

168 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Entergy Services, LLC
Entergy Arkansas, Inc.
Entergy Louisiana, LLC
Entergy Mississippi, Inc.
Entergy New Orleans, LLC
Entergy Texas, Inc.

Docket No. EC19-18-000

ORDER AUTHORIZING
DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued September 30, 2019)

1. On October 29, 2018, as amended April 3, 2019, Entergy Services, LLC (Entergy Services), on behalf of itself and its affiliates the Entergy Operating Companies,¹ (collectively, Applicants) filed an application pursuant to section 203 of the Federal Power Act (FPA)² requesting that the Commission authorize the transfer of undivided ownership interests in two transmission control centers (Control Centers) from Entergy Services to the Entergy Operating Companies (Proposed Transaction).³
2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.⁴ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

¹ The Entergy Operating Companies are: Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; and Entergy Texas, Inc.

² 16 U.S.C. § 824b (2018).

³ Application for Authorizations Under Section 203 of the Federal Power Act, Docket No. EC19-18-000 (filed Oct. 29, 2018) (Application).

⁴ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (Merger Policy Statement) (cross-referenced at 77 FERC ¶ 61,263), *reconsideration*

I. Background

A. Description of Applicants

1. Entergy Services

3. Applicants state that Entergy Services is the centralized service company for the Entergy Operating Companies and provides a range of administrative and general support services, generation planning and operational support services, and transmission planning, operational, and reliability services.⁵ Applicants state that Entergy Services provides such services to the Entergy Operating Companies pursuant to certain forms of service agreements that are on file with the Commission (Service Company Agreements). The agreements establish the cost allocation methodologies pursuant to which Entergy Services allocates the costs of providing centralized services to the Entergy Operating Companies.⁶

2. The Entergy Operating Companies

4. Applicants state that the Entergy Operating Companies are public utilities and subsidiaries of Entergy Corporation (Entergy). Each is a transmission-owning member of Midcontinent Independent System Operator, Inc. (MISO) and provides transmission service over its transmission system pursuant to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). Applicants explain that the Entergy Operating Companies recover the costs of owning, operating, and maintaining

denied, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

⁵ Application at 2.

⁶ *Id.* n.4.

the Entergy transmission system pursuant to cost-based formula rate templates under Attachment O of the MISO Tariff (Entergy Operating Companies Formula Rates).⁷

B. The Transmission Control Centers

5. According to Applicants, the Control Centers are transmission facilities that Entergy Services currently owns and operates. Through the Control Centers, Entergy Services monitors the status of the Entergy Transmission System, coordinates transmission outages for maintenance and repair, and remotely operates transmission switches and breakers at substations.⁸ Applicants explain that the Control Centers, which were placed into service during 2016 and 2017, were developed after Entergy Services and the Entergy Operating Companies identified a need to modernize, standardize, and improve the reliability of the transmission operational facilities for the Entergy Transmission System.⁹ The Control Centers replaced five transmission operations centers and a single system operations center that were previously owned by individual Entergy Operating Companies and operated by Entergy Services.

6. Applicants state that Entergy Services recovers its costs of operating and maintaining the Control Centers pursuant to the Service Company Agreements.¹⁰

C. The Proposed Transaction and Related Filings

7. Applicants propose, consistent with the classification of the Control Centers as transmission facilities that exclusively support the operation of the Entergy Transmission System, to transfer ownership of the Control Centers from Entergy Services to the Entergy Operating Companies. Applicants explain that, upon receiving FPA section 203 approval, Entergy Services will transfer undivided ownership interests in the Control Centers to the Entergy Operating Companies according to an allocation factor based on each company's coincident peak load during 2017 (Peak Load Allocation Factor). Entergy Services will transfer the ownership interests in the Control Centers based on the aggregate net book value of the Control Centers as of the date the Proposed Transaction

⁷ The five transmission systems operated by the Entergy Operating Companies are collectively referred to as the Entergy Transmission System.

⁸ Application at 1.

⁹ *Id.* at 3.

¹⁰ *Id.*

is consummated.¹¹ Applicants explain that the Joint Ownership and Operating Agreement (Agreement), which was filed pursuant to FPA section 205¹² in Docket No. ER19-211-000, establishes the Peak Load Allocation Factor.¹³

8. Applicants note that the Proposed Transaction is related to a complaint filed by the Louisiana Public Service Commission (Louisiana Commission) on September 19, 2018, in Docket No. EL18-201-000 (Complaint). According to Applicants, the Louisiana Commission seeks relief in the Complaint with respect to the Entergy Operating Companies' current accounting and rate treatment of the Control Center costs. Applicants represent that the Louisiana Commission argues that, because the Control Centers are properly characterized as transmission facilities, all of the costs related to them should be allocated solely to the Entergy Operating Companies' transmission function, with 100 percent of those costs included in the Entergy Operating Companies Formula Rates. Applicants state that they agree with the Louisiana Commission's characterization of the Control Centers as transmission facilities, and, as a result, propose to transfer ownership of them to the Entergy Operating Companies in order to allow those companies to account for their ownership of the Control Centers as transmission plant, and to recover the costs of the Control Centers through their formula rates.¹⁴ The Application seeks Commission authorization for the ownership change.

II. Notice of Filing

9. Notice of the Application was published in the *Federal Register*, 83 Fed. Reg. 55,356 (2018), with interventions and protests due on or before November 19, 2018.

10. The Mississippi Public Service Commission and the Mississippi Public Utilities Staff (together, Mississippi Intervenors), the Arkansas Public Service Commission, the

¹¹ *Id.* at 5.

¹² 16 U.S.C. § 824d (2018).

¹³ Entergy Services, LLC, Joint Ownership and Operating Agreement, Docket No. ER19-211-000 (filed Oct. 29, 2018). The Agreement also establishes the terms and conditions pursuant to which the Entergy Operating Companies will jointly own the undivided interests in the Control Centers, and the terms and conditions pursuant to which Entergy Services will continue to provide operations and maintenance services related to the Control Centers to the Entergy Operating Companies.

¹⁴ Application at 6.

Council of the City of New Orleans, and the Public Utility Commission of Texas filed notices of intervention.

11. On November 19, 2018, the Mississippi Intervenors filed a protest and a motion to consolidate consideration of the Application, the Agreement, and a separate proceeding involving a notice of succession filed by Entergy Services in Docket No. ER19-227-000 (Motion to Consolidate).¹⁵ The Mississippi Intervenors filed the motion in the dockets of all three proceedings. The Louisiana Commission filed a notice of intervention and protest.

