

172 FERC ¶ 61,056  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Louisiana Public Service Commission

Docket No. EL19-50-001

v.

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

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued July 16, 2020)

1. On February 27, 2019, the Louisiana Public Service Commission (Louisiana Commission) filed, pursuant to sections 205, 206, 306, and 309 of the Federal Power Act (FPA)<sup>1</sup> and Rules 206 and 207 of the Commission's Rules of Practice and Procedure,<sup>2</sup> a complaint (2019 Complaint) against Entergy Corporation (Entergy) and its subsidiaries<sup>3</sup> alleging that certain off-system sales of electric energy by Entergy Services to third-party power marketers and others for the benefit of Entergy Arkansas violated the provisions of a generation and transmission pooling arrangement (System Agreement).

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<sup>1</sup> 16 U.S.C. §§ 824d, 824e, 825e, 825h (2018).

<sup>2</sup> 18 C.F.R. §§ 385.206, 385.207 (2019).

<sup>3</sup> These subsidiaries are Entergy Arkansas, LLC (Entergy Arkansas), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, LLC (Entergy Mississippi), Entergy New Orleans, LLC (Entergy New Orleans), and Entergy Texas, Inc. (Entergy Texas) (collectively, Operating Companies) and Entergy Services, LLC (Entergy Services).

2. On November 21, 2019, the Commission denied the 2019 Complaint.<sup>4</sup> On December 20, 2019, the Louisiana Commission filed a request for rehearing of the 2019 Complaint Order.

3. Pursuant to *Allegheny Defense Project v. FERC*,<sup>5</sup> the rehearing request filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a) of the Federal Power Act (FPA),<sup>6</sup> however, we are modifying the discussion in the 2019 Complaint Order and continue to reach the same result in this proceeding, as discussed below.<sup>7</sup>

## I. Background

### A. Entergy System Agreement

4. The System Agreement was a 1982 contract that provided for the planning and operations of the Operating Companies' generation and bulk transmission facilities on a coordinated, single-system basis.<sup>8</sup> Service Schedules MSS-1 through MSS-8 to the System Agreement governed the basis for compensation for the use of facilities and for the capacity and energy provided or supplied by one or more Operating Companies under

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<sup>4</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, 169 FERC ¶ 61,113 (2019) (2019 Complaint Order).

<sup>5</sup> *Allegheny Defense Project v. FERC*, No. 17-1098 (D.C. Cir. June 30, 2020).

<sup>6</sup> 16 U.S.C. § 825l(a) (2018) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

<sup>7</sup> *Allegheny Defense Project*, slip op. at 30. The Commission is not changing the outcome of the 2019 Complaint Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

<sup>8</sup> Entergy Arkansas withdrew from the System Agreement effective December 18, 2013 and Entergy Mississippi withdrew effective November 7, 2015. On December 29, 2015, the Commission approved a settlement agreement filed on August 14, 2015 that terminated the System Agreement (2015 Settlement Agreement) effective August 31, 2016. See *Entergy Ark., Inc.*, 153 FERC ¶ 61,347 (2015) (2015 Settlement Agreement Order).

the System Agreement, and contained formulas providing for the allocation of costs and revenues among the Operating Companies.

**B. Docket No. EL09-61-000 Complaint**

5. On June 29, 2009, the Louisiana Commission filed a complaint (2009 Complaint) in Docket No. EL09-61-000 against Entergy alleging that certain sales by Entergy Services on behalf of Entergy Arkansas to third-party power marketers and other parties that are not members of the System Agreement<sup>9</sup> were imprudent and violated the terms of the System Agreement. The Louisiana Commission alleged that these sales: (1) violated the provision of the System Agreement that prohibits sales of excess capacity and energy to third parties by individual Operating Companies absent an offer of a right of first refusal to the other Operating Companies; (2) violated the provisions of the System Agreement that allocate the energy generated by System resources; (3) imprudently denied the System and its ultimate customers the benefits of low-cost System generating capacity; and (4) imprudently impaired a Commission-ordered remedy to ensure rough equalization of production costs among the Operating Companies.<sup>10</sup>

6. The Commission set the complaint for hearing and settlement judge procedures and, in Opinion No. 521,<sup>11</sup> the Commission determined that Entergy Arkansas had authority to make the Opportunity Sales under the System Agreement but that Entergy had violated the System Agreement by including the sales in Entergy Arkansas' native load under System Agreement section 30.03 and allocating low cost energy to those sales instead of allocating higher cost energy as "Sales to Others" under System Agreement section 30.04. The Commission established hearing procedures to determine refunds and on April 21, 2016, in Opinion No. 548,<sup>12</sup> the Commission required a further hearing to determine refunds and required that Entergy re-run the Intra-System Bill to determine damages from the Opportunity Sales.

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<sup>9</sup> These sales were referred to as "Opportunity Sales" in that proceeding.

<sup>10</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, 129 FERC ¶ 61,205, at P 5 (2009).

<sup>11</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 521, 139 FERC ¶ 61,240 (2012) (Phase I).

<sup>12</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 548, 155 FERC ¶ 61,065 (2016).

7. On October 18, 2018, the Commission issued Opinion No. 565<sup>13</sup> finding, as relevant here, that two of the System Agreement violations alleged by the Louisiana Commission were outside the scope of the damages proceeding. First, the Commission found that sales from Entergy Arkansas' share of the Grand Gulf nuclear facility<sup>14</sup> for January through September 2000 were already accounted for as Joint Account Sales (sales made on behalf of all the Operating Companies collectively) under section 30.04 of the System Agreement and were not improperly allocated under section 30.03 and thus did not belong in the calculation of damages caused by the Opportunity Sales.<sup>15</sup> The Commission found the issue of whether Entergy Arkansas was over-compensated for energy to supply the Grand Gulf sales from January through September 2000, resulting in harm to the other Operating Companies, to be beyond the scope of the damages proceeding.<sup>16</sup> Second, concerning Opportunity Sales made on behalf of Entergy Arkansas that Entergy had subsequently converted, in part, to Joint Account Sales because Entergy Arkansas did not have enough resources to fully source those sales as Opportunity Sales, the Commission affirmed, on other grounds, the Presiding Judge's rejection of the Louisiana Commission's claim that those Opportunity Sales caused harm that should be accounted for as part of the damages, finding the Louisiana Commission's claims also to be beyond the scope of the damages proceeding.

