

171 FERC ¶ 61,038
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. EC19-18-001

ORDER ON REHEARING AND CLARIFICATION

(Issued April 16, 2020)

1. On September 30, 2019, the Commission issued an order pursuant to section 203 of the Federal Power Act (FPA)¹ authorizing Entergy Services, LLC (Entergy Services), on behalf of itself and its affiliates the Entergy Operating Companies,² (collectively, Applicants) to transfer undivided ownership interests in two transmission control centers (Control Centers) from Entergy Services to the Entergy Operating Companies.³ On October 30, 2019, the Arkansas Public Service Commission (Arkansas Commission), and the Mississippi Public Service Commission and Mississippi Public Utilities Staff (Mississippi Commission) (collectively, Arkansas/Mississippi Commissions) requested clarification and rehearing of the Transfer Order. The Louisiana Public Service Commission (Louisiana Commission) also filed a request for rehearing. As discussed below, we deny these rehearing requests and grant the Arkansas/Mississippi Commissions' request for clarification in part.

¹ 16 U.S.C. § 824b (2018).

² The Entergy Operating Companies are: Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; and Entergy Texas, Inc.

³ *Entergy Servs., LLC*, 168 FERC ¶ 61,207 (2019) (Transfer Order).

I. Background

2. Entergy Services is a centralized service company⁴ that provides support services to the Entergy Operating Companies. At the time of the filing at issue in this proceeding, 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. In an application submitted on October 29, 2018 (Transfer Application), and amended on April 3, 2019, Entergy Services proposed to transfer ownership of the Control Centers to the Entergy Operating Companies (Transaction) 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 Tariff (Tariff). The Transfer Application followed 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.⁵

3. In the Transfer Order, the Commission approved the Transaction as consistent with the public interest.⁶ The Commission determined that the Transaction would not

⁴ 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).

⁵ Concurrent with the Transfer Application, Entergy Services filed, pursuant to section 205 of the FPA, a Joint Ownership and Operating Agreement (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. The Ownership Agreement also specifies the terms under which Entergy Services will continue to operate the Control Centers. The Commission accepted the Ownership Agreement in an order issued concurrently with the Transfer Order, effective on the date the Entergy Operating Companies acquire the Control Centers. *Entergy Ark., Inc.*, 168 FERC ¶ 61,211, at P 34 (2019).

⁶ Transfer Order, 168 FERC ¶ 61,207 at P 1. The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves

have an adverse effect on competition and would not have an adverse effect on regulation.⁷ With respect to the effect on rates, the Commission recognized that the Transaction would increase rates for some customers but concluded that this increase is not adverse.⁸ The Commission also determined that the Transaction would not result in cross-subsidization.⁹ As relevant to this rehearing request, the Commission also rejected challenges as to the permissibility of the transfer of the undivided ownership interests in the Control Centers. On rehearing, the Louisiana Commission and the Arkansas/Mississippi Commissions allege, to varying extents, that the Commission erred in making these determinations. As discussed below, we affirm each of these determinations and deny rehearing.

II. Discussion

A. Rehearing

1. Effect on Rates

a. Requests for Rehearing

4. On rehearing, the Louisiana Commission alleges that the Commission ignored the retail rate impacts of the Transaction.¹⁰ The Louisiana Commission is also concerned that the hold harmless commitment accepted by the Commission may be unenforceable

consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997). Section 203(a)(4) of the FPA 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." 16 U.S.C. § 824b(a)(4).

⁷ Transfer Order, 168 FERC ¶ 61,207 at PP 29, 31, 62-65.

⁸ *Id.* P 52.

⁹ *Id.* P 76.

