

151 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
and Tony Clark.

Louisiana Public Service Commission

Docket No. EL11-63-001

v.

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

ORDER DENYING REHEARING

(Issued June 18, 2015)

1. In this order we deny rehearing of a Commission order issued on January 19, 2012 that dismissed as premature, in part, and denied, in part, a complaint that the Louisiana Public Service Commission (Louisiana Commission) filed against Entergy Corporation and seven affiliates (Complaint).<sup>1</sup> The Complaint raised concerns related to Entergy Corporation's allocation of the cost of transmission upgrades at the Ouachita Generating

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<sup>1</sup> *La. Pub. Serv. Comm'n v. Entergy Corp., et al.*, 138 FERC ¶ 61,029 (2012) (Order on Complaint). The affiliates include Entergy Services, Inc. (Entergy) and six Operating Companies: Entergy Louisiana, LLC (Entergy Louisiana), Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), and Entergy Texas, Inc. (collectively, Operating Companies).

Station (Ouachita Plant) in Louisiana and the allocation of the benefits from the settlement of a contractual dispute between Entergy Arkansas and Union Pacific Corporation (Union Pacific) over the delivery of coal supplies to two generation units in Arkansas (Union Pacific Settlement). The Louisiana Commission seeks rehearing with respect to the Order on Complaint's holdings concerning the Ouachita Plant.

## **I. Background**

2. The Ouachita Plant is a three-unit, 789 MW, natural gas-fired generating facility located near Sterlington, Louisiana in Entergy Louisiana's service territory. On September 30, 2008, Entergy Arkansas purchased 100 percent of the Ouachita Plant and sold one-third of its capacity to Entergy Gulf States Louisiana, which was approved by the Louisiana Commission. On November 30, 2009, Entergy Arkansas sold one unit of the Ouachita Plant to Entergy Gulf States Louisiana. Entergy's System Planning and Operations organization submitted a request for long-term network transmission service from the Ouachita Plant on behalf of all the Operating Companies from June 1, 2007 to June 1, 2057. On November 17, 2007, an Independent Coordinator of Transmission released a Facilities Study estimating that it would cost approximately \$70 million for required transmission upgrades to qualify the Ouachita Plant as a network resource for the Operating Companies. In its October 6, 2011 Answer to the Complaint, Entergy stated that some of the transmission upgrades had already been placed in service, with the remainder scheduled for completion in 2012 and 2013.<sup>2</sup> The identified transmission upgrades are located in Entergy Louisiana's and Entergy Mississippi's service areas. Entergy Corporation assigned the construction duties for the upgrades to Entergy Louisiana and Entergy Mississippi, and the two Operating Companies assumed the related costs.

3. The Louisiana Commission argued in the Complaint that it was unjust, unreasonable, and unduly discriminatory to allocate to Entergy Louisiana the transmission upgrade costs incurred to permit Entergy Arkansas to receive electricity from the Ouachita Plant because Entergy Arkansas has sought and received approval to withdraw from the Entergy System Agreement (System Agreement).<sup>3</sup> The Louisiana Commission also raised concerns regarding the Union Pacific Settlement. The Louisiana Commission argued that because the damages that occurred in that instance affected all Operating Companies, all should benefit from the Union Pacific Settlement in proportion to their incurred damages. The Louisiana Commission claimed that because a large portion of the settlement benefits would occur after Entergy Arkansas withdrew from the

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<sup>2</sup> Entergy Answer at 9.

<sup>3</sup> See Order on Complaint, 138 FERC ¶ 61,029 at PP 10-14.

System Agreement, the rates of system customers will be unjust, unreasonable, and unduly discriminatory absent a remedy that matches the pre-withdrawal costs and the benefit of the settlement.