### C. 2019 Complaint

8. In the 2019 Complaint, the Louisiana Commission argued that: (1) Entergy made sales from Entergy Arkansas' Grand Gulf Retained Share,<sup>17</sup> from January through

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<sup>13</sup> *La. Pub. Serv. Comm'n v. Entergy Corp.*, Opinion No. 565, 165 FERC ¶ 61,022 (2018) (Phase III or damages proceeding).

<sup>14</sup> Grand Gulf is a nuclear generating unit owned by System Energy Resources, Inc., an Entergy affiliate. Four of the Operating Companies, including Entergy Arkansas, purchased capacity from Grand Gulf in fixed percentages known as "retained shares."

<sup>15</sup> Opinion No. 565, 165 FERC ¶ 61,022 at PP 102-104.

<sup>16</sup> *Id.* PP 104-107.

<sup>17</sup> Pursuant to a settlement agreement approved by the Arkansas Public Service Commission (Arkansas Commission) on September 9, 1985, Entergy Arkansas is authorized to include its allocated portion of Grand Gulf in retail rates, with the exception of a carved out portion of the allocated share of which Entergy Arkansas is not allowed to recover actual costs in retail rates (Grand Gulf Retained Share). Instead, Entergy Arkansas is authorized by the Arkansas Commission to sell the Grand Gulf Retained Share to third parties and, in the event that Entergy Arkansas does not sell the

September 2000, that violated cost provisions in the System Agreement for determining the reimbursement due for generating electricity for off-system sales, denied Entergy system customers the benefit of correctly-calculated margins earned on the off-system sales, and harmed Entergy system customers by denying them the benefit of capacity that they supported through FERC cost allocation (2000 Retained Share Sales); and (2) Entergy imprudently made off-system sales, originally made as Opportunity Sales but then later converted to Joint Account Sales, from 2000 to 2005, and required Entergy system customers to absorb the cost of uneconomic sales made so that stockholders could profit on off-system Opportunity Sales made for the account of Entergy Arkansas in violation of the System Agreement (Packaged Sales).<sup>18</sup>

**D. Responsive Pleadings**

9. On March 19, 2019, Entergy Services filed an answer on behalf of itself and the Operating Companies. Relevant here, Entergy Services argued that the Commission should dismiss the 2019 Complaint because the Louisiana Commission waived its claims in the 2015 Settlement Agreement that terminated the Entergy System Agreement.<sup>19</sup> Entergy Services contends that the parties to the 2015 Settlement Agreement waived any claims related to the System Agreement not filed and served as of the time of the filing of the 2015 Settlement Agreement.<sup>20</sup>

10. Accordingly, Entergy Services argued the Louisiana Commission's claims must be dismissed because they arise out of and relate to the System Agreement, pertain to the manner in which Entergy Services accounted for certain sales pursuant to the System Agreement, and because the Louisiana Commission first raised the issues that are the basis of the 2019 Complaint over a year after the 2015 Settlement Agreement was filed on August 14, 2015. Entergy Services argued that, contrary to the Louisiana Commission's assertion that it previously raised these claims in the 2009 Complaint, it was not until the Louisiana Commission made its direct and rebuttal cases in Phase III of the Docket No. EL09-61 proceeding (filed on November 18, 2016 and March 24, 2017, respectively)

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Grand Gulf Retained Share to third parties, Entergy Arkansas has the right to sell the energy to Entergy Arkansas' retail customers at avoided cost. *See* 2019 Complaint Order, 169 FERC ¶ 61,113 at P 6 n.13.

<sup>18</sup> 2019 Complaint at 17-33.

<sup>19</sup> Entergy Services March 19, 2019 Answer at 1, 5-7 (citing Settlement Agreement Order, 153 FERC ¶ 61,347).

<sup>20</sup> *Id.* at 5 (citing 2015 Settlement Agreement § G(1), Docket No. ER14-75-000, et al. (filed Aug. 14, 2015)). *See infra* P 13 (quoting waiver language).

that the Louisiana Commission argued alleged harm to the Entergy system or System Agreement violations based on the sales at issue in the 2019 Complaint.<sup>21</sup>

11. On April 3, 2019, the Louisiana Commission filed an answer to Entergy Services. The Louisiana Commission argued that Entergy Arkansas was not a party to the 2015 Settlement Agreement<sup>22</sup> and, therefore, the 2015 Settlement Agreement does not exonerate Entergy Arkansas in this case. The Louisiana Commission stated that it did not allege that the Operating Companies that were Settling Parties to the 2015 Settlement Agreement violated the System Agreement but that the 2019 Complaint makes clear that these parties and their customers were the victims of the violation. The Louisiana Commission also argued that, even if the 2015 Settlement Agreement did apply in this case, the 2015 Settlement Agreement excludes disputes concerning cost allocations as the agreement provided that “[t]his Settlement Agreement shall have no effect on cost allocation disputes affecting costs incurred prior to January 1, 2016.”<sup>23</sup>

12. Further, the Louisiana Commission argued that the violations concerning the two sets of off-system sales at issue in the 2019 Complaint involve the same substantive violations as the complaint in the Docket No. EL09-61 proceeding.<sup>24</sup> The Louisiana Commission also argued that Entergy’s change of position led to the exclusion of the sales from the Docket No. EL09-61 proceeding but that this did not happen until after the approval of the 2015 Settlement Agreement, which means the 2015 Settlement Agreement could not apply to those sales.<sup>25</sup> The Louisiana Commission argued that, in the event the Commission determined that the 2015 Settlement Agreement applies in this case, the Commission should

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<sup>21</sup> *Id.* at 6.

<sup>22</sup> The Settling Parties to the 2015 Settlement Agreement include: Entergy Services, Entergy Texas, Entergy Louisiana, Entergy Gulf States, Louisiana, L.L.C., Entergy New Orleans, the Louisiana Commission, the Council for the City of New Orleans, and the Public Utility Commission of Texas. *See* 2015 Settlement Agreement at n.1.