¹⁰ Louisiana Commission Rehearing Request at 1, 4.

because, in its view, the Transfer Order describes a different commitment from what was made in the Transfer Application. The Louisiana Commission points out that in the Transfer Order, the Commission accepted “Applicants’ commitment to hold customers harmless from costs related to the Proposed Transaction.”¹¹ However, the Louisiana Commission observes that the commitment as framed in the Transfer Application was that Applicants would “not seek to include any transaction-related costs in excess of transaction savings” for a period of five years after the consummation of the transfer.¹² The Louisiana Commission is also concerned that the commitment is meaningless because no “transaction savings” have been identified.

5. As to the effect of the Transaction on wholesale rates, the Louisiana Commission argues that the Commission did not adequately support its determination that the Transaction does not have an adverse effect on rates because it will result in “administrative efficiency” and “rate transparency.”¹³ The Louisiana Commission asserts that the Control Center costs will “presumably . . . be recorded in transmission plant accounts and combined into the cost of transmission” but alleges that the Commission has not explained how this aids transparency.¹⁴ The Louisiana Commission adds that, to the extent the Control Center costs are discernable on the Entergy Operating Companies’ books, it will give the false appearance that an asset constructed by Entergy Services was in fact built by the Entergy Operating Companies. Thus, the Louisiana Commission concludes that the Transaction does not aid transparency.¹⁵

6. The Louisiana Commission and the Arkansas/Mississippi Commissions dispute that there will be any efficiency benefit from the Transaction. The Arkansas/Mississippi Commissions argue that there is no material improvement in administrative efficiency because Entergy Services administered the Entergy Operating Companies’ books and accounting prior to the Transaction and would continue to do so following the

¹¹ *Id.* at 18-19 (citing Transfer Order, 168 FERC ¶ 61,207 at P 50).

¹² Louisiana Commission Rehearing Request *Id.* at 19 (citing Entergy Services’ October 2018 section Transfer Application at 13).

¹³ *Id.* at 5, 18 (quoting Transfer Order, 168 FERC ¶ 61,207 at P 49). *See also* Arkansas/Mississippi Commissions Rehearing and Clarification Request at 17-18. The Arkansas/Mississippi Commissions’ request for rehearing focuses their second specification of error on alleged cross-subsidization and references rate impacts in this context. We summarize and address the Arkansas/Mississippi Commissions’ cross-subsidization arguments in section II.A.3 below.

¹⁴ Louisiana Commission Rehearing Request at 18.

¹⁵ *Id.*

Transaction.¹⁶ The Louisiana Commission contends that the administrative bookkeeping will become more inefficient because, according to the Louisiana Commission, additions to the property will be recorded in accounts on Entergy Services' books, while the net book value at the time of the Transaction resides on the Operating Companies' books.¹⁷ The Louisiana Commission also dismisses as meaningless any assurances that the Entergy Operating Companies will not seek to recover more than book value, noting that book value is all they would be entitled to recover if they had constructed the assets themselves.¹⁸

b. Commission Determination

7. We deny rehearing and affirm the Commission's determination that, while the Transaction will increase rates, such an increase is not adverse.¹⁹ As an initial matter, we note that the Commission's section 203 analysis concerning rate impacts of a transaction does not extend to retail rate impacts unless a state commission lacks the authority to review such rate impacts and specifically asks the Commission to do so.²⁰ We note that, although the Louisiana Commission and the Arkansas/Mississippi Commissions have intervened in this proceeding, they have not asked us to scrutinize such effects here. We also note that our approval of the Transaction in this proceeding does not preclude the Arkansas/Mississippi Commissions or the Louisiana Commission from examining the Transaction's effects on retail rates.

8. As to the effect of the Transaction on wholesale rates, we affirm the Commission's acceptance of Applicants' five year hold harmless commitment, and we disagree with the Louisiana Commission's contention that the commitment departs from the commitment in the Transfer Application and is thus unenforceable or lacks clarity. In the Transfer Order, the Commission explained that its interpretation of the hold harmless commitment

¹⁶ Arkansas/Mississippi Commissions Rehearing and Clarification Request at 18.

¹⁷ Louisiana Commission Rehearing Request at 18.