4. In the Order on Complaint, the Commission found that the issues that the Louisiana Commission raised regarding allocation of the Ouachita Plant transmission upgrade costs following Entergy Arkansas' proposed withdrawal from the System Agreement in 2013, and the issues regarding the Union Pacific Settlement, were premature and dismissed them.<sup>4</sup> The Commission denied the Louisiana Commission's Complaint to the extent it alleged that the current, pre-withdrawal allocation of the Ouachita Plant transmission upgrade costs was unjust, unreasonable, or unduly discriminatory.<sup>5</sup>

## II. Discussion

### A. Federal Power Act Section 306

5. In the Order on Complaint, the Commission rejected the Louisiana Commission's assertions that Entergy had a duty to respond to, and the Commission an obligation to investigate, the Louisiana Commission's allegations in the Complaint because they were brought under section 306 of the Federal Power Act (FPA).<sup>6</sup> The Commission stated that although FPA section 306 requires a public utility to answer a complaint filed by a state regulatory commission, it does not, as the Louisiana Commission implies, change the burden of the complainant. The Commission explained that complainants bear the burden to prove their allegations under both sections 206 and 306 of the FPA, irrespective of the FPA section 306 requirement that a public utility provide an answer to the complaint.<sup>7</sup>

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<sup>4</sup> *Id.* PP 43, 53.

<sup>5</sup> *Id.* P 44.

<sup>6</sup> 16 U.S.C. § 825e (2012).

<sup>7</sup> Order on Complaint, 138 FERC ¶ 61,029 at P 41 (citing *Richard Blumenthal, et al. v. ISO New England Inc., et al.*, 135 FERC ¶ 61,117 (2011) (*Blumenthal*)).

6. On rehearing, the Louisiana Commission contends that the Order on Complaint violated the section 306 standard by dismissing the Louisiana Commission's complaint even though Entergy did not "satisfy" the complaint with support demonstrating that there is no reasonable ground for investigating the complaint.<sup>8</sup> The Louisiana Commission contends that the Commission mischaracterized the Louisiana Commission's position through its finding that "Complainants bear the burden to prove their allegations under both sections of the FPA, irrespective of the FPA section 306 requirement that a public utility provide an answer to the complaint."<sup>9</sup> The Louisiana Commission contends that it has not urged that the burden of proof at the hearing shifts to the utility under a section 306 complaint.

7. The Louisiana Commission maintains that the burden of proof standard that applies to prevail in a hearing differs from that applicable to the determination of whether the Commission is required to investigate a complaint under section 306. It contends that the standard for assessing a complaint is established in section 306 of the FPA and that this standard requires more than merely the filing of an unsupported answer. The Louisiana Commission asserts that section 306 permits a state regulatory authority to file a complaint, and it requires that the public utility "satisfy" the complaint by providing an answer. Entergy, the Louisiana Commission contends, has not "satisfied" the complaint, but instead provided an answer full of unsupported conclusory statements.

8. The Louisiana Commission argues that in this situation, the statute prescribes further action if there is any reasonable ground for investigation.<sup>10</sup> It contends that the analysis that the statute requires in assessing whether there is reasonable ground for a hearing is different from the analysis that is required to satisfy the "burden of proof" required at a hearing. The Louisiana Commission contends that absent a supported demonstration that there is no reasonable ground for investigating a complaint, and that the factual allegations made do not raise a legitimate legal issue, the allegations should proceed to hearing, where the Louisiana Commission would then bear the burden of proof.

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<sup>8</sup> Louisiana Commission February 20, 2012 Request for Rehearing at 3-4 (Request for Rehearing).

<sup>9</sup> *Id.* at 4 (citing Order on Complaint, 138 FERC ¶ 61,029 at P 41).

<sup>10</sup> *Id.* (citing 16 U.S.C § 825e).

9. The Louisiana Commission states that the *Blumenthal* decision that the Commission relied on in the Order on Complaint is inapplicable here.<sup>11</sup> It states that *Blumenthal* stands for the proposition that complaints raising violations of the FPA, as opposed to tariffs, must be brought under section 306, not section 206 of the FPA, and that the just and reasonable standard does not apply to claims related to market manipulation.<sup>12</sup> The Louisiana Commission states that its complaint was brought under section 306 and that if the “proof” were weighed, its complaint would have to be sustained and a hearing held. According to the Louisiana Commission, this is because it has submitted the only proof, including the only affidavit, in this proceeding. The Louisiana Commission contends that Entergy’s answer is unsupported by any affidavits or other evidence, and it fails to demonstrate that there was no reasonable ground for investigating the complaint. The Louisiana Commission thus contends that the Commission erred in dismissing the complaint without a hearing.

