

143 FERC ¶ 61,111  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Entergy Arkansas, Inc.	Docket Nos. ER12-1384-002
Entergy Gulf States Louisiana, L.L.C.	ER12-1385-001
Entergy Louisiana, LLC	ER12-1386-002
Entergy Mississippi, Inc.	ER12-1387-002
Entergy New Orleans, Inc.	ER12-1388-002
Entergy Texas, Inc.	ER12-1390-002
Louisiana Public Service Commission	EL11-57-001 (Consolidated)

v.

Entergy Corporation, *et al.*

ORDER DENYING REHEARING

(Issued May 9, 2013)

1. On May 31, 2012, the Commission issued an order that accepted and suspended Entergy Services, Inc.'s (Entergy) proposed revisions to the rough production cost equalization bandwidth formula and summarily rejected the Louisiana Commission's request to permanently assign the costs associated with the cancelled Little Gypsy Repowering Project (Little Gypsy cancellation costs).<sup>1</sup> As discussed below, this order denies the Louisiana Public Service Commission's (Louisiana Commission) request for rehearing of the Initial Order.

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<sup>1</sup> *Entergy Services, Inc., Louisiana Pub. Serv. Comm'n v. Entergy Corp., et al.*, 139 FERC ¶ 61,167 (2012) (Initial Order).

## I. Background

2. Entergy and the Entergy Operating Companies<sup>2</sup> are currently parties to the Entergy System Agreement (System Agreement). The System Agreement is a rate schedule on file at the Commission that allows the Entergy Operating Companies to plan, construct, and operate their generation and transmission facilities as a single, integrated electric system (Entergy System).<sup>3</sup> Entergy stated that after 2015, Entergy Arkansas and Entergy Mississippi will no longer be a part of the Entergy System.<sup>4</sup>

3. Entergy stated that it planned the Little Gypsy Repowering Project to diversify the Entergy System's fuel requirements and to provide baseload capacity by converting a natural gas-fired unit to a solid-fuel unit. Entergy stated that the Louisiana Commission approved Entergy Louisiana's application for the Little Gypsy Repowering Project in March 2008; however, in 2009 a substantial decline in natural gas prices reversed the economics of the project, and the Little Gypsy Repowering Project no longer represented the lowest reasonable cost alternative.

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<sup>2</sup> The Entergy Operating Companies are: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy Texas, Inc.; and Entergy New Orleans, Inc.

<sup>3</sup> Initial Order, 139 FERC ¶ 61,167 at P 2 (referencing Entergy March 29, 2012 Filing at 2).

<sup>4</sup> In Opinion Nos. 480 and 480-A, the Commission established a numerical bandwidth of +/- 11 percent of the Entergy system average production costs to maintain the rough equalization of production costs among the Operating Companies. On November 17, 2006, the Commission issued an order accepting Entergy's proposed amendments to Service Schedule MSS-3 to include a formula to calculate bandwidth payments and achieve rough equalization of production costs (bandwidth formula). *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part*, *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047 (2011)).

4. On May 17, 2011, the Louisiana Commission approved an uncontested settlement to cancel the Little Gypsy Repowering Project,<sup>5</sup> including an uncontested stipulation in which Entergy Louisiana committed to seek inclusion of the Little Gypsy cancellation costs as production costs in the bandwidth formula.

5. On August 4, 2011, as amended on September 16, 2011, the Louisiana Commission filed a complaint before the Commission seeking to include Little Gypsy cancellation costs in the bandwidth formula (Amended Complaint). The Louisiana Commission sought either to: (1) classify the Little Gypsy cancellation costs as fixed and permanently assign them to all Entergy Operating Companies, regardless of whether they continued to participate in the System Agreement; or (2) amend the bandwidth formula to allow inclusion of the Little Gypsy cancellation costs. On January 19, 2012, the Commission issued an order holding the Amended Complaint in abeyance, and noting that Entergy planned to make an FPA section 205 filing to include the Little Gypsy cancellation costs in the 2012 bandwidth formula calculation.<sup>6</sup>

6. On March 29, 2012, Entergy filed proposed tariff amendments pursuant to section 205 of the Federal Power Act (FPA)<sup>7</sup> and Part 35 of the Commission's regulations.<sup>8</sup> Entergy sought to modify the bandwidth formula, to include the Little Gypsy cancellation costs. Entergy stated that the Little Gypsy cancellation costs are production-related costs and should therefore be included in the bandwidth formula.

7. In the Initial Order, the Commission determined that Entergy's proposed revisions to the bandwidth formula raised issues of material fact and would be more appropriately addressed in hearing and settlement procedures. The Commission stated that its preliminary analysis indicated that the revisions may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The Commission therefore accepted Entergy's proposed revisions for filing, suspended them for a nominal period, made them effective June 1, 2012, subject to refund, and set them for hearing and

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<sup>5</sup> *Docket No. U-30192, Phase III, Application of Entergy Louisiana, LLC for Approval to Repower Little Gypsy Unit 3 Electric Generation Facility and for Authority to Commence Construction and for Certain Cost Protection and Cost Recovery*, Order No. U-30192-E (May 17, 2011) (Louisiana Commission Order).