¹⁸ *Id.*

¹⁹ Transfer Order, 168 FERC ¶ 61,207 at PP 49, 52.

²⁰ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,128 (1996) (Merger Policy Statement) (cross-referenced at 77 FERC ¶ 61,263), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) ("In cases where a state commission asks us to address the merger's effect on retail markets because it lacks adequate authority under state law, we will do so.").

is in accordance with the Commission's policy on hold harmless commitments.²¹ Consistent with that policy, the commitment applies to all transaction-related costs, including costs related to consummating the Transaction, incurred prior to the consummation of the Transaction, or in the five years following the consummation of the Transaction.²²

9. Furthermore, the Louisiana Commission is mistaken in its belief that the hold harmless commitment is meaningless because transaction-related savings have not been identified. To the contrary, to the extent the Louisiana Commission is correct that there are no transaction savings, the hold harmless commitment will prevent the Entergy Operating Companies from recovering any transaction-related costs in their rates. In that regard, as the Commission explained in its policy statement on hold harmless commitments, transaction-related savings are evaluated on a case-by-case basis if and when the applicant makes a filing under section 205 of the FPA to recover transaction-related costs.²³

10. The Louisiana Commission challenges the Commission's determination that the wholesale rate increase is not adverse given improved administrative efficiency and rate transparency.²⁴ In its specification of error, the Louisiana Commission alleges that the Commission "fails to explain what is more efficient, or transparent about splitting the costs of [the Control Centers] into parts and spreading them into transmission plant account of the Companies."²⁵ We disagree and affirm the finding in the Transfer Order that the Transaction will increase administrative efficiency and rate transparency.²⁶ The primary increase in transparency is that, once transferred to the Entergy Operating Companies, the Control Centers will be included in transmission plant accounts. Previously, the costs of the Control Centers were not recorded in transmission plant accounts because Entergy Services uses the Commission's Uniform System of Accounts for Centralized Service Companies,²⁷ which does not include any transmission plant

²¹ Transfer Order, 168 FERC ¶ 61,207 at P 50 (citing *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016)).

²² *Id.*

²³ *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 at P 60.

²⁴ Louisiana Rehearing Request at 4, 17-18.

²⁵ *Id.* at 4.

²⁶ Transfer Order, 168 FERC ¶ 61,207 at P 49.

²⁷ 18 C.F.R. pt. 367 (2019).

accounts. The chart of accounts for Centralized Service Companies only includes general plant accounts, such as for office buildings, furniture, and equipment. The Transmission Control Centers are not mere buildings but instead serve a transmission function. It is therefore more appropriate and transparent that they be fully functionalized to transmission plant, which will occur as a result of the Transaction.

11. Similarly, the improvement in administrative efficiency will be realized because the Entergy Operating Companies will directly incorporate the cost of ownership of the facilities into their transmission rate base in their revenue requirements under the MISO Tariff. This accounting structure is more efficient than the current accounting regime wherein the Control Center costs are booked by Entergy Services as general plant accounts, and then allocated among and recovered from the Operating Companies, which, as a result of the order granting the Complaint in Docket No. EL18-201-000, book the costs as transmission expense. Booking these costs directly to transmission plant is appropriate because the Control Centers are transmission facilities that provide public utility service and should be included in the transmission revenue plant balances of the Entergy Operating Companies that are directly input to the rate base in their revenue requirements. The Louisiana Commission in fact advocated for the appropriate functionalization of transmission expenses in its complaint filed in Docket No. EL18-201-000 and offers no explanation for its new, contradictory, argument that this approach does not improve transparency and efficiency.²⁸

2. Effect on Regulation

a. Requests for Rehearing

12. The Louisiana Commission alleges that the Commission failed to explain why the approval of the Transaction will not create a regulatory gap.²⁹ Specifically, the Louisiana Commission is concerned that the Transfer Order “may preempt” or “arguably preempts” the “authority of state commissions to review and disallow costs associated with projects transferred from service companies to regulated affiliates.”³⁰ According to the Louisiana Commission, if the Control Centers were added by the Entergy Operating Companies themselves, then they would be “subject to the plenary regulatory authority of retail

²⁸ See Complaint of the Louisiana Public Service Commission, Docket No. EL18-201-000 (filed Sept. 19, 2018) (alleging that failure of Entergy Operating Companies to include 100% of the costs of the Control Centers in the Companies’ MISO Attachment O was unjust and unreasonable).