<sup>23</sup> Louisiana Commission April 3, 2019 Answer at 2, 5 (citing 2015 Settlement Agreement § G(2), Docket No. ER14-75-000, *et al.* (filed Aug. 14, 2015)).

<sup>24</sup> *Id.* at 4-6 (citing 2015 Settlement Agreement § G(1), Docket No. ER14-75-000, *et al.* (filed Aug. 14, 2015)).

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

apply the doctrine of equitable estoppel to prevent Entergy from changing positions after inducing reliance on its prior position.<sup>26</sup>

13. On May 7, 2019, Entergy Services filed a reply. On May 14, 2019, the Louisiana Commission filed a reply to that reply.

**E. 2019 Complaint Order**

14. In the 2019 Complaint Order, the Commission found that the 2015 Settlement Agreement barred the Louisiana Commission from raising the claims alleged in the 2019 Complaint and therefore denied the 2019 Complaint.<sup>27</sup> Specifically, the Commission determined that the Louisiana Commission's claims were barred by the waiver and release provision section G(1) of the 2015 Settlement Agreement, which provides as follows:

The Settling Parties irrevocably waive and release any rights, claims, remedies, or causes of action they may have against any other Settling Party arising out of or relating to the System Agreement that are not filed and served upon the applicable parties as of the filing of the Settlement Agreement, including but not limited to any claims or causes of action that would seek to extend any System Agreement obligations beyond the System Agreement Termination Date; provided, however, that nothing herein shall bar any action or proceeding to enforce the terms of this Settlement Agreement . . .<sup>28</sup>

Applying this provision, the Commission found that the 2015 Settlement Agreement barred the 2019 Complaint because: (1) the Louisiana Commission, as a Settling Party, filed the 2019 Complaint against another Settling Party; (2) the 2019 Complaint raised claims, remedies, or causes of action arising out of or relating to the System Agreement; and (3) the Louisiana Commission did not file and serve the claims, remedies, or causes

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<sup>26</sup> *Id.* at 10-11 (citing *New Hampshire v. Maine*, 532 U.S. 742 (2001); *Great Earth Cos., Inc. v. Simons*, 288 F.3d 878 (6th Cir. 2002); *Meyerson v. Werner*, 683 F.2d 723 (2d Cir. 1982)).

<sup>27</sup> 2019 Complaint Order, 169 FERC ¶ 61,113 at PP 37-46.

<sup>28</sup> 2015 Settlement Agreement § G(1), Docket No. ER14-75-000, et al. (filed Aug. 14, 2015).

of action on the applicable parties as of the August 14, 2015 filing of the 2015 Settlement Agreement.<sup>29</sup>

15. More specifically, the Commission noted that the Louisiana Commission admitted it was a Settling Party to the 2015 Settlement Agreement and that the 2019 Complaint had been filed against multiple other Entergy companies that were Settling Parties to the 2015 Settlement Agreement. Further, the Commission found that Entergy Services, a signatory to the 2015 Settlement Agreement, had acted as Entergy Arkansas' agent at the time of the disputed sales. Accordingly, the Commission found that the Louisiana Commission filed its cause of action against other Settling Parties, as described in section G(1) of the 2015 Settlement Agreement.<sup>30</sup>

16. The Commission also found that the 2000 Retained Share Sales and the Packaged Sales "aris[e] out of or relat[e] to the System Agreement" because the sales were governed by the System Agreement and Entergy Services made the sales pursuant to the System Agreement.<sup>31</sup>

17. Further, the Commission found that the Louisiana Commission did not file and serve the claims it made in the 2019 Complaint as of the August 14, 2015 filing date of the 2015 Settlement Agreement. The Commission found the language in the 2009 Complaint relied on by the Louisiana Commission too vague to reasonably represent the 2000 Retained Share Sales and the Packaged Sales claims.<sup>32</sup>

18. The Commission was not persuaded by the Louisiana Commission's equitable estoppel argument that Entergy misrepresented the nature of the 2000 Retained Share Sales in the Docket No. EL09-61 proceeding. The Commission found this argument to

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<sup>29</sup> 2019 Complaint Order, 169 FERC ¶ 61,113 at P 38.

<sup>30</sup> *Id.* P 39 (citing 2019 Complaint at 7 (explaining Entergy Services' role as agent for the parties to the System Agreement); Entergy Services March 19, 2019 Answer at n.1, 8-11 (describing Entergy Services' accounting of the disputed sales)).

<sup>31</sup> *Id.* P 40 (noting that the Louisiana Commission itself argued that the sales violated the System Agreement and the Louisiana Commission seeks a ruling from the Commission that the sales "violated . . . provisions of the System Agreement" and "improperly denied the [Entergy] System . . . the benefits of off-System sales of low-cost System generating capacity [required by the System Agreement]," and Entergy Services "imposed harm on System customers by [making the Packaged Sales]." (citing 2019 Complaint at 1-2)).

<sup>32</sup> *Id.* P 41.



be outside the scope of this proceeding. Further, the Commission had previously rejected a similar argument in Phase III of the Docket No. EL09-61 proceeding.<sup>33</sup>

19. Finally, the Commission was not persuaded by the Louisiana Commission's argument that, even if the 2015 Settlement Agreement applied here, it excluded disputes concerning cost allocation. The Commission found that the Louisiana Commission's expansive reading of the cost allocation exclusion would render the general waiver and release of all claims relating to the System Agreement meaningless.<sup>34</sup>

## II. Request for Rehearing

20. The Louisiana Commission argues that the 2019 Complaint Order inadequately explained how the 2015 Settlement Agreement protected Entergy Arkansas.<sup>35</sup> The Louisiana Commission reiterates its prior arguments that Entergy Arkansas was not a party to the 2015 Settlement Agreement and that Entergy Services did not act as an agent for Entergy Arkansas with respect to the 2015 Settlement Agreement.<sup>36</sup> The Louisiana Commission argues that the other Operating Companies were injured by Entergy Arkansas as well and would receive damages on behalf of their ratepayers.<sup>37</sup> The Louisiana Commission claims that the omission of Entergy Arkansas from the 2015 Settlement Agreement showed that Entergy Services was not acting as an agent for Entergy Arkansas for purposes of the agreement.<sup>38</sup> The Louisiana Commission argues that Entergy Arkansas cannot be protected by the 2015 Settlement Agreement because it never agreed to be bound by it.<sup>39</sup>

21. The Louisiana Commission next argues that the 2019 Complaint Order improperly dismissed its equitable estoppel arguments.<sup>40</sup> The Louisiana Commission states that judicial and equitable estoppel prevent Entergy from changing positions after inducing

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<sup>33</sup> *Id.* P 42 (citing Opinion No. 565, 165 FERC ¶ 61,022 at PP 106, 128).

