

171 FERC ¶ 61,037  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Arkansas, Inc.

Docket No. ER19-211-001

ORDER ON REHEARING AND CLARIFICATION

(Issued April 16, 2020)

1. On September 30, 2019, the Commission issued an order accepting a Joint Ownership and Operating Agreement (Ownership Agreement) filed by Entergy Services, LLC (Entergy Services), on behalf of itself and its affiliated Entergy Operating Companies,<sup>1</sup> which identifies the terms and conditions pursuant to which the Entergy Operating Companies will jointly own undivided interests in two Transmission Control Centers (Control Centers) and pursuant to which Entergy Services will continue to provide Control Center operations and maintenance services to the Entergy Operating Companies.<sup>2</sup> On October 30, 2019, the Arkansas Public Service Commission, the Mississippi Public Service Commission and Mississippi Public Utilities Staff (collectively, Arkansas/Mississippi Commissions) jointly filed a request for clarification or, in the alternative, rehearing. The Louisiana Public Service Commission (Louisiana Commission) also filed on that date a request for rehearing. As discussed below, we grant the Arkansas/Mississippi Commissions' clarification request and dismiss their alternative rehearing request. Further, we deny the Louisiana Commission's rehearing request.

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<sup>1</sup> The Entergy Operating Companies at the time of the Ownership Agreement filing were: Entergy Arkansas, Inc. (now Entergy Arkansas, LLC); Entergy Louisiana, LLC; Entergy Mississippi, Inc. (now Entergy Mississippi, LLC); Entergy New Orleans, LLC; and Entergy Texas, Inc.

<sup>2</sup> *Entergy Ark., Inc.*, 168 FERC ¶ 61,211 (2019) (Agreement Order).

## **I. Background**

2. Entergy Services is a centralized service company<sup>3</sup> that provides support services to the Entergy Operating Companies. At the time of the Ownership Agreement filing, Entergy Services owned and operated two Control Centers, which are used to monitor the status of the Entergy Operating Companies' transmission system, coordinate transmission system outages for maintenance or repair, and remotely operate transmission switches and breakers at substations. On October 29, 2018, as amended April 3, 2019, Entergy Services submitted an application under section 203 of the Federal Power Act (FPA) proposing to transfer ownership of the Control Centers to the Entergy Operating Companies (Transfer Application) 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 under Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).<sup>4</sup> The Commission approved the Transfer Application on September 29, 2019.<sup>5</sup>

3. On October 29, 2018, concurrent with the Transfer Application, Entergy Services filed the Ownership Agreement, which establishes the ownership share allocation for the Control Centers for each Entergy Operating Company according to the Entergy Operating Companies' 2017 coincident peak load. By order issued September 29, 2019, concurrent with issuance of the Transfer Order, the Commission accepted the Ownership

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<sup>3</sup> The Commission's regulations define "centralized service company" as a "service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal, or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. Centralized service companies are different from other service companies that only provide a discrete good or service." 18 C.F.R. § 367.1(a)(7) (2019).

<sup>4</sup> The Transfer Application was filed in response to a complaint filed by the Louisiana Commission in Docket No. EL18-201-000 contending that the Entergy Operating Companies' failure to include in their wholesale transmission rates 100% of the Control Center costs, is unjust, unreasonable, and unduly discriminatory. Entergy Services agreed with the characterization of the Control Centers as transmission facilities, and, as a result, proposed to transfer ownership of them to the Entergy Operating Companies.

<sup>5</sup> *Entergy Servs., LLC*, 168 FERC ¶ 61,207 (2019) (Transfer Order).

Agreement to become effective on the date the Entergy Operating Companies acquire undivided ownership interests in the Control Centers from Entergy Services.<sup>6</sup>

## **II. Discussion**

### **A. Procedural Matters**

4. On November 14, 2019, the Arkansas/Mississippi Commissions filed a motion for leave to respond to the Louisiana Commission's request for rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2019), prohibits an answer to a request for rehearing. Accordingly, we deny the Arkansas/Mississippi Commissions' motion for leave to respond and reject that response.

