

138 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Louisiana Public Service Commission

Docket No. EL11-63-000

v.

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

ORDER ON COMPLAINT

(Issued January 19, 2012)

1. On September 14, 2011, pursuant to sections 206 and 306 of the Federal Power Act (FPA) and Rule 206 of the Commission's Rules of Practice and Procedure,¹ the Louisiana Public Service Commission (Louisiana Commission) filed a complaint (Complaint) against Entergy Corporation and seven affiliates.² The Complaint raises concerns related to Entergy Corporation's allocation of the cost of transmission upgrades at the Ouachita Generating Station (Ouachita Plant) in Louisiana and the allocation of the benefits from the settlement of a contractual dispute between Entergy Arkansas and Union Pacific Corporation (Union Pacific) over the delivery of coal supplies to two

¹ 16 U.S.C. §§ 824e, 825e (2006); 18 C.F.R. § 385.206 (2011).

² The affiliates include Entergy Services, Inc. (Entergy) and six Operating Companies: Entergy Louisiana, LLC (Entergy Louisiana), Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), and Entergy Texas, Inc. (collectively, Operating Companies).

generation units in Arkansas (Union Pacific Settlement). In this order, we dismiss as premature in part and deny in part the Complaint.

I. Background

2. The Operating Companies plan, construct, and operate their generation and bulk transmission facilities as a single, integrated electric system pursuant to the Entergy System Agreement (System Agreement). The System Agreement is a Commission-accepted rate schedule that manages integrated generation and bulk transmission operations for the Operating Companies and allocates costs and benefits among them. Service Schedule MSS-2 sets out the basis for equalizing the ownership costs of bulk transmission investments, which are generally 230 kilovolts (kV) or above. The System Agreement also empowers and obligates an Operating Committee made up of representatives of the Operating Companies, Entergy, and Entergy Corporation to administer the System Agreement. In Opinion Nos. 480 and 480-A, the Commission accepted a numerical bandwidth of + / - 11 percent of the Entergy system average production cost in order to maintain the rough equalization of production costs among the Operating Companies.³ Service Schedule MSS-3 sets forth the bandwidth remedy provisions and provides a method for pricing energy exchanged among the Operating Companies. The Operating Companies also have an open access transmission tariff (Entergy OATT) on file with the Commission.

A. The Ouachita Plant

3. The Ouachita Plant is a three-unit, 789 MW, natural gas-fired generating facility located near Sterlington, Louisiana in Entergy Louisiana's service territory.⁴ On September 30, 2008, Entergy Arkansas purchased 100 percent of the Ouachita Plant and sold one-third of its capacity to Entergy Gulf States Louisiana.⁵ On November 30, 2009, Entergy Arkansas sold one unit of the Ouachita Plant to Entergy Gulf States Louisiana.⁶

³ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 136, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005).

⁴ *See* Louisiana Commission's September 14, 2011 Complaint, Docket No. EL11-63-000 at 10 (Complaint); Entergy October 6, 2011 Answer, Docket No. EL11-63-000, at 9 (Entergy Answer).

⁵ *See* Complaint at 10; Entergy Answer at 9.

⁶ *See* Entergy Answer at 9.

The Louisiana Commission approved Entergy Gulf States Louisiana's purchase of its one-third share in the facility on a life-of-plant basis.⁷

4. Entergy's System Planning and Operations organization submitted a request for long-term network transmission service from the Ouachita Plant on behalf of all the Operating Companies from June 1, 2007 to June 1, 2057.⁸ On November 17, 2007, an Independent Coordinator of Transmission (ICT) released a Facilities Study estimating that it would cost approximately \$70 million for required transmission upgrades to qualify the Ouachita Plant as a network resource for the Operating Companies. Some of the transmission upgrades have been placed into service and the remaining upgrades will be completed in 2012 and 2013. The identified transmission upgrades are located in Entergy Louisiana's and Entergy Mississippi's service areas. Entergy Corporation assigned the construction duties for the upgrades to Entergy Louisiana and Entergy Mississippi, and the two Operating Companies assumed the related costs.⁹