<sup>34</sup> *Id.* PP 43-44.

<sup>35</sup> Request for Rehearing at 6.

<sup>36</sup> *Id.* at 7-9.

<sup>37</sup> *Id.* at 9.

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

<sup>39</sup> *Id.* at 10.

<sup>40</sup> *Id.* at 10-15.

reliance on its prior position.<sup>41</sup> The Louisiana Commission states that it was prejudiced by its reliance on Entergy's inconsistent representation that the 2000 Retained Share Sales were Opportunity Sales.<sup>42</sup> Specifically, the Louisiana Commission argues that during Phase I of the Docket No. EL09-61 proceeding, in testimony and responses to data requests, Entergy identified the Opportunity Sales and included the 2000 Retained Share Sales.<sup>43</sup> The Louisiana Commission states that then, during Phase III of the Docket No. EL09-61 proceeding, Entergy changed its position and argued that the 2000 Retained Share Sales should be excluded from the remedy because they were not Opportunity Sales.<sup>44</sup> The Louisiana Commission claims that if it had known that Entergy would change its position and exclude the 2000 Retained Share Sales from Opportunity Sales, then the Louisiana Commission would have brought this suit prior to the 2015 Settlement Agreement.<sup>45</sup>

22. The Louisiana Commission further argues that the 2015 Settlement Agreement cannot be applied to preclude the current claim because the agreement was entered into under mutual mistake of fact.<sup>46</sup> The Louisiana Commission states that at the time of the 2015 Settlement Agreement all of the parties were under the impression that the 2000 Retained Share Sales were Opportunity Sales, and so did not believe the waiver contained in the 2015 Settlement Agreement would apply to those sales.<sup>47</sup>

23. The Louisiana Commission contends that the 2015 Settlement Agreement cannot be enforced because it was not signed by Entergy Arkansas, Entergy Services or the Arkansas Public Service Commission.<sup>48</sup> The Louisiana Commission claims that the

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 13.

<sup>43</sup> *Id.* at 13-14.

<sup>44</sup> *Id.* at 15.

<sup>45</sup> *Id.* at 13-14.

<sup>46</sup> *Id.* at 16-18.

<sup>47</sup> *Id.* (citing Restatement of Contracts 2d § 152).

<sup>48</sup> *Id.* at 18.

Settlement Agreement is non-binding because it was not unanimous,<sup>49</sup> and as such, the Commission only had the power to approve the settlement based on an independent finding, supported by substantial evidence, that the proposal would establish just and reasonable rates.<sup>50</sup> The Louisiana Commission states that because the letter order approving the settlement only made a general finding that the settlement “appears” to be reasonable, it cannot be enforced, particularly to protect non-parties to the agreement.<sup>51</sup>

24. The Louisiana Commission next claims that the 2019 Complaint Order arbitrarily narrowed the 2015 Settlement Agreement’s exclusion of disputes related to cost allocations.<sup>52</sup> The Louisiana Commission cites the sentence stating that “[t]his Settlement Agreement shall have no effect on cost allocation disputes affecting costs incurred prior to January 1, 2016” as proof of a broad exclusion.<sup>53</sup> The Louisiana Commission argues that this language is, at minimum, ambiguous and as such must be construed against Entergy as the drafter of the agreement.<sup>54</sup>

25. Finally, the Louisiana Commission argues that the 2019 Complaint Order fails to sufficiently explain why the 2009 Complaint does not satisfy the 2015 Settlement Agreement’s exception that preserves claims filed and served before January 1, 2016.<sup>55</sup> The Louisiana Commission argues that the claim necessarily includes the 2000 Retained

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<sup>49</sup> The Louisiana Commission claims that while Entergy Services, Entergy Arkansas and the Arkansas Commission were participants in Docket Nos. ER14-75, et al, they did not join the Settlement Agreement, making it non-unanimous. *Id.*

<sup>50</sup> *Id.* (citing *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 314 (1974) for the proposition that if a proposal lacks unanimity, it may be adopted as a resolution on the merits, if the Commission makes an independent finding supported by substantial evidence on the record as a whole that the proposal will establish just and reasonable rates for the area).

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

<sup>52</sup> *Id.* at 19-20.

<sup>53</sup> *Id.* at 19 (quoting Settlement Agreement § G(2)).

<sup>54</sup> *Id.* at 20 (citing *Royal Ins. Co. of Am. v. Orient Overseas Container Line Ltd.*, 525 F.3d 409, 423 (6th Cir. 2008)).

<sup>55</sup> *Id.* at 21-24.

Share Sales, given that Opinion No. 565 found \$5,380,845 in damages that the Louisiana Commission alleges were attributable to the 2000 Retained Share Sales.<sup>56</sup>

### III. Commission Determination

#### A. Waiver of Claims Against Settling Parties

26. We are not persuaded by the Louisiana Commission's arguments and sustain the result of the 2019 Complaint Order, as discussed below. As the Commission found in the 2019 Complaint Order,<sup>57</sup> the 2015 Settlement Agreement bars the Louisiana Commission from raising the claims in the 2019 Complaint.

27. On rehearing, the Louisiana Commission claims that Entergy Services was not a party to the 2015 Settlement Agreement, and even if it was a party, the Commission failed to explain how this finding provides a legal basis for determining that the 2019 Complaint cannot proceed against Entergy Arkansas.<sup>58</sup> Contrary to the Louisiana Commission's contention,<sup>59</sup> Entergy Services is defined as a Settling Party in the 2015 Settlement Agreement and accompanying filing letter<sup>60</sup> and identified as such in the 2015 Settlement Agreement Order.<sup>61</sup> Further, there is no dispute that the Louisiana Commission is a Settling Party, or that respondents Entergy Louisiana, Entergy

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<sup>56</sup> *Id.* at 23 (citing Opinion No. 565, 165 FERC ¶ 61,022 at P 85).