### **Commission Determination**

10. We deny rehearing. The Louisiana Commission has misread section 306 of the FPA. We therefore begin with the text of the statute itself, which reads, in relevant part, as follows:

Any person, . . . , or State commission complaining of anything done or omitted to be done by any . . . public utility in contravention of the provisions of this chapter may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such . . . public utility, who shall be called upon to satisfy the complaint *or* to answer the same in writing . . . . If such . . . public utility shall not satisfy the complaint within the time specified *or* there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper.<sup>13</sup>

11. Section 306 thus provides a public utility that is the respondent to a complaint with two options: it may either (1) “satisfy” the complaint or (2) answer the complaint in

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<sup>11</sup> *Id.* at 5 (citing Order on Complaint, 138 FERC ¶ 61,029 at P 41 (citing *Blumenthal*, 135 FERC ¶ 61,117)).

<sup>12</sup> *Id.* (citing *Blumenthal*, 135 FERC ¶ 61,117 at P 38).

<sup>13</sup> 16 U.S.C. § 825e (2012) (emphasis supplied).

writing. To “satisfy” a complaint means to take action that resolves the dispute, whether through unilateral action by the respondent, an agreement between the complainant and the respondent, or some other action that resolves the dispute.<sup>14</sup> The Commission’s regulations establish specific procedures for the satisfaction of complaints. These regulations require a respondent to file a motion explaining how it has satisfied the complaint and authorizes the Commission either to dismiss the complaint or to require the submission of additional information.<sup>15</sup>

12. The Louisiana Commission misinterprets the requirements of section 306 by reading that section as requiring “the public utility to ‘satisfy’ the complaint by providing an answer . . . that refutes with support ‘any reasonable ground for investigating such complaint.’”<sup>16</sup> However, section 306 states that the respondent must either satisfy complaint or answer the complaint in writing. These are separate and alternative courses of action. The statute does not require the respondent to demonstrate that there are no reasonable grounds to investigate the complaint, although the respondent certainly may do this if it wishes. However, demonstrating that there are no reasonable grounds for an investigation does not amount to satisfying a complaint, since, as noted, satisfaction involves action that resolves the dispute between the parties.

13. The Louisiana Commission’s misinterpretation of the meaning of the word “satisfy” in section 306 has the effect of improperly shifting the burden of proof to a respondent.<sup>17</sup> The Louisiana Commission’s reading of the statute would create a

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<sup>14</sup> *Cross Timbers Energy Servs., Inc. v. Transwestern Pipeline Co.*, 108 FERC ¶ 61,209, at P 6 (2004) (accepting a representation by the parties that an agreement between them, which preserved the current tariff structure through the full term of a rate change moratorium, while also addressing certain rate and policy issues, satisfied the complaint); *Oroville-Wyandotte Irrigation Dist.*, 33 FERC ¶ 61,416, at n.5 (1985) (stating that FPA section 306 does “does not entitle a complainant to an adjudication of its complaint” and requires an investigation only if the public utility does not satisfy the complaint or if there appear to be reasonable grounds for an investigation).

<sup>15</sup> 18 C.F.R. § 385.206(j) (2014); *Chevron Products Co. v. Calnev Pipe Line, L.L.C.*, 101 FERC ¶ 61,023, at PP 4-5 (2002) (dismissing a complaint under rule 206(j) of the Commission’s rules of practice and procedure on the grounds that it had been satisfied as set forth in the agreement in satisfaction of complaint filed along with a motion to dismiss).

<sup>16</sup> Request for Rehearing at 2.

<sup>17</sup> *New Eng. Power Pool Agreement*, 56 FPC 1562, at 1579 (1976) (stating that interveners had misinterpreted the institution of an investigation by the Commission as a

(continued...)

presumption in favor of a hearing that the respondent must overcome in its answer. While section 306 does provide for an investigation where the respondent does not satisfy a complaint within a specified period, a respondent fulfills its obligations under section 306 if, in the alternative, it answers the complaint in writing. This has occurred here, and in these circumstances the failure to satisfy the complaint is, in itself, not grounds for an investigation. Rather, in these circumstances, the Commission has a duty to investigate the matters complained of only if “there shall appear to be any reasonable ground for investigating such complaint.” The burden of showing that there is such a ground lies with the complainant. The analysis in the Order on Complaint, as well as our discussion below of our reasons for denying rehearing, demonstrates that there is no such ground for an investigation.