12. On December 4, 2018, Applicants filed a request for leave to respond and response to the protests and the Motion to Consolidate. The Louisiana Commission filed a motion for leave to reply and reply in support of the Mississippi Intervenors' protest.

13. On December 19, 2018, the Louisiana Commission and the Mississippi Intervenors each filed motions for leave to respond and responses to Applicants' answer.

14. On March 14, 2019, Commission staff issued a deficiency letter requesting additional information from Applicants. On April 3, 2019, Applicants submitted a response to the letter. Notice of Applicants' response was published in the *Federal Register*, 85 Fed. Reg. 14,359 (2019), with comments due on or before April 24, 2019.

15. On April 24, 2019, the Louisiana Commission filed a protest of Applicants' response to the deficiency letter. The Mississippi Intervenors filed comments.

16. On May 13, 2019, Entergy filed a request for leave to respond and response to the Louisiana Commission's protest of and the Mississippi Intervenors' comments on the response to the deficiency letter.

17. On May 28, 2019, the Louisiana Commission filed a motion for leave to reply and reply to Entergy's May 13, 2019 response.

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention serve to make the entities that filed them parties to this proceeding.

¹⁵ The notice of succession provided notice that Entergy Services, Inc. was becoming Entergy Services, LLC and succeeding to various rate schedules on file with the Commission, including the Service Company Agreements.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

20. The Mississippi Intervenors move the Commission to consolidate consideration of the Proposed Transaction with the Agreement and the notice of succession proceeding.¹⁶ The Mississippi Intervenors also request that the Commission set the Proposed Transaction for hearing.¹⁷ The Louisiana Commission supports the Mississippi Intervenors' requests.¹⁸ Applicants oppose both requests.¹⁹

21. As an initial matter, we note that, in its order accepting the notice of succession filed in Docket No. ER19-227-000, the Commission previously denied the Mississippi Intervenors' motion to consolidate that filing with the instant proceeding and the proceeding on the Agreement.²⁰ As noted there, in general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required to resolve common issues of law and fact, and consolidation will ultimately result in greater administrative efficiency.²¹ In denying the motion to consolidate, the Commission noted that it was not

¹⁶ See, e.g., Mississippi Intervenors, Motion to Consolidate Docket Nos. EC19-18-000, ER19-211-000, and ER19-227-000 (not consolidated), at 1 (filed Nov. 19, 2018).

¹⁷ See, e.g., Mississippi Intervenors, Protest, Docket No. EC19-18-000, at 1 (filed Nov. 19, 2018) (Mississippi Intervenors November 2018 Protest).

¹⁸ See, e.g., Louisiana Commission, Motion for Leave to Reply and Reply in Support of the Protest of the Mississippi Public Service Commission and Answer to the Motion to Consolidate of the Mississippi Public Service Commission, Docket No. EC19-18-000, at 1 (filed Dec. 4, 2018) (Louisiana Commission December 2018 Reply in Support).

¹⁹ See, e.g., Applicants, Response to Motion to Consolidate, Docket Nos. EC19-18-000, ER19-211-000, ER19-227-000 (not consolidated), at 3 (filed Dec. 4, 2018) (opposing request to consolidate); Applicants, Request for Leave to Respond and Response, Docket No. EC19-18-000, at 12 (filed Dec. 4, 2018) (opposing request for hearing) (Applicants December 2018 Response).

²⁰ *Entergy Servs., LLC*, 165 FERC ¶ 61,274, at P 12 (2018).

²¹ See, e.g., *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 33 (2011); *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 44, n.74 (2010); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008).

setting the notice of succession filing for hearing and that the ministerial nature of the proceeding raises no common issues with the other dockets. We again conclude that consolidating this proceeding with the FPA section 205 proceedings on the Agreement and the notice of succession is not appropriate because there are no issues related to the Proposed Transaction that need to be set for a trial-type evidentiary hearing. Moreover, consolidating the proceedings would not ultimately result in greater administrative efficiency.

22. We also deny the requests that the Commission set the Proposed Transaction for hearing. Neither the Mississippi Intervenors nor the Louisiana Commission has demonstrated that there are issues of material fact in dispute with respect to the Proposed Transaction that require an evidentiary hearing.²²

B. Substantive Matters

1. FPA Section 203 Standard of Review

23. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.²³ The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.²⁴ FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."²⁵ The Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.²⁶

²² See, e.g., *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 55 (2010) (no hearing is required where no issues of material fact have been identified).

²³ 16 U.S.C. § 824b(a)(4).

²⁴ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

²⁵ 16 U.S.C. § 824b(a)(4).

²⁶ 18 C.F.R. § 33.2(j) (2019).

2. Analysis of the Proposed Transaction

a. Effect on Competition

i. Applicants' Analysis

(a) Horizontal Competition

24. Applicants claim that the Proposed Transaction does not raise any horizontal market power concerns because the Control Centers will continue to be owned indirectly by Entergy and will continue to be operated by Entergy Services. According to Applicants, while the Proposed Transaction will result in a change in ownership of the Control Centers, it will not result in a change in actual control of the Control Centers.

25. Applicants assert that, because the Proposed Transaction does not provide for the transfer of ownership in electric generation, pursuant to the Commission's regulations, no Competitive Analysis Screen is necessary.²⁷

(b) Vertical Competition

26. Applicants contend that the Proposed Transaction does not raise vertical market power concerns. According to Applicants, the Commission's concern with regard to vertical market power generally arises in circumstances, which they claim are not present here, in which the combined entity may restrict potential downstream competitors' access to upstream supply markets or increase potential competitors' costs. Applicants state that the Proposed Transaction will have no effect on natural gas facilities, coal facilities, or any other inputs to electricity products that would raise vertical market power issues. Applicants state further that the Entergy Operating Companies are transmission owning members of MISO, and that the Control Centers have been, and will continue to be, operated subject to MISO's functional control. Applicants also state that MISO will continue to provide open access transmission service over the Entergy Transmission System pursuant to the MISO Tariff. As a consequence, Applicants conclude that the Proposed Transaction will not enable the Entergy Operating Companies to give themselves advantages in the markets for capacity, energy, ancillary services, or transmission services.²⁸

²⁷ Application at 8-9.

²⁸ *Id.* at 9-10.