<sup>57</sup> 2019 Complaint Order, 169 FERC ¶ 61,113 at P 39.

<sup>58</sup> Rehearing Request at 7.

<sup>59</sup> *Id.* at 8 (“The Settlement Agreement also named the “Settling Parties” and neither Entergy Services nor Entergy Arkansas was included.” (citing 2015 Settlement Agreement at 2 n.2)). The Louisiana Commission also repeats its prior argument that Entergy Arkansas is not a Settling Party. Request for Rehearing at 6-10. As discussed below, the presence of other Settling Parties as respondents is sufficient to invoke the waiver and release provision of the 2015 Settlement Agreement. Accordingly, we need not address this question here.

<sup>60</sup> 2015 Settlement Agreement at 2 n.2 (“[Entergy Services] is authorized to represent that the following parties collectively and individually support this Settlement Agreement as in the public interest, and are “Settling Parties”: Entergy Texas, Inc. (“ETI”), Entergy Louisiana, LLC (“ELL”), Entergy Gulf States Louisiana, L.L.C. (“EGSL”), Entergy New Orleans, Inc. (“ENO”) . . . and [Entergy Services].”).

<sup>61</sup> 2015 Settlement Agreement Order, 153 FERC ¶ 61,347 at P 1 n.1 (“The Settling Parties are: Entergy Services, . . .”).

Mississippi, Entergy New Orleans, and Entergy Texas are Settling Parties. The Louisiana Commission, a Settling Party, brought its claim against other Settling Parties. Therefore, we continue to find that the 2019 Complaint is barred in accordance with section G(1) of the 2015 Settlement Agreement.

28. Further, we find that it is irrelevant that Entergy Arkansas was not a Settling Party to the 2015 Settlement Agreement, and are not persuaded by the Louisiana Commission's argument that its "decision to name some Settling Parties in the 2019 Complaint may justify a partial dismissal of those parties, but it does not justify a dismissal against Entergy Arkansas, the company that violated the agreement, or its agent, or Entergy Services."<sup>62</sup> The core issue in the Louisiana Commission's 2019 Complaint is not that the making of the off-system sales at issue was a System Agreement violation, but that the accounting methodology Entergy Services used to allocate the 2000 Retained Share Sales and Packaged Sales among all of the Operating Companies violated the System Agreement.<sup>63</sup> The Louisiana Commission seeks relief in the form of refunds that would be determined by re-calculating and re-allocating the net margins on such transactions.<sup>64</sup> This would result in a re-allocation of costs for all of the Operating Companies, not just Entergy Arkansas.<sup>65</sup> The allocation of the cost of energy produced within the Entergy system, whether it served System load or an off-system sale, involved not only the

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<sup>62</sup> Rehearing Request at 6.

<sup>63</sup> *See, e.g.*, 2019 Complaint at 2 (alleging respondents "violated the provisions of the System Agreement that govern the reimbursement for energy used to supply sales to others for the joint account of the Entergy Operating Companies"); *id.* at 15 (arguing section 30.04 required reimbursement to be at the cost of energy); *id.* at 18 ("Although the 2000 Retained Share Sales were accounted for as Joint Account Sales, an incorrect, inflated energy cost was attributed to them, harming System customers to the same extent, or more, than the Opportunity Sales."); *id.* at 31 ("Entergy's accounting for the Packaged Sales violated the System Agreement"); *see also* Opinion No. 565, 165 FERC ¶ 61,022 at P 104 (finding that the core argument over the 2000 Retained Share Sales was "over what reimbursement Entergy should have made to Entergy Arkansas for the sales under section 30.04"); *cf.* Opinion No. 521, 139 FERC ¶ 61,240 at P 116 (finding the violations alleged "generally concern cost allocation issues, not the antecedent question of Operating Company powers, or lack thereof, under the System Agreement").

<sup>64</sup> *See* 2019 Complaint at 35 (seeking as a remedy for violation of the System Agreement refunds awarded "to the [other Operating Companies] and their ratepayers").

<sup>65</sup> *See id.* If the Commission were to grant this remedy, it is unclear how the Commission could direct those Operating Companies to participate in the remedy without violating the 2015 Settlement Agreement.

Operating Company that produced the energy or made the sale, but all of the Operating Companies together. Accordingly, the Louisiana Commission's claims necessarily implicate the Operating Companies that were parties to the 2015 Settlement Agreement and no claim against Entergy Arkansas can be made separately. Therefore, the waiver and release provisions of the 2015 Settlement Agreement apply to the claims asserted in the 2019 Complaint, regardless of whether Entergy Arkansas was a party to the 2015 Settlement Agreement.

29. Moreover, as noted above, Entergy Services is a Settling Party and its actions are at the center of the Louisiana Commission's allegations. The Louisiana Commission alleges that Entergy Services made the allegedly improper sales at issue,<sup>66</sup> was the party responsible for legal, accounting and regulatory decisions under the System Agreement, and was the party who "performed the dispatch, operation, and planning and billing associated with the generation of electricity on the Entergy [s]ystem."<sup>67</sup> While the sales at issue were made on Entergy Arkansas' behalf, Entergy Arkansas was not responsible under the System Agreement for the accounting and cost allocation that are, again, at the center of the Louisiana Commission's allegations. Thus, the 2019 Complaint fails to state an actionable claim against Entergy Arkansas.<sup>68</sup>

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<sup>66</sup> Request for Rehearing at 8; *see also* Entergy Services March 19, 2019 Answer at n.1, 8-11 (describing Entergy Services' accounting of the disputed sales).

<sup>67</sup> 2019 Complaint at 7.