**B. Interpretation of Service Schedule MSS-2 With Respect to Cost Allocation**

14. The Commission noted in the Order on Complaint that the System Agreement and its provisions remain in place until the Commission accepts a replacement agreement.<sup>18</sup> It stated that under the System Agreement, bulk transmission costs (generally above 230 kV) are equalized among the Operating Companies, as set forth in Service Schedule MSS-2.<sup>19</sup> The Commission also addressed the System Agreement’s treatment of cost allocation for transmission facilities below the bulk transmission level, noting that the System Agreement contemplates that an Operating Company may invest in such transmission facilities for the collective benefit of all the Operating Companies and that the related costs will not be equalized among the Operating Companies, even where the upgrades were necessary as a result of a generation acquisition by an Operating Company whose service territory is outside where the upgrades are located.<sup>20</sup> The Commission further explained that:

Neither Service Schedule MSS-2 nor any other Service Schedule provides for cost allocation, or other compensation, between different Operating Companies for the construction of transmission facilities below the bulk transmission [230 kV] level. Therefore, the assumption

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finding that the respondent had failed to satisfy its complaint under section 306 so as to impose the burden of proof upon the respondent).

<sup>18</sup> Order on Complaint, 138 FERC ¶ 61,029 at P 44.

<sup>19</sup> *Id.* P 45.

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

of such costs by individual Operating Companies is the sole mechanism for allocating such costs.<sup>21</sup>

15. The Commission also found that the Entergy Operating Committee<sup>22</sup> had engaged in the practice of assigning the construction of transmission upgrades below the bulk transmission voltage threshold among Operating Companies based on the location of the transmission upgrades, with the assigned Operating Company assuming such cost, and that this practice is within the Operating Committee's authority under the System Agreement and is consistent with historical practice on the Entergy system.<sup>23</sup>

16. On rehearing, the Louisiana Commission asserts that the Commission erred by stating that in the absence of a mechanism in Service Schedule MSS-2 for allocating costs for transmission below 230 kV, Entergy Louisiana must be allocated the costs associated with the Ouachita Plant upgrades because the assumption of such costs by individual Operating Companies is the sole mechanism for allocating such costs.<sup>24</sup> The Louisiana Commission claims that the absence of a prescribed allocation of the costs of facilities provides no basis for a determination that the costs are properly allocated to Entergy Louisiana,<sup>25</sup> and that the Commission erred in so finding.<sup>26</sup>

17. The Louisiana Commission also contends that the historical rationale for allocating costs pursuant to Operating Committee decisions "went away" when Entergy Arkansas opted to leave the system, effective in 2013<sup>27</sup> and that Entergy's proposed cost

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<sup>21</sup> *Id.* P 45.

<sup>22</sup> The duties of the Entergy Operating Committee under the System Agreement are provided for in Article V of the System Agreement. System Agreement, §§ 5.01-5.08.

<sup>23</sup> Order on Complaint, 138 FERC ¶ 61,029 at P 46.

<sup>24</sup> Request for Rehearing at 2.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.* at 6 (citing *Commonwealth Group Winchester Partners, L.P. v. Winchester Warehousing, Inc.*, 332 Fed. App. 913, 921 (4th Cir. 2009) (The absence of language in an agreement allocating cost responsibility to a party provides no basis to allocate those costs to that party)).

<sup>27</sup> *Id.*

allocation violates section 3.01<sup>28</sup> and section 3.09<sup>29</sup> of the System Agreement and is contrary to Commission cost causation principles that require assignment of costs to those who will benefit from the completed upgrades.<sup>30</sup> The Louisiana Commission argues that only Entergy Arkansas customers will benefit from the completed upgrades. The Louisiana Commission states that all the upgrades necessary to secure network service will not be completed until shortly before Entergy Arkansas withdraws from the System Agreement.<sup>31</sup>