### **B. Arkansas/Mississippi Commissions' Request for Clarification or, in the Alternative, Rehearing**

5. The Arkansas/Mississippi Commissions request clarification that the Agreement Order "addresses only recovery of [the Control Center] related costs at wholesale . . . and is not intended to affect or preempt [the Arkansas/Mississippi Commissions'] respective authority to determine whether any Control Center costs are recoverable in retail rates."<sup>7</sup> Alternatively, the Arkansas/Mississippi Commissions request rehearing, claiming that the Commission erred in determining that the Ownership Agreement is just and reasonable.<sup>8</sup> We grant clarification that the Agreement Order is not intended to affect or preempt the Arkansas/Mississippi Commissions' respective authorities to determine whether any Control Center costs are recoverable in retail rates.<sup>9</sup> Because the Arkansas/Mississippi Commissions state that their rehearing request requires attention only if the Commission were to deny its clarification request,<sup>10</sup> and we are granting clarification, we dismiss the Arkansas/Mississippi Commissions' alternative request for rehearing.

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<sup>6</sup> Agreement Order, 168 FERC ¶ 61,211 at P 1.

<sup>7</sup> Arkansas/Mississippi Commissions Request for Clarification, or in the Alternative Rehearing at 6.

<sup>8</sup> *Id.* at 2, 3, 6-9.

<sup>9</sup> *See* Transfer Order, 168 FERC ¶ 61,207 at P 51, *order on reh'g and clarification*, 171 FERC ¶ 61,038 P 14.

<sup>10</sup> Arkansas/Mississippi Commissions Request for Clarification, or in the Alternative Rehearing at 1 (requesting "clarification or, in the alternative, rehearing"), 2 (requesting clarification and stating that "[o]therwise, the Commission should grant rehearing"), 4 (characterizing its pleading as a "Request for Clarification *or* Rehearing,"

**C. Louisiana Commission's Request for Rehearing**

**1. Review Under Section 205 of the FPA**

**a. Rehearing Request**

6. The Louisiana Commission asserts that, pursuant to the Ownership Agreement, investment costs associated with the Control Centers will “instantaneously transfer” from Entergy Services to the Entergy Operating Companies, which will raise rates at the wholesale and retail levels. The Louisiana Commission argues that by refusing to examine the reasonableness of the resulting rate increase and by characterizing the issue as outside the scope of this proceeding, the Commission has abdicated its responsibility under section 205 of the FPA.<sup>11</sup> Noting that the Commission also did not analyze the reasonableness of the rate increase in the Transfer Order, the Louisiana Commission argues that this is “the only case that will ever present an opportunity to examine the reasonableness of the cost transfer.”<sup>12</sup> The Louisiana Commission maintains that the cost transfer permits Entergy Services to evade the Commission’s “at cost” rule because Entergy will be recovering a return on equity for an asset that will be under the control of Entergy Services.<sup>13</sup> The Louisiana Commission also alleges a failure to comply with the Commission’s “market standard,” which, according to the Louisiana Commission, requires that affiliate transfers “occur only if they are economical compared to market prices.”<sup>14</sup>

**b. Commission Determination**

7. We deny rehearing on this issue. The Louisiana Commission is incorrect that the Ownership Agreement provides for the transfer of the Control Center investment costs from Entergy Services to the Operating Companies or for the valuation of those costs for ratemaking purposes. Rather, the Ownership Agreement establishes the allocation of ownership interests in the Control Centers among the Entergy Operating Companies and the rights and obligations of Entergy Services as Control Center operator on behalf of the

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emphasis added), 18 (concluding that the Commission “should grant clarification or, in the alternative, rehearing”).

<sup>11</sup> Louisiana Commission Rehearing Request at 1, 2, 4, 9.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 4.