²⁹ Louisiana Commission Rehearing Request at 15.

³⁰ *Id.* at 4, 15.

agencies” but that such regulation is hindered through the approval of the Transaction.³¹ The Louisiana Commission also asserts that the Commission did not explain why “the Louisiana Commission will continue to have the same authority over the Entergy Operating Companies before and after the Proposed Transaction.”³²

b. Commission Determination

13. We deny rehearing on this issue. Consistent with the effect on regulation prong of the Commission’s FPA section 203 analysis, the Commission explained in the Transfer Order that it will retain its regulatory authority over Applicants and the Control Centers, and that the Louisiana Commission will continue to have the same regulatory authority over the Entergy Operating Companies before and after the Transaction.³³ Prior to the Transaction, the Control Center costs were recovered by Entergy Services from the Entergy Operating Companies under Entergy Services’ centralized service company agreements on file with the Commission.³⁴ In turn, each operating company booked its payments for the Control Center Costs as depreciation expense for general plant. After the Transaction, the capitalized costs of the Control Centers will be functionalized as transmission and recovered directly by the Operating Companies under the MISO Tariff. The costs remain subject to regulatory authority both before and after the Transaction; there is no regulatory gap.

14. Similarly, while the Louisiana Commission also appears concerned that the Transaction will preempt its ability to disallow the costs of the Control Centers, the Louisiana Commission fails to provide any evidence or explanation for why this would be so. The state commissions will retain their respective authority to determine whether and how the Control Center Costs are recoverable in retail rates.³⁵ Neither the Commission nor the state commissions are bound to apply the same ratemaking principles as the other when considering the Control Center costs.³⁶ As a consequence,

³¹ *Id.* at 15.

³² *Id.* at 17 (citing Transfer Order, 168 FERC ¶ 61,207 at P 64).

³³ Transfer Order, 168 FERC ¶ 61,207 at P 64.

³⁴ Entergy Services uses the Uniform System of Accounts for Centralized Service Companies, which does not include any transmission plant accounts. 18 C.F.R. pt. 367 (2019).

³⁵ Transfer Order, 168 FERC ¶ 61,207 at PP 51, P 64. *See also* *infra* P 26.

³⁶ *Entergy Services, Inc.*, 127 FERC ¶ 61,126, at P 25 (2009) (noting that different regulatory bodies are not bound to apply the same ratemaking principles and

we continue to find that the Transaction will not impair state or federal regulatory authority, or diminish effective regulation of the Control Centers.

15. We are similarly unpersuaded by the Louisiana Commission's argument that its regulatory oversight over the construction of the Control Centers would have been different if the Control Centers had been constructed by the Entergy Operating Companies instead of Entergy Services. We do not view this alleged difference in the regulation that would have applied during construction – which is outside the scope of this proceeding in any event, as we discuss below – as evidence of a regulatory gap. Our FPA section 203 review focuses instead on whether state and federal regulators will retain their respective authorities as a result of the Transaction. For the reasons discussed in the Transfer Order, we affirm that these authorities are unchanged.³⁷