27. Applicants assert that the Proposed Transaction will not provide the Entergy Operating Companies with any ability to erect barriers to market entry given that the Entergy Transmission System and the Control Centers are, and will continue to be, subject to MISO's functional control and the MISO Tariff.²⁹

ii. Commission Determination

28. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.³⁰

29. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. Applicants state that the Proposed Transaction does not involve the disposition of any generation facilities but rather support facilities that allow Entergy Services to provide transmission operational services for the Entergy Transmission System in an efficient, reliable, and cost-effective manner. As a result, the Proposed Transaction will not have any effect on market concentration for generation.

30. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.³¹

31. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. As Applicants note, the Entergy Operating Companies are transmission owning members of MISO, and the Control Centers have been, and will continue to be, operated subject to MISO's functional

²⁹ *Id.* at 10-11.

³⁰ *Nev. Power Corp.*, 149 FERC ¶ 61,079, at P 28 (2014).

³¹ *Upstate N.Y. Power Producers*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

control. In addition, transmission service over the Entergy Transmission System will continue to be provided pursuant to the MISO Tariff.

b. Effect on Rates

i. Applicants' Analysis

32. Applicants claim that the Proposed Transaction will not have an adverse effect on wholesale power and transmission rates. With respect to wholesale power rates, Applicants state that the Proposed Transaction does not involve generating capacity and will not have any effects on rates for wholesale power sales.

33. Applicants argue that the Proposed Transaction will not have any effect on the Entergy Operating Companies Formula Rate templates because the Entergy Operating Companies will not amend or change those rates as a result of the Proposed Transaction. According to Applicants, following their acquisition of the ownership interests in the Control Centers from Entergy Services, the Entergy Operating Companies will account for those interests as transmission plant, place those assets into their transmission rate bases, and recover the costs related to the Control Centers through their formula rates.

34. Applicants state that the inclusion of the ownership interests of the Control Centers in transmission rate base will have an effect on each of the Entergy Operating Companies' annual transmission revenue requirements (Revenue Requirement). After the Proposed Transaction is consummated, the Entergy Operating Companies will account for their ownership interests in the Control Centers as transmission plant and include them in their transmission rate bases as utility plant. Applicants assert that the effect on the Entergy Operating Companies' Revenue Requirements is the same as would have occurred had the companies acquired the ownership interests by developing and constructing the Control Centers themselves.³²

35. According to Applicants, the aggregate Revenue Requirement for the Entergy Operating Companies associated with the Control Centers is "estimated to be approximately \$3.6 million in total, as of December 31, 2018."³³ Applicants note that transmission service customers taking service on the Entergy Transmission System "historically represent approximately 24 percent of the total system peak load share,"³⁴

³² Application at 12.

³³ *Id.*

³⁴ *Id.* at 12-13.

and estimate the change in billings to such customers from the Proposed Transaction to be approximately \$676,000.

36. Applicants offer a hold harmless commitment. Applicants commit that “the Entergy Operating Companies will not seek to include any transaction-related costs in excess of transaction savings in their Commission-jurisdictional transmission revenue requirements used to establish rates for Commission-jurisdictional transmission services for a period of five years after the [Proposed Transaction] is consummated.”³⁵ If the Entergy Operating Companies seek to recover through Commission-jurisdictional rates any transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the transaction, Applicants state that the companies would make that filing in a new FPA section 205 docket and submit that same filing as a concurrent informational filing in this docket.

ii. Protests

37. The Louisiana Commission disputes Applicants’ claim that the Proposed Transaction will not have an adverse effect on rates, arguing that the Proposed Transaction will harm customers by increasing rates without offsetting benefits. According to the Louisiana Commission, the costs of the Control Centers are currently “billed to the [Entergy] Operating Companies ‘at cost,’ meaning that [Entergy Services] collects for depreciation and interest, but no equity return.”³⁶ The Louisiana Commission explains that, by transferring the investment to the books of the Entergy Operating Companies, Entergy seeks to recover a return on equity for an asset that will still be under the control of Entergy Services. The Louisiana Commission states that the return requirement will increase the rates of both retail and wholesale transmission customers.

38. The Louisiana Commission asserts that Applicants attempt to minimize the increase in the Revenue Requirements by claiming that the rate increase is the same that would have occurred had the Entergy Operating Companies developed and constructed the facilities themselves. The Louisiana Commission contends that this argument is irrelevant because the Commission’s effect on rates analysis focuses on the transaction itself, and the Entergy Operating Companies did not develop and construct the Control

³⁵ *Id.* at 13.

³⁶ Louisiana Commission, Notice of Intervention and Protest, Docket No. EC19-18-000, at 8 (filed Nov. 19, 2018) (Louisiana Commission November 2018 Protest).

Centers.³⁷ The Louisiana Commission also notes that Applicants do not claim that the Proposed Transaction results in any benefits, and that any benefits listed in the Application are the result of constructing the Control Centers, not the Proposed Transaction.³⁸

39. The Mississippi Intervenors assert that Applicants have failed to demonstrate that the Proposed Transaction will not adversely affect wholesale and retail rates. The Mississippi Intervenors note that Applicants acknowledge that only approximately 24 percent of the aggregate Revenue Requirement associated with the Control Centers will be recovered through the Entergy Operating Companies Formula Rates, but fails to discuss how the remaining costs will be recovered. The Mississippi Intervenors claim that those costs are likely to be borne by the Entergy Operating Companies' retail ratepayers. The Mississippi Intervenors also claim that the Application raises numerous questions about the details of the Proposed Transaction and recovery of the costs of the Control Centers, but includes no workpapers or supporting documentation of the derivation of the Control Center costs or the proposed recovery of those costs going forward.³⁹

40. If the Commission approves the Proposed Transaction, the Mississippi Intervenors request that the Commission "expressly condition the authorization of the transfer to recognize that any pass-through of [Control Center] costs to retail customers and all retail rates charged by the [Entergy Operating Companies] remain subject to state approvals by each state or local (in the case of Entergy New Orleans) utility regulatory body for each respective [Entergy Operating Company]."⁴⁰ The Louisiana Commission supports this condition.⁴¹

iii. Applicants' Answer

41. Applicants dispute the claims that the Proposed Transaction will have an adverse effect on rates. Applicants reiterate that, although the Revenue Requirements that result

³⁷ The Louisiana Commission notes further that if the Entergy Operating Companies had developed and constructed the Control Centers, those actions would have required state regulatory oversight. *Id.* at 9.