<sup>6</sup> *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 138 FERC ¶ 61,031, at P 28 (2012).

<sup>7</sup> 16 U.S.C. § 824d (2006).

<sup>8</sup> 18 C.F.R. Part 35 (2012).

settlement procedures. The Commission also consolidated the Amended Complaint with Entergy's section 205 filing after determining that the proceedings presented common issues of law and fact.<sup>9</sup>

8. As relevant here, the Initial Order rejected the Louisiana Commission's request to provide a permanent allocation of the Little Gypsy cancellation costs on a fixed basis to all of the Entergy Operating Companies regardless of their continued participation in the System Agreement. The Commission concluded that the System Agreement places no further conditions on an Operating Company's ability to withdraw beyond giving 96 months' notice.<sup>10</sup> The Commission stated that once Entergy Arkansas and Entergy Mississippi withdraw from the Entergy System, they would no longer be considered affiliates of the other Entergy Operating Companies for purposes of the bandwidth formula.<sup>11</sup> The Commission also clarified that because there is no basis to suggest that bandwidth payments should continue indefinitely if an Operating Company is no longer a member of the System Agreement, there is no basis for an Operating Company to continue to be allocated costs of another Operating Company's cancelled production projects for rough production cost equalization purposes.

## **II. Request for Rehearing**

9. The Louisiana Commission argues that the Initial Order constitutes arbitrary and capricious decision-making because the Commission: (1) did not address whether the Little Gypsy cancellation costs should be permanently assigned and failed to address relevant precedent; (2) failed to explain why the withdrawal provision of the System Agreement justifies not requiring all of the Operating Companies to share responsibility for the Little Gypsy cancellation costs and did not explain why the withdrawal provision justifies localizing costs; and (3) summarily dismissed fact-based allegations that the Little Gypsy Repowering Project was planned for the benefit of the Entergy System. The Louisiana Commission asserts that "[t]he Commission should reconsider its ruling and address the substantive allegations of a statutory violation, or grant the Amended Complaint, or set it for hearing."<sup>12</sup>

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<sup>9</sup> Initial Order, 139 FERC ¶ 61,167 at PP 51-52.

<sup>10</sup> *Id.* P 53 (citing *Entergy Services, Inc.*, 129 FERC ¶ 61,143, at P 59 (2009)).

<sup>11</sup> *Id.* (citing *Entergy Services, Inc.*, 134 FERC ¶ 61,075 (2011)).

<sup>12</sup> Rehearing Request at 13.

### III. Discussion

10. The Louisiana Commission asserts that the Initial Order “may address whether the permanently-assigned [Little Gypsy cancellation] costs remain subject to the rough equalization calculation,” but claims that the Commission “does not address whether [those costs] should be permanently assigned.”<sup>13</sup> According to the Louisiana Commission, the Little Gypsy cancellation costs are fixed and permanent, and were incurred to provide benefits to all of the Entergy Operating Companies. The Louisiana Commission claims that because the Little Gypsy Repowering Project will have no future use, and will not provide benefits, permanent allocation of the “sunk cancelled plant costs” is appropriate.<sup>14</sup>

11. The Louisiana Commission contends that the basis for its argument in favor of a fixed, permanent allocation of the Little Gypsy cancellation costs was that the plant was planned for the benefit of the entire Entergy System. It claims that the Commission’s decision, which was based on the language of the System Agreement, is not responsive to its arguments.

12. We note at the outset that in its rehearing request, the Louisiana Commission misstates the findings set forth in the Initial Order. The Commission explicitly addressed whether the Little Gypsy cancellation costs should be permanently assigned. Specifically, the Commission stated:

[W]e reject the Louisiana Commission’s request to provide a permanent allocation of the Little Gypsy cancellation costs on a fixed basis to all Entergy Operating Companies regardless of their continued participation in the System Agreement. The System Agreement places no further conditions on an Operating Company’s ability to withdraw beyond giving 96 months’ notice.<sup>15</sup>

As noted above, the Commission set for hearing the question of whether it is just and reasonable to include the Little Gypsy cancellation costs in the bandwidth formula, which

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<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> Initial Order, 139 FERC ¶ 61,167 at P 53.

would allocate them to all participants in the System Agreement; it did not find that Entergy Louisiana must bear all of the sunk costs as the Louisiana Commission contends.<sup>16</sup>

13. The Louisiana Commission also claims that the Commission failed to distinguish the instant proceeding from its *Grand Gulf* decision, stating that “[t]he Commission permanently allocated the catastrophically uneconomical cost of the Grand Gulf unit to four [Operating] Companies that neither owned nor constructed it.”<sup>17</sup> The Louisiana Commission states that the System Agreement’s 96-month withdrawal notice provision existed when the *Grand Gulf* decision was rendered, yet the Commission found that permanent allocation was appropriate given the Entergy System’s history of system planning. The Louisiana Commission argues that given the similarities between *Grand Gulf* and the instant proceeding, “Louisiana ratepayers deserve to be protected from the undue discrimination associated with the localization of cost responsibility for a cancelled plant that was planned for all the [Operating] Companies.”<sup>18</sup>