### **Commission Determination**

18. We deny rehearing on the interpretation of Service Schedule MSS-2. Contrary to the Louisiana Commission's argument, the Commission did not make the absence of a mechanism in Service Schedule MSS-2 for allocating costs for transmission below 230 kV the basis for allocating costs to Entergy Louisiana. The Commission's recognition that there was no such mechanism was simply a statement of fact. The Commission concluded that in light of this fact, "the assumption of such costs by individual Operating Companies is the sole mechanism for allocating such costs."<sup>32</sup> The Commission identified "historical practice" as the basis for allocating costs to Entergy Louisiana, not the absence of a mechanism in the tariff. Specifically, the Commission found that "the Operating Committee's practice of assigning construction of transmission upgrades below the bulk transmission voltage threshold among Operating Companies based upon the location of the transmission upgrades is within the authority provided to the Operating Committee in the System Agreement."<sup>33</sup> The Louisiana Commission argues that the "historical rationale for allocating costs in this fashion went away when [Entergy Arkansas] opted to leave the System, effective in 2013,"<sup>34</sup> but the Commission

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<sup>28</sup> System Agreement, § 3.01 (calling for sharing among Operating Companies of "any imbalance of costs associated with the construction, ownership and operation of such facilities as are used for the mutual benefit of all the Companies.").

<sup>29</sup> System Agreement, § 3.09 ("... each Company shall share in the benefits and pay its share of the costs of coordinated operations. . .").

<sup>30</sup> Request for Rehearing at 7.

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

<sup>32</sup> Order on Complaint, 138 FERC ¶ 61,029 at P 45.

<sup>33</sup> *Id.* P 46.

<sup>34</sup> Request for Rehearing at 6.

has previously found that the System Agreement remains in effect until the Commission accepts a replacement agreement.<sup>35</sup> The rationale for allocating costs pursuant to Operating Committee decisions therefore did not go away when Entergy Arkansas opted to leave the System. As the Commission noted in the Order on Complaint, its findings apply for the period prior to Entergy Arkansas' withdrawal from the System Agreement, and the Louisiana Commission was free to raise these contentions for the post-withdrawal period in the proceedings addressing changes to the System Agreement.<sup>36</sup>

19. These points apply equally to the Louisiana Commission's argument that the assignment to Entergy Louisiana of Ouachita transmission upgrade costs is inconsistent with sections 3.01 and 3.09 of the System Agreement. The Commission found in the Order on Complaint that the proposed cost allocation was consistent with these sections, and "the fact that planning of the Ouachita Plant acquisition occurred after Entergy Arkansas provided notice of intent to withdraw from the System Agreement does not provide a basis for treating it differently from other system resources for the purpose of allocating associated transmission costs."<sup>37</sup> We thus also see no basis for concluding that the Commission's findings conflict with cost causation principles. These findings apply for the period prior to Entergy Arkansas' withdrawal from the System Agreement, and, as with other issues it has raised, the appropriate forum for the Louisiana Commission to raise issues regarding cost causation with respect to the post-withdrawal period was in the proceedings addressing changes to the System Agreement following Entergy Arkansas' withdrawal.

### **C. Transmission Benefits to Entergy Louisiana**

20. The Order on Complaint rejected the Louisiana Commission's assertions that the current allocation and assumption of Ouachita Plant transmission upgrade costs by

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<sup>35</sup> Order on Complaint, 138 FERC ¶ 61,029 at P 44 (citing *Ark. Elec. Energy Consumers, Inc. v. Entergy Corp., et al.*, 126 FERC ¶ 61,051, at P 38 (2009)).

<sup>36</sup> *Id.* P 43. In January 2013, Entergy filed a plan to reallocate the costs of the transmission upgrades related to the Ouachita unit from Entergy Louisiana and Entergy Mississippi to Entergy Arkansas effective December 18, 2013, the date of Entergy Arkansas' withdrawal from the System Agreement. On December 17, 2013, this matter was set for hearing and settlement judge procedures in Docket Nos. ER13-769-000 and ER13-770-000. *See Entergy Miss., Inc.*, 145 FERC ¶ 61,217 (2013). The Commission approved the settlement agreement filed in these cases on November 25, 2014. *See Entergy Miss., Inc. and Entergy Louisiana, LLC*, 149 FERC ¶ 61,170 (2014).

<sup>37</sup> Order on Complaint, 138 FERC ¶ 61,029 at P 47.