3. Cross Subsidization

a. Request for Rehearing

16. The Arkansas/Mississippi Commissions allege that the Commission erred in finding that the Transaction would not result in cross-subsidization among the Entergy Operating Companies, or between the Entergy Operating Companies and Entergy Services.³⁸ The Arkansas/Mississippi Commissions assert that that “[b]ecause the transfer here could result in increased rates charged by the [Entergy Operating Companies] to their retail customers, it stands to reason that cross-subsidization of Entergy Services will also result from the transfer.”³⁹ The Arkansas/Mississippi Commissions argue that transferring the facilities to the Entergy Operating Companies and adding a rate of return on equity (ROE) is the functional equivalent of including an adder onto the net depreciated book value of the facilities and assert that the resulting rate increase “smacks of cross subsidization.”⁴⁰

17. The Arkansas/Mississippi Commissions argue that Applicants failed to demonstrate that the Transaction will not result in cross-subsidization, as required by the

acknowledging the inherent possibility of imperfection in the dual system of retail and wholesale rate regulation).

³⁷ Transfer Order, 168 FERC ¶ 61,207 at PP 63-64.

³⁸ Arkansas/Mississippi Commissions Rehearing and Clarification Request at 4-5, 12.

³⁹ *Id.* at 13-14.

⁴⁰ *Id.* at 4.

Commission's regulations. In their view, the only evidence Applicants provided on this point was a representation that the Transaction "will be consistent with the public interest because [the Control Centers] support the Entergy Transmission System."⁴¹ The Arkansas/Mississippi Commissions add that the commitment to operate the transmission facilities "consistent with MISO's directives and NERC requirements" is a requirement applicable to all public utilities and does not constitute a demonstration that the Transaction is in the public interest.

b. Commission Determination

18. We affirm that Applicants have satisfied the Commission's cross-subsidization concerns and deny rehearing on this issue.⁴² Section 33.2(j) of the Commission's regulations requires, among other things, a detailed showing that a proposed transfer will not result in "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."⁴³ Applicants recognize that they cannot make this showing because the Transaction does involve such a transfer.⁴⁴ However, the cross-subsidization inquiry does not end here. If assurance against cross-subsidization cannot be provided based on the representation under section 33.1(j)(1), Applicants may provide "an explanation of how such cross-subsidization, pledge or encumbrance will be consistent with the public interest."⁴⁵ To this point, Applicants explained that the Transaction is in the public interest because the Control Centers support the safe and reliable operation of the Entergy Transmission System.⁴⁶ We deny rehearing as we find that it is appropriate and consistent with the public interest for transmission facilities fulfilling this purpose to be included in transmission plant, and that was Applicants' stated objective of this Transaction.

19. We also continue to find persuasive Applicants' representation that the Transaction will occur based on the net book value of the facilities such that Entergy

⁴¹ *Id.* at 18 (citing Entergy Services' Transfer Application, Ex. M).

⁴² Transfer Order, 168 FERC ¶ 61,207 at P 77.

⁴³ 18 C.F.R. § 33.2(j)(1)(ii)(A) (2019).

⁴⁴ Entergy Services' Transfer Application, Ex. M; Entergy December 2018 Response at 12-15.

⁴⁵ *Id.* § 33.2(j)(2).

⁴⁶ Application, Ex. M at 2; Entergy Services December 2018 Response at 14.

Services will not recover a subsidy from the Entergy Operating Companies.⁴⁷ The Arkansas/Mississippi Commissions argue that the transfer at net book value is irrelevant because “the subsidization here comes as an increase in costs for regulated retail customers intended to increase shareholder value for services provided by a centralized service company.”⁴⁸ We disagree. Although shareholders may now be collecting a rate of return on the costs of the Control Centers due to their appropriate inclusion in transmission rate base, we do not view this as a cross-subsidization concern. The Control Centers support the transmission system, and it is not unreasonable that shareholders earn a rate of return on the investment costs of these facilities. As to the services that will continue to be provided by Entergy Services to the Operating Companies, there is no subsidy for these services as a result of the Transaction.