<sup>68</sup> The 2019 Complaint acknowledges that Entergy Arkansas was permitted to make the 2000 Retained Share Sales. *See* 2019 Complaint at 19 (noting Entergy Arkansas was "permitted to sell the Grand Gulf Retained Share off-System rather than using it to serve Arkansas native load"); *id.* at 25-26 (citing Trial Staff's assessment that "Entergy's decision to price these transactions at avoided cost" was "sanctioned" for retail purposes, but violated System Agreement cost allocation requirements). The 2019 Complaint does suggest that making the Packaged Sales was itself imprudent. *See* 2019 Complaint at 28, 32-33. However, as noted above, the Packaged Sales themselves were made by Entergy Services acting as agent for Entergy Arkansas. Further, even assuming Entergy Arkansas acted imprudently in making the Packaged Sales, such imprudence would only harm its own ratepayers unless the related losses were misallocated across the Entergy system by Entergy Services. *See* 2019 Complaint at 31 (alleging the negative margins from Packaged Sales "should [have been] allocated directly to Entergy Arkansas"). Thus, the proximate cause of the harm to the Louisiana Commission was still the failure of Entergy Services to appropriately allocate the Packaged Sales so that Entergy Arkansas internalized the alleged harm of making the Packaged Sales.

30. Nor do we find it inequitable to deny the 2019 Complaint because it was barred by the 2015 Settlement. In 2015, the Louisiana Commission voluntarily agreed to end all litigation arising out of the System Agreement when it entered into the 2015 Settlement Agreement. The Commission has long held that “[p]reserving the bargains of the parties to the greatest extent possible encourages settlements,” given that “parties would be hesitant to resolve their disputes by settlement if the Commission did not honor these agreements to the greatest extent possible.”<sup>69</sup>

31. For the above reasons, because the Louisiana Commission’s claim is one by a Settling Party against multiple other Settling Parties, it is barred by the broad waiver contained in the 2015 Settlement Agreement. Accordingly, we find that the 2019 Complaint Order properly denied the 2019 Complaint against all parties.

### **B. Estoppel**

32. We are likewise not persuaded by the Louisiana Commission’s equitable and judicial estoppel arguments. The Louisiana Commission states that it was prejudiced by its reliance on Entergy’s inconsistent representation that the 2000 Retained Share Sales were Opportunity Sales.<sup>70</sup> Specifically, the Louisiana Commission argues that during discovery in Phase I of the Docket No. EL09-61 proceeding, Entergy identified the 2000 Retained Share Sales as Opportunity Sales.<sup>71</sup> The Louisiana Commission states that then, during Phase III, Entergy changed its position and argued that the 2000 Retained Share Sales were not Opportunity Sales.<sup>72</sup> The Louisiana Commission claims that if it had known that Entergy would change its position and exclude the 2000 Retained Share Sales from Opportunity Sales, then the Louisiana Commission would have brought this suit prior to the filing of the settlement.<sup>73</sup>

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<sup>69</sup> *El Paso Natural Gas Co.*, 120 FERC ¶ 61,170, at P 38 (2007).

<sup>70</sup> Request for Rehearing at 13 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 156 FERC ¶ 61,202, at P 140 (2016); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 115 FERC ¶ 61,230, at P 33 n.59 (2006)).

<sup>71</sup> *Id.* at 13-14.

<sup>72</sup> *Id.* at 15.

<sup>73</sup> *Id.* at 13-14.

33. We find that judicial estoppel does not apply here.<sup>74</sup> When applied, the doctrine of judicial estoppel prohibits “a party who has prevailed in a judicial forum to take a position in later litigation that is in conflict with the one that was successful in the same or related litigation.”<sup>75</sup> As the Supreme Court has explained, a party must have “succeeded in persuading a court to accept that party’s earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled.”<sup>76</sup> Unless successful in the prior proceeding, “a party’s later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity.”<sup>77</sup> In the Docket No. EL19-50 proceeding, the Commission was never induced to adopt the position that the 2000 Retained Share Sales were Opportunity Sales; to the contrary it only adopted the position that they were not Opportunity Sales,<sup>78</sup> the same posture that respondents take in this proceeding. Therefore, the elements of judicial estoppel are absent here.

34. Equitable estoppel also does not preclude Entergy’s position. The doctrine of equitable estoppel provides that “a party with full knowledge of the facts, which accepts the benefits of a transaction, contract, statute, regulation, or order may not subsequently take an inconsistent position to avoid the corresponding obligations or effects.”<sup>79</sup> There

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<sup>74</sup> *Ky. Utils. Co.*, 62 FERC ¶ 61,097, at 61,705 (1993) (noting that the “doctrine of judicial estoppel has . . . never been applied by the Commission”).

<sup>75</sup> *KN Energy, Inc.*, 36 FERC ¶ 63,040, at 65,122 (1986) (finding judicial estoppel does not apply where a party is “not successful in inducing the court to adopt its position”).

<sup>76</sup> *New Hampshire*, 532 U.S. at 750 (internal citations and quotation marks omitted).

<sup>77</sup> *Id.* at 750-751 (internal citations and quotation marks omitted).

<sup>78</sup> Opinion No. 565, 165 FERC ¶ 61,022 at PP 103-104 (holding that “that the appropriate treatment of the [2000 Retained Share Sales] is that they do not belong in the calculation of damages because, unlike the Opportunity Sales, [2000 Retained Share Sales] at issue were not improperly allocated under section 30.03” and were Joint Account Sales).

<sup>79</sup> *First Am. Disc. Corp. v. Commodity Futures Trading Comm’n*, 222 F.3d 1008, 1016 (D.C. Cir. 2000); *see also Cassidy v. Owen*, 533 A.2d 253, 255 (D.C. Ct. App. 1987) (describing elements of an equitable estoppel claim as showing “(1) conduct amounting to a false representation or concealment of material fact; (2) made with actual or constructive knowledge of the true facts; and (3) with the intention that another person act in reliance upon it; (4) the other person’s lack of knowledge and of the means of



must be a showing that the false representation was made with “a purpose to invite action by the party to whom the representation was made, ignorance of the true facts by that party, and reliance.”<sup>80</sup>

35. Here, the Louisiana Commission’s 2019 Complaint did not allege that Entergy knew that its representations about the 2000 Retained Share Sales in Phase I of the Docket No. EL19-50 proceeding were false when made. The Louisiana Commission has also failed to allege facts suggesting Entergy’s representations during litigation in 2010<sup>81</sup> were made to induce the Louisiana Commission to enter into a Settlement Agreement in 2015 with Entergy Services and the Operating Companies; if anything, the multiyear gap between the 2010 litigation and the 2015 Settlement Agreement would seem to suggest otherwise.