³⁸ *Id.* at 8-9.

³⁹ Mississippi Intervenors November 2018 Protest at 8-10.

⁴⁰ *Id.* at 12.

⁴¹ Louisiana Commission December 2018 Reply in Support at 3.

from implementation of the Entergy Operating Companies Formula Rates will change, the Proposed Transaction will not amend or change any of the rates currently on file with the Commission. Applicants argue that since the Proposed Transaction will not change the rates that are on file, the Proposed Transaction will not have an adverse effect on rates.

42. Applicants argue further that, even if the Commission concludes that the Proposed Transaction will have an effect on the Entergy Operating Companies' transmission rates, the Commission should, for several reasons, conclude that the effect is not adverse. First, Applicants compare the Proposed Transaction to the transaction in *GridLiance West Transco, LLC*.⁴² According to Applicants, in that case the Commission found that a change in ownership of transmission facilities would cause a rate increase, but concluded that the increase was not adverse where the acquiring entity was a for-profit business with a different capital structure, tax obligations, and the need to earn a return.⁴³ Second, Applicants explain that the change in Revenue Requirements will arise because the Entergy Operating Companies will, in compliance with the Commission's accounting requirements and their own tariffs, account for their ownership interests in the Control Centers. Third, Applicants state that the Entergy Operating Companies will acquire their ownership interests in the Control Centers based on the aggregate net book value of the facilities as of the date the Proposed Transaction is consummated.⁴⁴

43. Applicants also claim that the Proposed Transaction will provide benefits that will offset or mitigate any rate effects. Specifically, Applicants state that the Proposed Transaction will enable the Entergy Operating Companies to account for the Control Centers as transmission plant, consistent with the Commission's accounting regulations, and to earn a return on their ownership interests in the Control Centers, consistent with FPA section 219.⁴⁵

44. Applicants also respond to particular arguments raised by the Louisiana and Mississippi Intervenors. With respect to the Louisiana Commission's argument that it is irrelevant that the effect of the Proposed Transaction is the same as if the Entergy

⁴² 160 FERC ¶ 61,002, at P 52 (2017) (*GridLiance West*).

⁴³ Applicants December 2018 Response at 5-6.

⁴⁴ *Id.* at 7-9.

⁴⁵ *Id.* at 8-9. FPA section 219 directs the Commission to establish incentive-based rate treatments for transmission, for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. 16 U.S.C. § 824s(a).

Operating Companies had built the Control Centers, Applicants reiterate that the Commission distinguishes between “simple rate increases and adverse rate increases.”⁴⁶ According to Applicants, the Commission should not conclude that the effect of the Proposed Transaction on rates is adverse merely because it will cause a modest increase in the Revenue Requirements. With respect to the Mississippi Intervenors’ claims that Applicants must provide more information in response to issues it has raised about cost recovery and rate effects, Applicants respond that they have fully explained that the Entergy Operating Companies propose to acquire the ownership interests in the Control Centers at net book value and recover those costs through their formula rates. Applicants respond further that the Mississippi Intervenors’ questions about issues such as cost support for the estimated net book value of the Control Centers, the workings of the Entergy Operating Companies Formula Rates, and the effects of the Proposed Transaction on retail rates are either irrelevant to, or beyond the scope of, the Commission’s analysis under FPA section 203.⁴⁷

iv. Answers

45. The Louisiana Commission disputes Applicants’ claim that the Proposed Transaction will not have an effect on rates because it will not result in any changes to the formula rate templates of the Entergy Operating Companies. The Louisiana Commission contends that this argument is illogical because following Applicants’ line of reasoning would mean that no transaction could ever have an adverse effect on rates. The Mississippi Intervenors make similar arguments, asserting that the actual effect on customers, not the effect on the formula rate template, is the subject of the Commission’s analysis.⁴⁸ The Louisiana Commission and the Mississippi Intervenors also distinguish *GridLiance West* from the Proposed Transaction, noting, among other things, that in that proceeding the Commission relied on benefits from the proposed transaction that would offset the expected rate increase caused by it.⁴⁹

⁴⁶ *Id.* at 9.

⁴⁷ *Id.* at 9-10.

⁴⁸ Mississippi Intervenors, Motion for Leave to Respond and Response, Docket Nos. EC19-18-000, ER19-211-000, and ER19-227-000 (not consolidated), at 8 (filed Dec. 19, 2018) (Mississippi Intervenors December 2018 Response).

⁴⁹ Louisiana Commission, Motion for Leave to Reply and Reply to Responses to Protests of Entergy Services, LLC, Docket Nos. EC19-18-000 and ER19-211-000 (not consolidated), at 4-5 (Louisiana Commission December 2018 Response); Mississippi Intervenors December 2018 Response at 6-7.

46. The Louisiana Commission also disagrees with Applicants' arguments regarding the alleged benefits of the Proposed Transaction. First, with regard to the Entergy Operating Companies accounting for the Control Centers consistent with the Commission's regulations, the Louisiana Commission argues that the companies could do so now by directly assigning the transmission billings from Entergy Services to transmission accounts.⁵⁰ Second, the Louisiana Commission claims that providing the Entergy Operating Companies with the ability to earn a return on the ownership interests in the Control Centers is not a benefit, and would undermine the service company trade-off, where holding companies are permitted to provide services without competition, but at cost. Third, the Louisiana Commission disputes Applicants' claim that allowing a return on the ownership interests in the Control Centers would be consistent with the Commission's policy interests established in FPA section 219. The Louisiana Commission notes that providing a return after-the-fact on already-built facilities does not encourage new investment, and that the Control Centers are not the types of transmission facilities that Congress sought to incentivize when it enacted FPA section 219. The Mississippi Intervenors make similar arguments with respect to Applicants' FPA section 219 claims.⁵¹

v. **Comments on Applicants' Response to the Deficiency Letter**

47. The Mississippi Intervenors reiterate many of its arguments in its comments on Applicants' response to the deficiency letter.⁵² Applicants respond that they have previously addressed the Mississippi Intervenors' arguments in opposition to the Application and the Control Center-related FPA section 205 filings.⁵³

vi. **Commission Determination**

48. We emphasize at the outset that our analysis of rate effects under FPA section 203 differs from the analysis of whether rates are just and reasonable under FPA section 205. Our focus here is on the effect that the Proposed Transaction will have on jurisdictional

⁵⁰ Louisiana Commission December 2018 Response at 5.