4. Permissibility of the Transaction

a. Requests for Rehearing

20. Both the Louisiana Commission and the Arkansas/Mississippi Commissions maintain that Entergy Services was not authorized under its centralized service agreements to construct the Control Centers on behalf of the Entergy Operating Companies. The Louisiana Commission argues that the service agreements between Entergy Services and the Entergy Operating Companies make no mention of construction.⁴⁹ In the Louisiana Commission’s view, Applicants “effectively conceded that the [s]ervice [a]greements do not authorize the [T]ransaction in its May 13, 2019 Response to Protests and Comments.”⁵⁰ The Louisiana Commission notes that, in that response, Entergy Services stated that the Transaction “will not be undertaken pursuant to Entergy Services’ centralized service agreement rate schedules” and that the Transaction is “not a service that Entergy Service will provide.”⁵¹ The Louisiana Commission concludes that the Commission erred in failing to analyze the service agreements and in failing to acknowledge Entergy Services’ “concession.”⁵²

⁴⁷ See Transfer Order, 168 FERC ¶ 61,207 at P 77.

⁴⁸ Arkansas/Mississippi Commissions Rehearing and Clarification Request 17.

⁴⁹ Louisiana Commission Rehearing Request at 14-15.

⁵⁰ *Id.* at 14.

⁵¹ *Id.* (citing Entergy Services May 2019 Answer at 6).

⁵² *Id.* at 15.

21. The Arkansas/Mississippi Commissions assert that the Commission should grant rehearing and find that the Transaction is not authorized because Entergy Services failed to obtain state authorization to construct the Control Centers. The Arkansas/Mississippi Commissions argue that even if Entergy Services was not required to obtain state authorization to construct the Control Centers, the Entergy Operating Companies were required to obtain such approval to the extent they intended to later own the facilities.⁵³ Further, the Arkansas/Mississippi Commissions allege that Entergy Services may have been violating the FPA by constructing, owning and transferring the Control Centers without satisfying the requirements of a public utility. The Arkansas/Mississippi Commissions request that the Commission initiate a proceeding under section 206 of the FPA to consider this issue.⁵⁴

22. The Louisiana Commission also alleges that the Commission's Transfer Order conflicts with Order No. 667⁵⁵ and Order No. 707⁵⁶ in that it allows specialized construction projects to be transferred to affiliates without complying with the Commission's "market standard," which, according to the Louisiana Commission, requires that the transaction be priced at or below market.⁵⁷ The Louisiana Commission challenges the Commission's Transfer Order as "appear[ing] to hold that, if a specialized construction service company constructs and transfers a facility to an affiliate, it is subject to the market standard, but that if a traditional service company expands into providing construction projects, it is not subject to a market test."⁵⁸ The Louisiana Commission views this as an impermissible modification of the Commission's market standard. The Louisiana Commission also challenges as unsupported the Commission's conclusion that the Louisiana Commission's arguments are premised on a misreading of Order No. 667.⁵⁹

⁵³ Arkansas/Mississippi Commissions Rehearing and Clarification Request at 10.

⁵⁴ *Id.* at 11.

⁵⁵ *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 (2005).

⁵⁶ *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 122 FERC ¶ 61,155 (2008).

⁵⁷ Louisiana Commission Rehearing Request at 2, 7.

⁵⁸ *Id.* at 3.

⁵⁹ *Id.* at 11 (citing Transfer Order, 168 FERC ¶ 61,207 at P 87).

b. Commission Determination

23. We deny rehearing. As an initial matter, we find that the Arkansas/Mississippi Commissions' concern as to Entergy Services' authority to construct the facilities' construction is outside the scope of this proceeding. We also dismiss as outside the scope of this proceeding the claim that Entergy Services violated the FPA by allegedly acting as a public utility without satisfying the requirements of a public utility, by constructing and owning the Control Centers. With regard to the claim that Entergy Services improperly transferred the facilities, we note that Entergy Services appropriately sought the Commission's approval of the transfer in this proceeding.