36. Further, even if equitable estoppel did apply, it is not clear that the broad relief sought by the Louisiana Commission would be appropriate. As the authorities cited by the Louisiana Commission suggest, equitable estoppel is typically invoked to preclude a party from changing positions.<sup>82</sup> Here, Entergy’s original position was that the 2000 Retained Share Sales were Opportunity Sales. However, precluding Entergy from changing that position now would not assist the Louisiana Commission’s case, given that

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knowledge concerning the truth of the representation; (5) and his reliance upon the misrepresentation; (6) causing him to act so as to change his position prejudicially”).

<sup>80</sup> *ATC Petroleum, Inc. v. Sanders*, 860 F.2d 1104, 1111 (D.C. Cir. 1988) (citation omitted); *see also Sw. Power Pool, Inc.*, 160 FERC ¶ 61,115, at P 77 (2017) (describing the elements of equitable estoppel as “false representation, a purpose to invite action by the party to whom the representation was made, ignorance of the true facts by that party, reliance, and unjust enrichment”).

<sup>81</sup> Request for Rehearing at 15 (noting Entergy’s contrary “position taken during the first [p]hase of this proceeding in 2010”).

<sup>82</sup> *See id.* at 11 (citing *Sky Cable, LLC v. Direct TV, Inc.*, 886 F.3d 375, 393 (4th Cir. 2018) for the proposition that “[t]he court applied equitable estoppel to preclude consideration of a party’s changed position”); *id.* at 12 (citing *New Hampshire v. Maine*, 532 U.S. 742 for the proposition that “the Supreme Court applied judicial estoppel to prevent a party from changing positions after inducing reliance on the prior position”); *id.* at 13 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs*, 115 FERC ¶ 61,230, at P 33, which suggests parties should be prevented “from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding”).

the 2019 Complaint is predicated on the assumption that Entergy's new representations are correct, i.e., that the 2000 Retained Share Sales were not Opportunity Sales.

37. For the above reasons, we continue to find that the Louisiana Commission's arguments related to judicial and equitable estoppel do not preclude denial of the 2019 Complaint.

### C. Mutual Mistake

38. We find the Louisiana Commission's argument with respect to mutual mistake of fact<sup>83</sup> is waived because it is being raised for the first time on rehearing.<sup>84</sup> The Commission has "long held that it will reject new arguments on rehearing that could have been made originally but were not. Because other parties are precluded — pursuant to Rule 713(d)(1) of the Commission's Rules of Practice and Procedure<sup>85</sup> — from filing answers to requests for rehearing, allowing [parties] to introduce new arguments at the rehearing stage raises concerns of fairness and due process."<sup>86</sup> Here, the Louisiana Commission had ample opportunity to raise mutual mistake arguments in its April 3, 2019 answer to Entergy Services' answer, and again in the Louisiana Commission's May 14, 2019 answer to Entergy Services' May 7, 2019 answer, but did not. Thus, we find that the Louisiana Commission's mutual mistake arguments were waived. Regardless, we are not persuaded that mutual mistake applies here. For there to be a mutual mistake of fact, "a mistake 'must be common to both parties and by reason of it each has done what neither intended,' and the fact must be a material fact that forms the basis for the contract."<sup>87</sup> Here, the Louisiana Commission has presented no evidence that the parties' shared impression that the 2000 Retained Share Sales were Opportunity Sales was a material fact that formed the basis of the 2015 Settlement Agreement.

39. Nor are we persuaded by the Louisiana Commission's claims that the approval of the 2015 Settlement Agreement was improper because, without unanimity of the parties to the proceeding, the Commission could only approve the 2015 Settlement Agreement

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<sup>83</sup> Request for Rehearing at 16-18.

<sup>84</sup> *Omaha Pub. Power Dist.*, 164 FERC ¶ 61,238, at P 11 (2018).

<sup>85</sup> 18 C.F.R. § 385.713(d)(1) (2019).

<sup>86</sup> *Omaha Pub. Power Dist.*, 164 FERC ¶ 61,238 at P 11 (citing *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 16 (2016)).

<sup>87</sup> *Transwestern Pipeline Co. v. Southern California*, 102 FERC ¶ 61,127, at P 19 (2003) (citations omitted).

after finding, supported by substantial evidence, that it was just and reasonable.<sup>88</sup> The Louisiana Commission states “the [2015] Settlement Agreement cannot be enforced, particularly to protect non-parties to the agreement.”<sup>89</sup> The Louisiana Commission’s attempt to relitigate the 2015 Settlement Agreement Order, which it previously supported,<sup>90</sup> is an improper collateral attack<sup>91</sup> on the 2015 Settlement Agreement Order and thus does not persuade us to modify the findings in the 2019 Complaint Order. Even if these claims were not barred, we would disagree with the Louisiana Commission’s claims. The 2015 Settlement Agreement was not contested. Even if not all parties to the proceeding were signatories to the 2015 Settlement Agreement, the Commission acted in accordance with precedent in approving the uncontested settlement by finding that it “appears to be fair and reasonable and in the public interest.”<sup>92</sup> Rule 602 of the Commission’s Rules of Practice and Procedure looks at only whether a settlement is contested, not whether it is unanimous among participants and in fact provides mechanisms for severing contesting parties or issues.<sup>93</sup> No additional finding was necessary for the Commission to approve or enforce the 2015 Settlement Agreement and the Louisiana Commission provides no basis to find otherwise.<sup>94</sup>

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<sup>88</sup> Request for Rehearing at 18.

<sup>89</sup> *Id.*

<sup>90</sup> 2015 Settlement Agreement Order, 153 FERC ¶ 61,347 at P 1 n.1.

<sup>91</sup> *ISO New England Inc.*, 138 FERC ¶ 61,238, at P 17 (2012) (“a collateral attack is an attack on a judgment in a proceeding other than a direct appeal, and is generally prohibited” (internal citations omitted)).