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

Entergy Operating Companies.<sup>15</sup> In the Agreement Order, the Commission observed that the costs incurred to acquire the Control Centers are not specified or established in the Ownership Agreement,<sup>16</sup> and the Louisiana Commission references no term in the Ownership Agreement that would suggest otherwise. As the Commission explained in the Agreement Order, the costs incurred to acquire the Control Centers instead serve as an input to the Operating Companies' respective formulas, and the reasonableness of such costs for inclusion as an input to those formulas is not before us.<sup>17</sup> Accordingly, we affirm that the reasonableness of such costs is outside the scope of this proceeding. Our review of the Ownership Agreement in this proceeding under section 205 of the FPA is instead limited to the reasonableness of the provisions that establish the allocation of ownership interests and the specific terms under which Entergy Services will continue to provide services related to the Control Centers. The Louisiana Commission would prefer that the Commission expand its section 205 review to include other rate effects that occur outside of the terms of the Ownership Agreement and claims that the Commission's failure to do so is an abdication of its section 205 responsibility. We disagree that the Commission can or should expand its review beyond the scope of the filing before it. The Commission has fulfilled its responsibility under section 205 of the FPA by reviewing the terms and conditions of the Ownership Agreement and finding them to be just and reasonable.

8. The Louisiana Commission's arguments alleging non-compliance with the Commission's "market standard" or the Commission's "at cost rule" are likewise outside the scope of this proceeding.<sup>18</sup> As to an alleged violation of the "market standard," we address and dismiss this argument on rehearing of the Transfer Order, which is being

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<sup>15</sup> Agreement Order, 168 FERC ¶ 61,211 at P 35.

<sup>16</sup> *Id.*

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

<sup>18</sup> Although not specified in its rehearing request, the Louisiana Commission presumably refers to two separate provisions under the Commission's affiliate pricing restrictions intended to protect against affiliate cross-subsidization. Section 35.44(b)(2) sets forth the "market standard," which provides that "a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market." 18 C.F.R. § 35.44(b)(2) (2019). Section 35.44(b)(3) in turn sets forth the "at cost rule," which provides that "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." 18 C.F.R. § 35.44(b)(3).

issued concurrently with this order.<sup>19</sup> Regarding compliance with the “at cost rule,” the Commission explained in the Agreement Order that the Ownership Agreement does not give rise to or memorialize the “at cost” treatment of the Control Centers.<sup>20</sup> We address this issue further on rehearing of the Transfer Order by explaining that there is no cross-subsidization concern arising from the fact that transmission customers are paying a rate of return on transmission facilities.<sup>21</sup>

9. We disagree with the Louisiana Commission that this proceeding represents the only opportunity for the Commission to review the wholesale rate effects from the transfer. The costs incurred to acquire the Control Centers serve as an input to the Entergy Operating Companies’ respective formula rates.<sup>22</sup> The Commission may review the reasonableness of these costs to the extent that they are challenged in a Formal Challenge filed in the docket in which the annual informational filing,<sup>23</sup> which is due by March 15 each year, of the annual update to the Entergy Operating Companies’ transmission formula rates pursuant to their MISO Attachment O protocols.<sup>24</sup>

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<sup>19</sup> Transfer Order, 171 FERC ¶ 61,038 at P 25.

<sup>20</sup> Agreement Order, 168 FERC ¶ 61,211 at P 35.

<sup>21</sup> Transfer Order, 171 FERC ¶ 61,038 at P 19.

<sup>22</sup> Agreement Order, 168 FERC ¶ 61,211 at P 35.

<sup>23</sup> *N. Virginia Elec. Coop., Inc. v. Fed. Energy Regulatory Comm’n*, 945 F.3d 1201, 1204 (D.C. Cir. 2019) (describing a Formal Challenge as “more accurately akin to a continuation of the § 205 proceeding in which the utility files its formula rate. ... That’s because the annual update supplements the utility’s initial § 205 filing, which is simply a formula without the necessary inputs. Consequently, in a Formal Challenge, the utility not the complainant bears the burden of proving the justness and reasonableness of its inputs, just as the utility does when it first files the formula rate under § 205.”).

<sup>24</sup> The Commission may also review the rate effects of this transaction if challenged pursuant to a section 206 complaint. In addition, although the Commission’s review under section 203 differs from its review under section 205 of the FPA, the section 203 proceeding nonetheless presented the Commission with the opportunity to examine the reasonableness of the cost transfer. In that proceeding, the Commission concluded that, while the transfer would increase costs for some customers, the rate increase was not adverse because the Control Centers are used by the Entergy Operating Companies. Transfer Order, 168 FERC ¶ 61,207 at P 49.