24. On rehearing, as in their protests, the Louisiana Commission and the Arkansas/Mississippi Commissions maintain that the Transaction was not authorized under the centralized service agreements between Entergy Services and each of the Operating Companies. We reject this argument as unsupported. The state commissions have not cited any provision in the centralized service agreements that would prohibit the Transaction. The Louisiana Commission instead argues that Applicants "effectively conceded" that the Transaction was not authorized by the centralized service agreements. This claim misrepresents what Applicants stated. Applicants' statement that the Transaction was not being undertaken pursuant to the service agreements carries no implication that the Transaction is prohibited by the service agreements.

25. We are also unconvinced by the Louisiana Commission's arguments concerning the applicability of the Commission's "market standard" and the consistency of the Transaction with Order No. 667 or Order No. 707. With respect to non-power goods and services transactions between holding company affiliates, the Commission explained in Order No. 667 that a "non-regulated, affiliated special-purpose company may not sell to its public utility affiliate at a price above the market price."⁶⁰ However, the Louisiana Commission ignores the fact that Entergy Services is not] a "non-regulated special-purpose company" but is instead, as Louisiana acknowledges in its rehearing request,⁶¹ a traditional centralized service company and therefore subject to regulation by the Commission. The Commission's affiliate pricing rules for transactions involving centralized service companies are different and do not require pricing at or below market. Instead, the Commission's regulations specify 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 *at cost*."⁶² Furthermore, in circumstances where centralized service companies perform

⁶⁰ Order No. 667, 113 FERC ¶ 61,248 at P 171.

⁶¹ Louisiana Commission Rehearing Request at 1.

⁶² 18 C.F.R. 35.44(b)(3) (2019) (emphasis added).

specialized services, the Commission explained that it would apply a rebuttable presumption that costs incurred under “at cost” pricing are reasonable.⁶³ Therefore, even if Entergy Services had “expand[ed] into providing construction projects,” as the Louisiana Commission suggests on rehearing,⁶⁴ the market standard still would not apply. Consistent with Order No. 667, the Commission instead applies a rebuttable presumption that the proposed cost-based price for the Transaction (i.e., net book value) is reasonable. Accordingly, we conclude that the Transaction is not inconsistent with Order No. 667 or Order No. 707.

B. Clarification

26. Referring to the Commission’s statement that “the Louisiana and Mississippi [Commissions] will retain their authority over the rates of retail customers,” the Arkansas/Mississippi Commissions seek clarification that the Commission intended to include the Arkansas Commission as well.⁶⁵ We did so intend and hereby clarify that the Arkansas Commission will also retain its authority over the rates of retail customers. As the Commission explained in the Transfer Order, the Transaction will not affect state regulatory authority over retail rates. Relatedly, the Arkansas/Mississippi Commissions request that the Commission clarify that “only the portion of the [Control Center Costs] to be recovered under the MISO Tariff are addressed in the Transfer Order and that the Transfer Order does not apply to the portion of costs that the [Entergy Operating Companies] would seek to recover under retail rates.” We are unsure what is meant by this clarification request. The Transfer Order considered only the question of whether the transfer of ownership interests in the Control Centers was consistent with the public interest and does not “apply” to any particular portion of costs. To the extent the Arkansas/Mississippi Commissions request clarification that they will retain their respective retail ratemaking authorities, we agree and grant this requested clarification.

⁶³ Order No. 667, 113 FERC ¶ 61,248 at P 16; *see also* Order No. 707, 122 FERC 61,155 at P 12 (recognizing the rebuttable presumption that at-cost pricing is reasonable for centralized service companies engaging in specialized services).

⁶⁴ Louisiana Commission Rehearing Request at 3.

⁶⁵ Arkansas/Mississippi Commissions Rehearing and Clarification Request at 9 (quoting Transfer Order, 168 FERC ¶ 61,207 at P 51).

The Commission orders:

(A) The requests for rehearing of the Transfer Order are hereby denied, as discussed in the body of this order.

(B) The Arkansas/Mississippi Commissions' request for clarification is hereby granted in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.