Entergy Louisiana is unreasonable because the Entergy system will enjoy few benefits from the Ouachita Plant until the transmission upgrades are completed and the Ouachita Plant qualifies as a network resource.<sup>38</sup> The Commission found that the Louisiana Commission's showing was insufficient to support this contention. It noted that Entergy had explained that the Ouachita Plant currently provides benefits to all Operating Companies<sup>39</sup> and that the Louisiana Commission had not disputed Entergy's statement that "the entire Ouachita Plant is a resource that is subject to the joint dispatch of all Operating Companies' generation resources pursuant to the System Agreement."<sup>40</sup>

21. On rehearing, the Louisiana Commission contends that the Order on Complaint erroneously failed to recognize that Entergy's answer does not identify any transmission benefits to Entergy Louisiana resulting from the Ouachita transmission upgrade costs assigned to Entergy Louisiana.<sup>41</sup> The Louisiana Commission states that Entergy acknowledges that the upgrades funded by Entergy Louisiana are necessary for Entergy Arkansas and Entergy Gulf States Louisiana to obtain transmission service for the Ouachita Plant. The Louisiana Commission contends that Entergy did not attempt in its Answer to identify any benefits that will be available from the Entergy Arkansas portion of the Ouachita Plant or the transmission upgrade costs supporting the Entergy Arkansas portion of the Ouachita Plant once Entergy Arkansas withdraws from the System Agreement in 2013.<sup>42</sup>

22. The Louisiana Commission contends that it is misleading for Entergy to state that the Ouachita Plant "currently provides benefits to all Entergy Operating Companies, including benefits from low-cost excess energy" because the unit does not serve its intended purpose and will not do so until transmission upgrades are completed to give it network status.<sup>43</sup> The Louisiana Commission cites Entergy testimony before the Arkansas Public Service Commission (Arkansas Commission) that the Louisiana Commission maintains supports its assertion that the system is not reaping significant

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<sup>38</sup> *Id.* P 51.

<sup>39</sup> *See* Entergy Answer at 13.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> Request for Rehearing at 3.

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

<sup>43</sup> *Id.* at 7-8.

benefits from the Ouachita Plant.<sup>44</sup> The Louisiana Commission contends that Entergy Louisiana will obtain no benefits from the Entergy Arkansas share of the Ouachita transmission upgrades after the departure of Entergy Arkansas from the System in 2013.<sup>45</sup> The Louisiana Commission argues that the Commission has no authority to approve a methodology that allocates costs for facilities that do not provide significant and demonstrable benefits consistent with those allocated costs.<sup>46</sup>

### **Commission Determination**

23. We deny rehearing. To the extent that the Louisiana Commission's contentions concern the post-withdrawal allocation of Ouachita Plant transmission upgrade costs to Entergy Louisiana, this matter was appropriately dismissed in the Order on Complaint without prejudice, where the Commission noted that the Louisiana Commission could raise the issue in the proceedings that will address post-withdrawal changes to the System Agreement. This was appropriate because the post-withdrawal cost allocation issues that the Louisiana Commission raised were not ripe for consideration by the Commission given that its necessary condition precedent had not yet occurred<sup>47</sup> and given the Commission's discretion to determine the best procedures to address the issues before it.<sup>48</sup> As noted, these costs are within the scope of the proceedings addressing changes to the System Agreement following Entergy Arkansas' withdrawal.<sup>49</sup>

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<sup>44</sup> *Id.* at 8.

<sup>45</sup> *Id.* at 8-9.

<sup>46</sup> *Id.* at 9 (citing *Ill. Commerce Commission v. FERC*, 576 F.3d 470 (7<sup>th</sup> Cir. 2009)).

<sup>47</sup> *See, e.g., La. Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,104 (2010) (ruling that an issue concerning inclusion of costs associated with the cancellation of a repowering of Entergy's Little Gypsy generation unit in the Entergy bandwidth remedy formula was premature and not ripe for Commission consideration because the Louisiana Commission had not yet approved the cancellation of Little Gypsy and further ruling that when the Louisiana Commission issued a final decision on the cancellation of Little Gypsy, parties would be able to seek a Commission determination as to whether Little Gypsy cancellation costs should be included in the bandwidth formula).

<sup>48</sup> *See Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,056, at P 39 (2011).

<sup>49</sup> *See supra* note 35.