## 2. Cost Allocation Method

### a. Rehearing Request

10. The Louisiana Commission alleges that the Commission erred in accepting the proposed allocation of ownership interests under the Ownership Agreement based on coincident peak load. The Louisiana Commission alleges that the Commission failed to consider evidence showing that this allocation method is discriminatory in that it will over-allocate costs to Louisiana ratepayers and under-allocate costs to ratepayers in other jurisdictions.<sup>25</sup> The Louisiana Commission asserts that, compared to what it calls “actual cost causation,” which the Louisiana Commission asserts would allocate the costs based on transmission line miles, the allocation proposal in the Ownership Agreement allocates “about 50% more costs to Entergy Louisiana than is appropriate.”<sup>26</sup>

11. The Louisiana Commission maintains that the Agreement Order fails to explain the connection between the chosen allocator and the services provided by the facilities. According to the Louisiana Commission, the services performed by the Control Centers “are driven directly by the length of [the transmission] lines” and “have nothing to do with peak loads.”<sup>27</sup> The Louisiana Commission argues that the function of maintaining a transmission system does not relate to load but rather to the length and complexity of the transmission system. According to the Louisiana Commission, a metropolitan area with high peak loads may have only a few bulk transmission lines connecting to its distribution facilities, which would require far less maintenance and repair than lines stretched over many miles of rural area where the loads are smaller.<sup>28</sup> In the Louisiana Commission’s view, the fact that transmission providers have traditionally relied upon coincident peak load allocation is not a satisfactory explanation to support acceptance of such allocation in this case.<sup>29</sup>

12. The Louisiana Commission also observes that, prior to the construction of the Control Centers at issue here, Entergy Services had never allocated the costs of transmission control centers based on peak load, but acknowledges that the costs of the previous control centers were not allocated at all as each was owned by an Operating

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<sup>25</sup> Louisiana Commission Rehearing Request at 5.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.* at 7-8.

Company.<sup>30</sup> The Louisiana Commission also argues that the Entergy coincident peak no longer has operational relevance because the Entergy Operating Companies no longer operate as a system but are instead separate members of MISO, which has a different coincident peak.<sup>31</sup>

13. Finally, the Louisiana Commission also points out that the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) overruled one of the cases cited in the Agreement Order for failing to explain the relationship of the allocator to cost-causation.<sup>32</sup> The Louisiana Commission adds that, unlike the cost allocation for the facilities at issue in the cases cited in Agreement Order, the costs at issue in this proceeding “are not the cost of transmission facilities themselves.”<sup>33</sup>

**b. Commission Determination**

14. We deny rehearing. The coincident peak load allocation method is the traditionally approved method for allocating the costs of transmission facilities,<sup>34</sup> and the historical and consistent use of this allocation method renders its choice presumptively reasonable. As noted in the Agreement Order, differing allocation methods could also be reasonable as long as they are adequately supported.<sup>35</sup> Coincident peak load allocation is

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<sup>30</sup> *Id.* at 6-7.

<sup>31</sup> *Id.* at 7-8.

<sup>32</sup> *Id.* at 8 (citing *Illinois Commerce Comm’n v. FERC*, 756 F.3d 556 (7th Cir. 2014) (*ICC v. FERC*) as overruling *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012) (*PJM Interconnection*)).

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

<sup>34</sup> See, e.g., *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,133, at P 2 (2013) (“The Commission typically allocates demand costs using a coincident peak method, through which demand costs are allocated based on each customer class’s load at the time of (or coincident with) the system peak load.”); *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,136, at P 25 (2018) (“Traditionally, public utility transmission providers have relied on the demand of its transmission customers at its system’s coincident peak to determine each customer’s network transmission service charges.”).

<sup>35</sup> Agreement Order, 168 FERC ¶ 61,211 at P 37 (citing *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,136 at P 25); see also *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs by Pub. Utils; Recovery of Stranded Costs by Pub. Utils and Transmitting Utils*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,736 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220),



also the method used for all other transmission facility costs under the Entergy Operating Companies' respective formula rates, and it is just and reasonable that the Control Centers – which are also transmission facilities – be allocated based on coincident peak load.