⁵¹ Mississippi Intervenors December 2018 Response at 7-8.

⁵² Mississippi Intervenors, Comments, Docket No. EC19-18-000, at 2 (filed Apr. 24, 2019).

⁵³ Applicants, Request for Leave to Respond and Response to Protests and Comments, Docket No. EC19-18-000, at 10 (filed May 13, 2019) (Applicants May 2019 Response).

rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the Proposed Transaction.⁵⁴

49. Based on Applicants' representations, we find that, while the Proposed Transaction will increase rates, in the unique circumstances of this case, such an increase is not adverse. As the Louisiana Commission notes, as a result of Entergy Services transferring its ownership interests in the Control Centers to the Entergy Operating Companies, the operating companies will incorporate the costs of those ownership interests into their transmission rate base in their revenue requirements under their formula rates and earn the MISO return on equity on those costs. As a consequence, rates will increase for some customers. This rate increase, however, is not adverse because the Control Centers are used by the Entergy Operating Companies to provide transmission service and transferring the ownership of the Control Centers to the Entergy Operating Companies will result in the centers being directly reflected on the Entergy Operating Companies' books of account and in their respective FERC Form No. 1 and Formula Rates, thereby increasing administrative efficiency and rate transparency. Moreover, we note that Applicants represent that they will transfer the ownership interests in the Control Centers to the Entergy Operating Companies based on the aggregate net book value of the centers as of the date the Proposed Transaction is consummated.⁵⁵ In addition, Applicants clarify that they will not seek to recover through their formula rates amounts in excess of the net book value of the costs of the Control Centers.

50. Applicants have also made a hold harmless commitment in connection with the costs of the Proposed Transaction. We accept Applicants' commitment to hold customers harmless from costs related to the Proposed Transaction. We interpret Applicants' hold harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed

⁵⁴ See, e.g., Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123 (noting that an increase in rates "can be consistent with the public interest if there are countervailing benefits that derive from the transaction"); see also *ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 24 (2010); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009).

⁵⁵ We note that in the order on complaint being issued concurrently in Docket No. EL18-201-000, we find that the Entergy Operating Companies incorrectly accounted for the Control Center costs allocated from Entergy Services as general plant depreciation instead of including the Control Center costs in transmission expense accounts and direct the Entergy Operating Companies to correct their prior accounting and recalculate their previously-calculated MISO Tariff Attachment O formula rates to reflect such accounting corrections. *Louisiana Public Service Commission v. Entergy Services, Inc.*, 168 FERC ¶ 61,210 (2019).

Transaction's consummation in accordance with the Commission's policy on hold harmless commitments.⁵⁶

51. We decline to condition our approval of the Proposed Transaction as requested by the Mississippi and Louisiana Commissions⁵⁷ because approval of the Proposed Transaction will not affect state regulatory authority over retail rates. The Louisiana and Mississippi Intervenors will retain their authority over the rates of retail customers.

52. For these reasons, we conclude that, while the Proposed Transaction will increase rates for some customers, such increase is not adverse.

c. Effect on Regulation

i. Applicants' Analysis

53. Applicants state that, under the effect on regulation prong of the Commission's FPA section 203 analysis, the Commission "seeks to ensure that a proposed transaction will not create a 'regulatory gap' between state and federal regulation."⁵⁸ According to Applicants, the Proposed Transaction will not have an adverse effect on the effectiveness of state or federal regulation because it will not change or impair the ability of the Commission to regulate rates for wholesale sales or transmission service, or the ability of state regulators to regulate retail sales.

ii. Protests

54. The Louisiana Commission claims that the Proposed Transaction will result in a state and federal regulatory gap, and that authorizing it would permit Entergy Services to avoid two regulatory protections: (1) state regulation and pre-construction certification; and (2) the Commission's "at cost rule."⁵⁹

⁵⁶ *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016) (Hold Harmless Policy Statement).

⁵⁷ *See supra* P 40.

⁵⁸ Application at 14.

⁵⁹ Louisiana Commission November 2018 Protest at 9-10. Section 35.44(b)(3) states: "A franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may only purchase or receive non-power goods and services from a centralized service company at cost." For purposes of this order, this provision is referred to as the At Cost Rule.

55. With respect to state regulation, the Louisiana Commission alleges that, if the Entergy Operating Companies had jointly constructed the Control Centers and shared ownership of them to begin with, retail regulators could have reviewed the projects because they would have been undertaken by utilities subject to their jurisdiction. Instead, Entergy Services, a centralized service company that provides services pursuant to the Service Company Agreements, constructed the Control Centers. The Louisiana Commission states that, as a result, the costs of the Control Centers are included in retail rates, but retail regulators must rely on the protection afforded by the At Cost Rule with respect to service company costs.

56. The Louisiana Commission argues further that earning a return on the Control Centers violates the At Cost Rule. The Louisiana Commission explains that, currently, Entergy Services expenses the costs of the Control Centers to the Entergy Operating Companies as depreciation, and those costs are not included in the Entergy Operating Companies' rate bases. Permitting Entergy Services to transfer the costs of the Control Centers to the Entergy Operating Companies, however, would, according to the Louisiana Commission, allow Entergy Services to bypass the At Cost Rule and earn a return on service company costs. The Louisiana Commission observes that Entergy chose for Entergy Services to build the Control Centers, and the resulting costs are subject to the At Cost Rule as a result of that choice. The Louisiana Commission asserts that authorizing the Proposed Transaction would permit Entergy Services to evade the At Cost Rule and increase consumer rates.⁶⁰

iii. Applicants' Answer

57. In their answer, Applicants argue that the Louisiana Commission's allegations that they are attempting to bypass retail regulation are unsupported and incorrect, and in any case, beyond the scope of the Commission's FPA section 203 analysis. Applicants also contend that the Louisiana Commission's argument that the Proposed Transaction would adversely affect the Commission's enforcement of the At Cost Rule is beyond the scope of the Commission's FPA section 203 analysis.⁶¹

iv. Answers

58. The Louisiana Commission disputes Applicants' conclusion that the effect on regulation issues it raises are beyond the scope of the Commission's FPA section 203 analysis. The Louisiana Commission reiterates that, if approved, the Proposed Transaction would result in a federal regulatory gap because it would allow Entergy Services to circumvent the At Cost Rule. The Louisiana Commission also argues that the

⁶⁰ Louisiana Commission November 2018 Protest at 11.

