companies have supported the costs of Entergy Arkansas plants under the cost-sharing provisions of the System Agreement because of the Operating Committee's determination that locating low-cost, coal plants in Arkansas was in the best interest of the entire system. Entergy New Orleans has paid millions of dollars to Entergy Arkansas,  
(continued...)

c. **Commission Determination**

43. Arkansas Consumers is incorrect in its belief that the Commission's decision regarding the Vidalia Plant is appropriate precedent for the Ouachita Plant.

44. In 2005, in Opinion No. 480,<sup>37</sup> the Commission found that rough production cost equalization had been disrupted on the Entergy System and approved a numerical bandwidth that roughly equalizes production costs among the Operating Companies. Each Operating Company's bandwidth payment is based on whether it exceeded plus-or-minus 11 percent of the average production cost of the entire Entergy System on an annual basis. Entergy added the bandwidth calculations to Service Schedule MSS-3.

45. In Opinion No. 480, the Commission determined that the Vidalia Plant<sup>38</sup> was not built as part of Entergy's overall system planning, and also that energy from the plant is solely an Entergy Louisiana resource. The Commission found that the Louisiana Commission decided to build the Vidalia Plant to serve Louisiana's needs, i.e., construction jobs, tax revenue, and tourism, in addition to electric power, and guaranteed full recovery of the Vidalia contract over the entire life of the contract. The Vidalia Plant was an accommodation between the Louisiana Commission and Entergy Louisiana, and was negotiated without participation of the Operating Committee. Entergy Louisiana's retail customers bear the Vidalia contract costs through a fuel clause.<sup>39</sup>

46. The Ouachita Plant, to the contrary, was acquired as part of Entergy's overall system planning with the intent that energy from the plant be an Entergy System resource. The Operating Committee structured the Ouachita Plant transaction, as required by its obligations under the System Agreement. Thus, the Commission's findings in Opinion No. 480 are inapposite to the Ouachita Plant.

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whose customers have not been paying their fair share of system costs over the years. *Id.* at 10.

<sup>37</sup> See Opinion No. 480, 111 FERC ¶ 61,311 at P 28.

<sup>38</sup> FERC Project No. 2854.

<sup>39</sup> Order No. 480, 111 FERC ¶ 61,311 at P 173-180.

The Commission orders:

The complaint filed by Arkansas Electric Energy Consumers, Inc. in this proceeding is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.