15. We disagree with the Louisiana Commission's contention that the services provided by the Control Centers are unrelated to load. The complexity of monitoring the status of the Entergy Operating Companies' transmission system is proportional to the load served on the system, and we find convincing the Arkansas/Mississippi Commissions' observation that "whether Entergy owned 100,000 miles or just 100 miles of transmission lines, that system would require [the Control Centers] to provide the needed monitoring and control."<sup>36</sup> Similarly, we find convincing Entergy Services' argument that the Control Centers provide system-wide benefits to the entire Entergy transmission system and that coincident peak load allocation is consistent with the cost allocation methodology that was utilized by the Entergy Operating Companies under its former system agreement.<sup>37</sup> Therefore, we conclude that peak load, rather than transmission line miles, is the factor most relevant to establishing cost-causation. Because this cost allocation method is consistent with cost-causation, it is not unduly discriminatory for Entergy Louisiana to be allocated a greater share of the costs as compared to the other Entergy Operating Companies.

16. We also do not find compelling Louisiana Commission's contention that the costs of the prior transmission control centers were never allocated based on coincident peak loads. The Control Centers replace five transmission operations centers and a systems operations center that were previously located around the Entergy Operating Companies'

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*order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002). ("Because network service is load based, it is reasonable to allocate costs on the basis of load for purposes of pricing network service. . . . [W]e recognize that alternative allocation proposals may have merit . . . . [t]hey will be evaluated on a case-by-case basis and decided on their merits.").

<sup>36</sup> Arkansas/Mississippi Commissions December 3, 2018 Answer to the Louisiana Commission Protest.

<sup>37</sup> Entergy Services October 2018 Filing at 6-7; Entergy Services December 4, 2018 Answer to Protests at 9.

transmission system and operated by Entergy Services.<sup>38</sup> As the Louisiana Commission states, Entergy's prior transmission control centers were owned by the Entergy Operating Company in the area where each was located.<sup>39</sup> The Louisiana Commission has not explained how the cost responsibility for the prior control centers is relevant to the allocation of the Control Centers given the significantly different configuration of the prior control centers. In addition, we disagree with Louisiana's argument that the Entergy peak load no longer has operational relevance given that the Entergy Operating Companies no longer operate as a system but are instead separate members of MISO. The Control Centers specifically monitor the Entergy transmission facilities, not the MISO system as a whole. It is therefore appropriate to allocate costs based on Entergy coincident peak rather than the MISO coincident peak.

17. Finally, we disagree with the Louisiana Commission's contention that the Commission inappropriately relied on its prior statement that "load on the transmission system is a measure of the usage of reliable transmission service,"<sup>40</sup> without acknowledging that the Commission's order in that case was overturned on appeal. This statement was included in the Agreement Order to provide further context for why the Commission has traditionally relied on coincident peak cost allocation.<sup>41</sup> The Seventh Circuit's decision in *ICC v. FERC* did not invalidate this concept. Rather, the Seventh Circuit addressed the appropriateness of a PJM-wide postage stamp cost allocation method for high voltage transmission facilities built in eastern PJM when, as the court found, there was insufficient benefit from those facilities demonstrated for transmission users in western PJM.<sup>42</sup> That case does not undermine the use of coincident peak load as an allocator for the Control Centers nor does it support the Louisiana Commission's proposal to allocate costs based on transmission line miles. Furthermore, the Louisiana Commission does not support its suggestion that there is a difference relevant to cost allocation in whether the allocated costs pertain to the transmission facilities themselves or to the transmission services that they provide.

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<sup>38</sup> Entergy Services October 2018 Filing at 3; Entergy Ark. Inc., Filing, Docket No. ER17-2029-000, at 2 (filed June 30, 2017).

<sup>39</sup> Louisiana Commission Rehearing Request at 6.

<sup>40</sup> Agreement Order, 168 FERC ¶ 61,211 at n.67; *see* Louisiana Commission Rehearing Request at 8 (discussing *ICC v. FERC*, 756 F.3d 556 and *PJM Interconnection*, 138 FERC ¶ 61,230 at P 114).

<sup>41</sup> Agreement Order, 168 FERC ¶ 61,211 at P 37 n.67.

<sup>42</sup> *ICC v. FERC*, 756 F.3d at 559.

The Commission orders:

(A) The Arkansas/Mississippi Commissions' request for clarification is hereby granted, and its alternative request for rehearing is dismissed, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.