24. With respect to the Louisiana Commission's challenges to the current allocation of Ouachita Plant transmission upgrade costs, we find that the Louisiana Commission has failed to support its contention that pre-withdrawal allocation of Ouachita Plant transmission upgrade costs to Entergy Louisiana cannot be justified. As Entergy has explained, until Entergy Arkansas' departure from the System Agreement, the Ouachita Plant provided benefits to all Operating Companies.<sup>50</sup> The Louisiana Commission does not dispute Entergy's statement that "the entire Ouachita Plant is a resource that is subject to the joint dispatch of all Operating Companies' generation resources pursuant to the System Agreement."<sup>51</sup> In addition, the Louisiana Commission has not alleged any attempt by Entergy to delay such upgrades to deprive the Entergy system of the Ouachita Plant's benefits. We also find that Entergy's testimony before the Arkansas Commission is not dispositive.

25. Finally, we note that whether or not the Ouachita Plant is providing the expected or planned benefits does not demonstrate that it is not indeed providing system benefits.

26. We reject the Louisiana Commission's additional cost causation assertions related to an alleged lack of transmission benefits from the Ouachita transmission upgrades because these arguments pertain to the post-Entergy Arkansas withdrawal period.<sup>52</sup> As noted above, the appropriate forum for the Louisiana Commission to raise issues regarding cost causation with respect to the post-withdrawal period was the proceedings that will address changes to the System Agreement.

#### **D. Prudence Clarification or Rehearing**

27. The Order on Complaint did not address prudence concerns relating to the allocation of Ouachita Plant transmission upgrade costs to Entergy Louisiana. On rehearing, the Louisiana Commission states that the Commission should clarify or grant rehearing on whether it intended to make a finding that the decision of Entergy Louisiana to pay for upgrades solely benefiting the departing Entergy Arkansas is prudent, or whether that prudence determination is reserved for the state retail regulatory authority.

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<sup>50</sup> See Entergy Answer at 13.

<sup>51</sup> *Id.* at 2.

<sup>52</sup> See *id.* at 8-9; see also *id.* at 9 ("[the Order on Complaint's] rationale fails to recognize that the [FPA] requires the application of cost-causation principles and that the rotation of responsibilities will no longer apply to [Entergy Arkansas] once it exits the system.").

It further contends that the States should retain the right to make prudence determinations regarding such decisions.

### **Commission Determination**

28. We deny the Louisiana Commission's request for rehearing or clarification regarding prudence concerns relating to the allocation of Ouachita Plant transmission upgrade costs to Entergy Louisiana. The Order on Complaint did not address prudence concerns because the Louisiana Commission did not seek Commission action on this issue. The Louisiana Commission mentioned prudence only in passing in its Complaint,<sup>53</sup> and it did not treat prudence as a basis for relief.<sup>54</sup> As a result, the issue of prudence was not raised in accordance with the Commission's pleadings requirements for complaints.<sup>55</sup> Absent good cause, the Commission looks with disfavor on parties raising new issues on rehearing, particularly in cases where the issues could have and should have been raised at an earlier point in the proceeding. Permitting parties to raise new issues for the first time on rehearing would have the effect of creating a moving target for parties and would be disruptive to the administrative process, given that parties have no opportunity to respond to rehearing requests.<sup>56</sup> The Louisiana Commission has not shown good cause for raising the prudence issue on rehearing.

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<sup>53</sup> See Complaint at 13 ("Although the [Louisiana Commission] expressly reserves its own jurisdiction to determine the prudence and reasonableness for retail ratemaking of [Entergy Louisiana's] decision to construct the transmission upgrades, Entergy contends that this Commission has exclusive jurisdiction to determine all ratemaking issues related to the Ouachita allocation.").

<sup>54</sup> The Louisiana Commission also did not raise prudence issues in its November 1, 2011 Motion to Reply and Reply.

<sup>55</sup> Rule 206(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206(b)(1)-(2) (2014), requires that:

. . . A complaint must:

(1) Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements;

(2) Explain how the action or inaction violates applicable statutory standards or regulatory requirements; . . . .

<sup>56</sup> See *Commonwealth Edison Co.*, 122 FERC ¶ 61,037, at P 39 (2008).

The Commission orders:

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

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.