⁶¹ Applicants December 2018 Response at 10-11.

Proposed Transaction would result in a retail regulatory gap because it could allow Entergy Services to include the costs of the Control Centers in the retail rate bases of the Entergy Operating Companies without approval from retail regulators. According to the Louisiana Commission, approval of the Proposed Transaction and the Agreement could “result in federal preemption that would render the states powerless to disallow the [Control Center] costs, even though retail regulators would not have the opportunity to approve their construction or review the costs.”⁶²

v. **Protest of Applicants’ Response to the Deficiency Letter**

59. In its protest of Applicants’ response to the deficiency letter, the Louisiana Commission claims that the Proposed Transaction is outside the authorized scope of activities of a traditional service company, and beyond the scope of the Service Company Agreements.

60. According to the Louisiana Commission, the Proposed Transaction would have an adverse effect on regulation since it would permit a traditional service company to perform a function that is not permitted under the Commission’s rules. The Louisiana Commission claims that, in Order No. 667, the Commission ruled that the At Cost Rule for service companies would apply to traditional service companies that provide accounting, human resources, legal, tax and other similar services, but that a market test would be required for service companies that construct facilities for affiliates.⁶³ The Louisiana Commission argues that, even if the Commission accepted that a transfer of plant such as the Proposed Transaction could constitute a service, Entergy Services has made no claim that the Proposed Transaction has been subject to a market test.

61. The Louisiana Commission also argues that Entergy Services’ proposed transfer of the Control Centers is beyond the scope of functions approved by the Commission for Entergy Services. Specifically, the Louisiana Commission asserts that the service agreements for Entergy Services and the Entergy Operating Companies that were

⁶² Louisiana Commission December 2018 Response at 8-9. The Louisiana Commission refers to “FERC approval of [Entergy Services’] filings,” which we understand to mean the Application and the Agreement.

⁶³ Louisiana Commission, Protest to Amended Filing and Identification of Additional Deficiency, Docket No. EC19-18-000, at 4 (filed Apr. 24, 2019) (Louisiana Commission Protest of Response to Deficiency Letter) (citing *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 113 FERC ¶ 61,248, at PP 169-171 (2005)).

previously approved by the Commission do not authorize the transfer of transmission plant to an operating company by Entergy Services.⁶⁴

vi. **Commission Determination**

62. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.⁶⁵ As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.⁶⁶ Based on Applicants' representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction.

63. As the Louisiana Commission notes, the Commission's review of a proposed transaction's effect on regulation is focused on ensuring that it does not result in a regulatory gap at the federal or state level.⁶⁷ We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its regulatory authority over Applicants and the Control Centers after the Proposed Transaction is consummated.

64. We disagree with the Louisiana Commission's claims that the Proposed Transaction will result in a retail regulatory gap, or adversely affect state regulatory authority. First, we note that the Proposed Transaction will not diminish the Louisiana Commission's authority over the Entergy Operating Companies. The Louisiana Commission will continue to have the same authority over the Entergy Operating Companies before and after the Proposed Transaction. Second, although the Louisiana Commission claims that the Proposed Transaction and the Agreement would render state regulatory authorities powerless to disallow the costs of the Control Centers, we note that the costs and cost recovery of the Control Centers will remain fully regulated.

⁶⁴ *Id.* at 4-5.

⁶⁵ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

⁶⁶ *Id.*

⁶⁷ *NV Energy, Inc.*, 145 FERC ¶ 61,170, at P 60 (2013).

65. We also disagree with the Louisiana Commission's arguments that the Proposed Transaction would have an adverse effect on regulation because it would permit a traditional service company to perform a function that is not permitted under the Commission's rules and would permit Entergy Services to evade the At Cost Rule. As discussed below, we disagree with the Louisiana Commission's claim that Entergy Services is not permitted to transfer the Control Centers to the Entergy Operating Companies.

d. Cross-subsidization

i. Applicants' Analysis

66. Under the Commission's regulations, FPA section 203 applicants must provide an explanation, with appropriate evidentiary support of such explanation,⁶⁸ of how they are providing assurance, based on facts and circumstances known to them or that are reasonably foreseeable, that a proposed transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including any existing pledges and/or encumbrances of utility assets, and a detailed showing that the transaction will not result in:

(A) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(B) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(C) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;
or

(D) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that

⁶⁸ The evidentiary support of such explanation is to be identified as Exhibit M of an FPA section 203 application. 18 C.F.R. § 33.2(j).

has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.⁶⁹

67. With respect to representation (A), Applicants note that, through the Proposed Transaction, Entergy Services, an associate company of the Entergy Operating Companies, will transfer ownership interests in the Control Centers to the Entergy Operating Companies, which are traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities. Applicants explain that the Control Centers exclusively support the Entergy Transmission System, and, through operation of the Control Centers, Entergy Services' personnel will perform all necessary operational tasks, such as monitoring the status of the Entergy Transmission System and coordinating transmission system outages, subject to MISO's authority as transmission provider under the MISO Tariff and regional reliability coordinator under North American Electric Reliability Corporation (NERC) rules. Applicants conclude that the Entergy Operating Companies' ownership of the Control Centers will be consistent with the public interest because the Control Centers support the Entergy Transmission System.⁷⁰

68. With respect to representations (B) and (C), Applicants state that the Proposed Transaction will not involve any new issuance of securities, or any new pledge or encumbrance of assets.

69. With respect to representation (D), Applicants explain that the Agreement identifies the terms and conditions pursuant to which the Entergy Operating Companies will jointly own undivided interests in the Control Centers and pursuant to which Entergy Services will continue to provide Control Center operations and maintenance services to the companies. Applicants state that the FPA section 205 filing proposing the Agreement demonstrates that the terms and conditions of the Agreement, including the determination of the Entergy Operating Companies' respective undivided ownership interests in the Control Centers, are just and reasonable.⁷¹

⁶⁹ 18 C.F.R. § 33.2(j)(1).

⁷⁰ Application, Exhibit M: Cross-Subsidization or Pledge or Encumbrance of Utility Assets at 1 (Exhibit M).