B. The Union Pacific Settlement

5. The Union Pacific Settlement, reached in 2008, resolved a lawsuit between Entergy Arkansas and Union Pacific regarding under-deliveries of coal by Union Pacific to two power plants in Arkansas between May 2005 and June 2006.¹⁰ The plants are operated by Entergy Arkansas.¹¹ Entergy Arkansas owns a little over a third of the plants' output; the rest is owned by a consortium that includes Entergy Mississippi, Arkansas Electric Cooperative Corporation and Arkansas municipalities.¹² Entergy Louisiana and Entergy New Orleans purchase a portion of the plants' output from Entergy Arkansas under a Commission-accepted life-of-unit cost-based power purchase agreement.¹³

⁷ See Complaint at 10.

⁸ Complaint at 11; Entergy Answer at 9.

⁹ Complaint at 12; *see also* Entergy Answer at 9.

¹⁰ See Complaint at 2-3, 16; Entergy Answer at 4.

¹¹ Entergy Answer at 4.

¹² *Id.*

¹³ *Id.*

C. Proposed Withdrawal of Entergy Arkansas and Entergy Mississippi from the System Agreement

6. On December 19, 2005, Entergy Arkansas notified the other Operating Companies of its intent to withdraw from the System Agreement effective December 18, 2013. Entergy Mississippi gave its notice of withdrawal on November 8, 2007, with its withdrawal effective on November 7, 2015. On February 2, 2009, Entergy, on behalf of Entergy Arkansas and Entergy Mississippi, submitted to the Commission Notices of Cancellation (Notices of Cancellation) to terminate their participation in the System Agreement.

7. On November 19, 2009, the Commission accepted the Notices of Cancellation.¹⁴ The Commission found that Entergy Arkansas and Entergy Mississippi were permitted to leave the Entergy system following a 96-month notice period (i.e., at the end of 2013 for Entergy Arkansas and end of 2015 for Entergy Mississippi).¹⁵ The Commission did not impose an exit fee or other payment upon Entergy Arkansas or Entergy Mississippi because it found that the System Agreement did not require withdrawing Operating Companies to pay an exit fee or otherwise compensate the remaining Operating Companies.¹⁶ The Commission also found that the System Agreement does not place a continuing obligation on the withdrawing Operating Companies with respect to the sharing of capacity or the payment of rough production cost equalization payments required by Opinion Nos. 480 and 480-A.¹⁷ However, the Commission noted that Entergy has an obligation to ensure that any future operating arrangement is just and reasonable.¹⁸ To that end, the Commission encouraged Entergy to make an FPA section 205 filing with post-2013 arrangements as soon as possible in order for the Commission to review the replacement arrangement prior to the withdrawals.¹⁹

¹⁴ *Entergy Servs., Inc.*, 129 FERC ¶ 61,143, at P 58 (2009) (Withdrawal Order), *reh'g denied*, 134 FERC ¶ 61,075 (2011) (Withdrawal Rehearing Order), *review pending sub nom. City Council of New Orleans v. FERC*, D.C. Cir Nos. 11-1043 *et al.* (Feb. 14, 2011).

¹⁵ *See* Withdrawal Order, 129 FERC ¶ 61,143 at P 59.

¹⁶ *Id.* P 60, 61.

¹⁷ *Id.* P 62.

¹⁸ *Id.* P 63.

¹⁹ *Id.*

8. The Commission stated that it would address any concerns regarding the structure of the post-withdrawal Entergy system when it considered Entergy's filing on transition measures.²⁰ The Commission specifically noted that the Louisiana Commission should raise its concerns with the post-withdrawal allocation of the Ouachita Plant transmission upgrade costs and the benefits of the Union Pacific Settlement in that proceeding.²¹

II. Notice of Filing and Responsive Pleadings

9. Notice of the Complaint was published in the *Federal Register*, 76 Fed. Reg. 58,803 (2011), with comments and interventions due on or before October 6, 2011. The Arkansas Public Service Commission (Arkansas Commission) and the Mississippi Public Service Commission filed notices of intervention. The Council of the City of New Orleans (New Orleans), East Texas Cooperatives, and Southwest Power Pool, Inc. filed timely motions to intervene. Arkansas Electric Cooperative Corporation filed a motion to intervene out-of-time. The Arkansas Commission filed a protest; and New Orleans filed comments. Entergy filed an answer. The Louisiana Commission filed an answer to Entergy's answer and the Arkansas Commission's protest.