<sup>92</sup> *See* 18 C.F.R. § 385.602(g)(3) (2019) (“An uncontested offer of settlement may be approved by the Commission upon a finding that the settlement appears to be fair and reasonable and in the public interest.”); *see, e.g., Southern LNG Co., LLC*, 135 FERC ¶ 61,153, at P 20 (2011) (explaining that the Commission “appl[ies] the standard set forth in section 602(g)(3) of our settlement rules for approval of uncontested offers of settlement”).

<sup>93</sup> 18 C.F.R. § 385.602(h); *City of Anaheim v. Cal. Ind. Sys. Operator Corp.*, 101 FERC ¶ 61,392 (2002).

<sup>94</sup> We note that *Mobil Oil Corp.*, the case relied on by the Louisiana Commission, involved a contested settlement. *See Mobil Oil Corp. v. FPC*, 417 U.S. 283.

**D. Section G(2)**

40. We are not persuaded by the Louisiana Commission's claims that the 2019 Complaint Order arbitrarily narrowed the 2015 Settlement Agreement's exclusion of disputes related to cost allocations.<sup>95</sup> The Louisiana Commission again cites the sentence stating that "[t]his Settlement Agreement shall have no effect on cost allocation disputes affecting costs incurred prior to January 1, 2016" as proof of a broad exclusion.<sup>96</sup> The Louisiana Commission argues that this language is, at minimum, ambiguous and as such must be construed against Entergy as the drafter of the agreement.<sup>97</sup>

41. The Commission "must review the entire agreement and particular words should be considered, not as if isolated from the context, but in light of the obligations as a whole and the intention of the parties as manifested therein."<sup>98</sup> To determine whether a provision is ambiguous, the Commission considers whether a provision "could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business."<sup>99</sup> The Commission properly performed such an analysis in the 2019 Complaint Order.<sup>100</sup> As discussed there, "a reasonable reading of section G(2) is that it pertains to the bandwidth calculation and the sentence cited by the Louisiana Commission clarifies that the Settling Parties would not be precluded from pursuing cost allocation disputes" related to a bandwidth calculation compliance filing that had not yet been submitted at the time of the 2015 Settlement Agreement.<sup>101</sup> By contrast, the Louisiana Commission's interpretation of section G(2), as carving out all cost allocation disputes, would render section G(1) — a general waiver and release of all claims relating to the System Agreement — meaningless. We do not find such a reading

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<sup>95</sup> Request for Rehearing at 19-20.

<sup>96</sup> *Id.* at 19 (quoting Settlement Agreement § G(2)).

<sup>97</sup> *Id.* at 20 (citing *Royal Ins. Co. of Am. v. Orient Overseas Container Line Ltd.*, 525 F.3d 409, 423 (6th Cir. 2008)).

<sup>98</sup> *Xcel Energy Servs. Inc. v. Am. Transmission Co., LLC*, 140 FERC ¶ 61,058, at P 60 (2012).

<sup>99</sup> *Id.* (quoting *Bank of N.Y. v. First Millennium, Inc.*, 607 F.3d 905, 914 (2d Cir. 2010)).

<sup>100</sup> 2019 Complaint Order, 169 FERC ¶ 61,113 at PP 43-45.

<sup>101</sup> *Id.* at 45.

plausible and decline to find ambiguity where there is none. Thus, we continue to find that section G(2) of the 2015 Settlement does not preserve the current claim.

**E. Preservation Under Docket No. EL09-61**

42. Finally, we are not persuaded by the Louisiana Commission's argument that the 2019 Complaint Order failed to sufficiently explain why the 2009 Complaint does not satisfy the 2015 Settlement Agreement's provision preserving claims filed and served before January 1, 2016.<sup>102</sup> The Louisiana Commission argues that the 2009 Complaint necessarily includes the 2000 Retained Share Sales, given that Opinion No. 565 found \$5,380,845 in damages that the Louisiana Commission alleges were attributable to the 2000 Retained Share Sales.<sup>103</sup>

43. We disagree. Opinion No. 565 expressly ruled that the claims presented in the 2019 Complaint were outside the scope of the 2009 Complaint.<sup>104</sup> Further, the broad waiver contained in section G(1) of the 2015 Settlement Agreement excepts only "rights, claims, remedies, or causes of action" that were made before January 1, 2016. In Docket No. EL09-61, complainants alleged that Entergy Arkansas had off-system sales that were improperly accounted for by Entergy under section 30.03(a) of the System Agreement rather than as "sales to others" under section 30.04.<sup>105</sup> The present proceeding relates to what reimbursement should have been made to Entergy Arkansas for the 2000 Retained Share Sales under section 30.04 of the System Agreement.<sup>106</sup> The fact that the 2000 Retained Share Sales may have been mistakenly misidentified as Opportunity Sales in an early stage of the Docket No. EL09-61 proceeding does not transform that proceeding into one that preserves a claim relating to the issue of what reimbursement should have been made to Entergy Arkansas for the 2000 Retained Share Sales under section 30.04 of

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<sup>102</sup> Request for Rehearing at 21-24.

<sup>103</sup> *Id.* at 23 (citing Opinion No. 565, 165 FERC ¶ 61,022 at P 85).

<sup>104</sup> Opinion No. 565, 165 FERC ¶ 61,022 at P 104.

<sup>105</sup> Opinion No. 521, 139 FERC ¶ 61,240 at PP 120-129.

<sup>106</sup> 2019 Complaint at 2 (alleging respondents "violated the provisions of the System Agreement that govern the reimbursement for energy used to supply sales to others for the joint account of the Entergy Operating Companies"); *id.* at 15 (arguing that section 30.04 required reimbursement to be at the cost of energy); *see also* Opinion No. 565, 165 FERC ¶ 61,022 at P 104 (finding that the core argument over the 2000 Retained Share Sales was "over what reimbursement Entergy should have made to Entergy Arkansas for the sales under section 30.04").

the System Agreement. Thus, we continue to find that the Louisiana Commission's complaint in Docket No. EL09-61 did not preserve the current claim under the 2015 Settlement Agreement.<sup>107</sup>

The Commission orders:

In response to the Louisiana Commission's request for rehearing, the 2019 Complaint Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>107</sup> 2019 Complaint Order, 169 FERC ¶ 61,113 at P 41.