⁷¹ Application, Exhibit M at 2.

ii. Protest

70. The Mississippi Intervenors claim that because Entergy Services is an associate company of the Entergy Operating Companies, and the Entergy Operating Companies are traditional public utilities with captive customers, the Proposed Transaction and the Agreement may be prohibited under the Commission's regulations. The Mississippi Intervenors claim that if the Proposed Transaction is not prohibited, the Application is deficient because Applicants do not provide any evidence or workpapers, beyond simple statements in Exhibit M, that the Proposed Transaction will not result in the Entergy Operating Companies cross-subsidizing Entergy Services. The Mississippi Intervenors urge the Commission to reject the Application.⁷²

71. The Louisiana Commission supports the Mississippi Intervenors' arguments on these issues.⁷³ The Louisiana Commission also alleges that the Application fails to comply with the Commission's regulations, specifically 18 C.F.R. § 33.2(c)(4),⁷⁴ because it fails to describe similar planned transfers of property between Entergy Services and the Entergy Operating Companies in the year following the Application, such as transfers of the Entergy Asset Management system described in the Louisiana Commission's protest of the Agreement.⁷⁵

iii. Applicants' Answer

72. Applicants contend that the Application satisfies the Commission's requirements regarding cross-subsidization. Applicants observe that the Mississippi Intervenors do not

⁷² Mississippi Intervenors November 2018 Protest at 7-8.

⁷³ Louisiana Commission December 2018 Reply in Support at 2.

⁷⁴ 18 C.F.R. § 33.2(c)(4) requires FPA section 203 applicants to provide: "A description of all joint ventures, strategic alliances, tolling arrangements or other business arrangements, including transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and planned to occur within a year from the date of filing, to which the applicant or its parent companies, energy subsidiaries, and energy affiliates is a party, unless the applicant demonstrates that the proposed transaction does not affect any of its business interests (to be identified as Exhibit D to the application)."

⁷⁵ The Louisiana Commission states that the Entergy Asset Management system is "a project – computer systems and equipment" that Entergy Services has been billing, and intends to continue billing, the costs of to the Entergy Operating Companies. Louisiana Commission November 2018 Protest at 23-24.

explain how or why the Commission's cross-subsidization rules under FPA section 203 could prohibit the Application or the Agreement, and note that they provided, in Exhibit M, an explanation that addresses each element of the Commission's cross-subsidization review.

73. Applicants acknowledge that the Proposed Transaction will involve the transfer of facilities between traditional public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities and an associate company, but reiterate that the Entergy Operating Companies' ownership of the Control Centers will be consistent with the public interest. Applicants clarify that the Control Centers support the safe and reliable operation of the Entergy Transmission System, and they reiterate the same claims regarding the benefits of the Entergy Operating Companies acquiring the Control Centers.⁷⁶

74. Applicants also assert that the Proposed Transaction does not constitute a cross-subsidization of Entergy Services by the Entergy Operating Companies because the Entergy Operating Companies will acquire their respective interests in the Control Centers based on the net book value of the facilities at the time the transaction is consummated. Applicants conclude that, by explaining how the Proposed Transaction is consistent with the public interest, they have satisfied the Commission's requirement that if they cannot provide the assurance required under Exhibit M, they should explain how the transfer is consistent with the public interest. Applicants note that they adopted a similar approach with respect to the Agreement, which is a new contract for non-power goods and services among Entergy Services and the Entergy Operating Companies. Applicants state that they filed the Agreement pursuant to FPA section 205, and so their explanation satisfies the Commission's requirement that Applicants explain whether any new non-power goods and services agreements related to the Proposed Transaction is subject to review under FPA sections 205 and 206.

iv. Responsive Pleadings

75. In its response to Applicants' answer, the Mississippi Intervenors allege that, rather than explaining why the Proposed Transaction does not result in cross-subsidization, Applicants attempt to shift the burden of proof. The Mississippi Intervenors argue that Applicants must demonstrate that they have satisfied the FPA section 203 criteria, and that they have not met their burden because they have not filed any supporting documentation of the rate effect of the Proposed Transaction,

⁷⁶ Applicants December 2018 Response at 14 (citing FPA section 219, 16 U.S.C. §824s).

demonstrated that there will be no cross-subsidization, or provided any other evidence to meet the public interest standard.⁷⁷

v. Commission Determination

76. Based on Applicants' representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company.

77. We disagree with the Mississippi Intervenors' suggestion that the Proposed Transaction is prohibited by the Commission's regulations. Section 33.2(j) does not prohibit particular transactions, but rather requires certain verifications, or additional explanations and evidentiary support, if FPA section 203 applicants cannot make the required verifications. In this case, although the Proposed Transaction will result in the transfer of property between an associate company and traditional public utilities that have captive customers or that own transmission facilities or provide transmission service over jurisdictional facilities, Applicants have satisfied the Commission's concerns regarding the potential for cross-subsidization by explaining how the transfer will be consistent with the public interest. In addition, the Control Centers will be transferred at net book value, and Entergy Services will continue to operate them consistent with MISO's directives and NERC requirements. With respect to rates, as noted above, issues related to the allocation of the costs of the Control Centers are being addressed in the order on the Agreement, which is being issued concurrently with this order. Accordingly, we do not agree that the Application is deficient.

78. We likewise disagree with the Louisiana Commission's claim that the Application is deficient because Applicants failed to include information regarding alleged similar transfers of property. The Louisiana Commission has not provided any evidence that Applicants have failed to disclose any current or future business arrangements of the type that should have been disclosed in the Application pursuant to the Commission's regulations under FPA section 203.

⁷⁷ Mississippi Intervenors December 2018 Response at 9.

3. Other Issues

a. Use of Peak Load Allocation Factor

i. The Louisiana Commission's argument

79. The Louisiana Commission argues that the proposed allocation of ownership interests in, and costs of, the Control Centers is improper. Rather than using the Peak Load Allocation Factor, the Louisiana Commission argues that Applicants should use a more cost driven allocator, such as Entergy's Transmission Line Miles allocator.⁷⁸

80. The Louisiana Commission also claims that Applicants' proposal to allocate the Control Center costs under the Peak Load Allocation Factor is unauthorized because "there is no rate schedule on file with the Commission that allows an allocation of Entergy System transmission costs among all of the operating companies."⁷⁹ The Louisiana Commission contends that, because Entergy Services must use a rate schedule on file with the Commission, and there is no such rate schedule permitting an allocation of transmission-related costs, Entergy Services cannot allocate the costs of the Control Centers to the Energy Operating Companies.⁸⁰

ii. Applicants' Response

81. Applicants argue that use of the Peak Load Allocation Factor is beyond the scope of the Application, and that the Commission should resolve any issues regarding the allocation factor in the proceeding on the Agreement.⁸¹ Applicants also assert that the Louisiana Commission's argument is premised on a misunderstanding of the Agreement. Applicants clarify that the agreement identifies the Peak Load Allocation Factor pursuant to which the undivided interests in the Control Centers will be allocated among the Entergy Operating Companies. Applicants explain that they have filed the Agreement to establish the Peak Load Allocation Factor for purposes of the Proposed Transaction.⁸²

⁷⁸ Louisiana Commission November 2018 Protest at 11-13.