14. *Grand Gulf* is distinguishable from this proceeding, however, because at the time of *Grand Gulf* there were no foreseeable changes to the composition of the Middle South Utilities<sup>19</sup> system, as there were to the Entergy System at the time the Little Gypsy Repowering Project was undertaken and cancelled. As the Louisiana Commission admits, the project was undertaken after Entergy Arkansas and Entergy Mississippi had given timely notice of their intent to exit the system.<sup>20</sup> When the Louisiana Commission approved Entergy’s application for the Little Gypsy Repowering Project in March 2008, the Operating Companies had been aware of Entergy Arkansas’ and Entergy Mississippi’s intent to withdraw from the System Agreement for over two years. We must therefore disagree with the Louisiana Commission that its “requested remedy is necessary to make certain that [Entergy Arkansas] and [Entergy Mississippi] are responsible for their respective shares of cancellation costs.”<sup>21</sup> The Operating Companies

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<sup>16</sup> Rehearing Request at 11-12.

<sup>17</sup> *Id.* at 13 (referencing *Middle South Energy, Inc.*, 31 FERC ¶ 61,305 (hereinafter, *Grand Gulf*), *reh’g denied*, 32 FERC ¶ 61,425 (1985)).

<sup>18</sup> *Id.*

<sup>19</sup> Middle South Utilities changed its name to Entergy in 1989.

<sup>20</sup> Rehearing Request at 7.

<sup>21</sup> *Id.* at 4.

have already had, in the system planning process, an opportunity to consider and decide how to allocate responsibility for the project.

15. Therefore, although Entergy Arkansas and Entergy Mississippi may be responsible for a portion of the Little Gypsy cancellation costs pursuant to the bandwidth formula, we find no basis in either the System Agreement or in *Grand Gulf* to support a permanent allocation of Little Gypsy cancellation costs. In fact, the United States Court of Appeals for the District of Columbia Circuit has recently affirmed that the 96-month withdrawal provision prevents any continuing obligations post withdrawal.<sup>22</sup> In *City of New Orleans*, petitioners alleged that the System Agreement prevented an Operating Company from leaving the Entergy System “without compensating the remaining [Operating] Companies for the assets it takes ... [and continuing to make] ‘rough equalization’ payments to its former partners.”<sup>23</sup> In its decision, however, the court agreed with the Commission that “the [System] Agreement’s purpose is central planning, not central ownership.”<sup>24</sup> The court determined that 96 months “provided sufficient time for the Operating Companies to plan for withdrawal” and concluded that once an Operating Company leaves the System Agreement, “it need not continue to make [rough equalization] payments.”<sup>25</sup>

16. The Louisiana Commission further states that Entergy has not disputed whether all of the Operating Companies participated in planning and assigning responsibility for the Little Gypsy Repowering Project. The Louisiana Commission asserts that the Commission’s dismissal of the Louisiana Commission’s fact-based allegations constitutes arbitrary decision-making.

17. The Louisiana Commission asserts that the Commission determined that the Entergy System’s generation facilities are planned and constructed for the Entergy System as a whole, requiring that all of the Entergy Operating Companies’ production costs be equalized.<sup>26</sup> The Louisiana Commission further asserts that the United States

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<sup>22</sup> *City of New Orleans, et al. v. FERC*, 692 F.3d 172 (D.C. Cir. 2012) (*City of New Orleans*).

<sup>23</sup> *Id.* at 175.

<sup>24</sup> *Id.* at 176.

<sup>25</sup> *Id.* at 176-177.

<sup>26</sup> Rehearing Request at 5 (citing *System Energy Resources, Inc.*, 41 FERC ¶ 61,238, at 61,614-15 (1987); Opinion No. 480, 111 FERC ¶ 61,311).

Court of Appeals has affirmed the Commission's determination that "all generating capacity on the [Entergy] System has been built and planned on an integrated basis by the [Entergy] System in order to meet the collective needs of the [Entergy] System."<sup>27</sup>

18. We disagree. For reasons explained here and in the Initial Order,<sup>28</sup> it would be inappropriate to permanently allocate the Little Gypsy cancellation costs to Entergy Arkansas and Entergy Mississippi on a fixed basis. Regardless of what Entergy intended in planning the Little Gypsy Repowering Project, once an Operating Company withdraws from the System Agreement, there is no basis for it to continue to be allocated costs of another Operating Company's cancelled production projects for the rough production cost equalization purposes of the System Agreement. Accordingly, and for all of the reasons set forth in the Initial Order, we affirm our finding that after Entergy Arkansas and Entergy Mississippi withdraw from the System Agreement, they should not be subject to the permanent allocation of the Little Gypsy cancellation costs.

The Commission orders:

The Louisiana Commission's request for rehearing of the Initial Order is denied as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>27</sup> *Id.* (citing *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378, 390 (D.C. Cir. 2008)).

<sup>28</sup> Initial Order, 139 FERC ¶ 61,167 at P 53.