⁷⁹ Louisiana Commission Protest of Response to Deficiency Letter at 6.

⁸⁰ *Id.* at 6-8.

⁸¹ Applicants December 2018 Response at 11-12.

⁸² Applicants May 2019 Response at 7-10.

iii. Commission Determination

82. As the Commission has explained in prior orders, the Commission does not address the rate treatment of assets in FPA section 203 proceedings. Resolution of such issues is reserved for FPA section 205 proceedings.⁸³ Accordingly, the Commission is addressing these issues in the order on the Agreement in Docket No. ER19-211-000, which is being issued concurrently with this order.

b. Whether the transfer of the Control Centers is permissible.

i. The Louisiana Commission's argument

83. The Louisiana Commission argues that because the Proposed Transaction only involves the transfer of transmission plant, and is not part of a service, approving the Proposed Transaction would permit Entergy Services, a traditional service company, to perform a function that is not permitted under the Commission's rules.⁸⁴ According to the Louisiana Commission, the Commission has stated that the At Cost Rule would apply to traditional service companies that provide accounting, human resources, legal, tax, and other such services, but that a market test would be required for service companies that construct facilities for affiliates. The Louisiana Commission concludes that because Applicants make no claim that the Proposed Transaction has been subjected to a market test, the transfer does not involve a permissible function for Entergy Services. The Louisiana Commission also argues that the proposed transfer is beyond the scope of functions approved by the Commission for Entergy Services in the relevant service agreements and rate schedules on file with the Commission.⁸⁵

ii. Applicants' Response

84. Applicants acknowledge that the relevant provision of the Commission's rules against affiliate cross-subsidization provides that a franchised public utility that has captive customers or that owns or provides transmission service over Commission-jurisdictional facilities may only purchase or receive non-power goods or services from a centralized service company at cost, and that this rule applies to the Entergy Operating

⁸³ See, e.g., *NV Energy, Inc.*, 145 FERC ¶ 61,170, at P 51 (2013).

⁸⁴ Louisiana Commission Protest of Response to Deficiency Letter at 3-4.

⁸⁵ *Id.* at 4-5.

Companies and Entergy Services.⁸⁶ Applicants assert, however, that nothing about the Proposed Transaction will be contrary to those rules. Applicants reiterate that they propose to undertake the Proposed Transaction at cost: Entergy Services will transfer undivided ownership interests in the Control Centers to the Entergy Operating Companies based on the net book value⁸⁷ of the Control Centers as of the date the transaction is consummated.

85. Applicants contend that the Louisiana Commission's argument is based on a misreading of Order No. 667. First, Applicants note that, in Order No. 667, the Commission stated that a non-regulated, affiliated special-purpose company may not sell to its public utility affiliate at a price above cost, but that this standard does not apply to Entergy Services because it is a traditional centralized service company. Second, Applicants note that Order No. 667 also states that, where specialized services are provided by centralized service companies, the Commission has held that it will apply a rebuttable presumption that costs incurred under "at cost" pricing of such services are reasonable. According to Applicants, even if the Proposed Transaction were considered a provision of a specialized service by Entergy Services to the Entergy Operating Companies, the Commission, consistent with Order No. 667, would still rebuttably presume that the proposed cost-based price for the transaction is reasonable.

iii. Answers

86. The Louisiana Commission asserts that, although Entergy Services has been a traditional service company, its construction and transfer of the Control Centers are functions beyond those allowed for a centralized service company. According to the Louisiana Commission, Entergy Services' actions fall within activities allowed only for special-purpose companies, which are subject to a market test. The Louisiana Commission concludes that because Entergy Services' actions are those of a special-purpose company, they were improperly conducted without a market test.⁸⁸

iv. Commission Determination

87. We disagree with the Louisiana Commission's claim that Entergy Services is not permitted to transfer the Control Centers to the Entergy Operating Companies. As an

⁸⁶ Applicants May 2019 Response at 4-6.

⁸⁷ Applicants state that the net book value of the Control Centers is their cost less accumulated depreciation. *Id.* at 5.

⁸⁸ Louisiana Commission, Motion for Leave to Reply and Reply to Responses of Entergy Services, LLC, Docket Nos. EC19-18-000 and ER19-211-000 (not consolidated), at 6-7 (filed May 28, 2019).

initial matter, the Louisiana Commission has not cited any Commission precedent, rule, or regulation that prohibits transfers like the Proposed Transaction. The Louisiana Commission's arguments are premised on a misreading of both Order No. 667 and the various rate schedules it relies on. Moreover, we note that the Commission contemplated sales and purchases of service company property when it promulgated 18 C.F.R. § 367.53 (2019), which establishes rules for accounting for sales and purchases of service company property, and 18 C.F.R. §§ 367.4211 and 367.4212 (2019), which establish accounts for service companies to record gains and losses on dispositions of property. Accordingly, we are not persuaded by the Louisiana Commission's unsupported claims.

4. Other Considerations

88. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.⁸⁹ Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, NERC, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

89. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to the Public Utility Holding Company Act of 2005 (PUHCA 2005)⁹⁰ are subject to the record-keeping and books and records requirements of PUHCA 2005.

90. Section 35.42 of the Commission's regulations requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting

⁸⁹ 16 U.S.C. § 824o (2018).

⁹⁰ 42 U.S.C. § 16451 *et seq.* (2018).

market-based rate authority.⁹¹ To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the Commission's requirements.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever not pending or may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

(H) If Applicants seek to recover transaction-related costs through their transmission or wholesale requirements rates, they must make a new FPA section 205 filing and submit concurrently an informational filing in the instant FPA section 203 docket. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction.

⁹¹ 18 C.F.R. § 35.42 (2019). *See also Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

(I) The Entergy Operating Companies shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. The Entergy Operating Companies shall submit the proposed accounting entries within six months of the date that the transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.