III. Complaint and Responsive Pleadings

A. Allocation of the Ouachita Plant Transmission Upgrade Costs

1. Complaint

10. The Louisiana Commission argues that it is unjust, unreasonable and unduly discriminatory to allocate to Entergy Louisiana the transmission upgrade costs incurred to permit Entergy Arkansas to receive electricity from the Ouachita Plant because Entergy Arkansas has sought and received approval to withdraw from the System Agreement.²² The Louisiana Commission contends that approximately \$48.7 million of the transmission upgrade costs will be borne by Entergy Louisiana and almost \$30 million of that will involve transmission lines below the 230 kV level. The Louisiana Commission notes that the upgrade costs related to the transmission lines below the 230 kV level are not eligible for transmission cost equalization under Service Schedule MSS-2 of the

²⁰ Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 37.

²¹ *Id.* n.54.

²² New Orleans states that, to the extent that its ratepayers are currently absorbing or will be paying any of these costs going forward through the operation of Service Schedule MSS-2 or otherwise, New Orleans raises the same complaint that the Louisiana Commission has raised. *See* New Orleans October 3, 2011 Comments, Docket No. EL11-63-000, at 4.

System Agreement. The Louisiana Commission claims that, at present, Entergy Arkansas' share of the Ouachita Plant provides minimal benefits to other Operating Companies. The Louisiana Commission asserts that the Ouachita Plant will not achieve network resource status until 2013, when Entergy Arkansas leaves the System Agreement. The Louisiana Commission argues that the transmission upgrade costs will not provide any discernable benefit to Entergy Louisiana or system customers when Entergy Arkansas withdraws because Entergy Arkansas will no longer share its generating resources with Entergy Louisiana and other Operating Companies under the terms of the System Agreement.

11. The Louisiana Commission claims that the allocation of the transmission upgrade costs to Entergy Louisiana is not required by the System Agreement and violates cost causation principles by assigning costs to a company that did not cause the costs to be incurred. The Louisiana Commission states that the System Agreement does not address the allocation of transmission upgrade costs.²³ The Louisiana Commission adds that it is unjust and unreasonable to construe the System Agreement to permit Entergy Corporation to allocate to an Operating Company the costs associated with a generation acquisition of another Operating Company that intends to exit the Entergy system. The Louisiana Commission contends that most of the transmission upgrades funded by Entergy Louisiana do not include transmission lines that are included in Service Schedule MSS-2. The Louisiana Commission concludes that the System Agreement does not authorize the Operating Committee to allocate responsibility for the transmission upgrades to Operating Companies that will not benefit from the Ouachita Plant. The Louisiana Commission states that Entergy Arkansas witnesses before the Arkansas Commission, and the Arkansas Commission itself, assumed that Entergy Arkansas would bear the Ouachita Plant transmission upgrade costs, aside from certain costs passed through Service Schedule MSS-2, until Entergy Arkansas' withdrawal.²⁴ The Louisiana Commission contends that, in a retail proceeding before the Louisiana Commission, Entergy Gulf States Louisiana was unable to identify any system transmission benefits from the Ouachita Plant transmission upgrades.²⁵ It also claims that Entergy Arkansas decided to acquire the Ouachita Plant after Entergy Arkansas announced its intention to leave the System Agreement.

12. The Louisiana Commission asserts that, because the transmission upgrades will benefit Entergy Arkansas almost exclusively after it becomes a stand-alone company, the

²³ Complaint at 14.

²⁴ *Id.* at 11-12.

²⁵ *Id.* at 12 (citing Attachment K, Entergy Gulf States Louisiana Response to Data Request No. LPSC 3-10, Louisiana Commission Docket No. U-30422).

allocation of upgrade costs to the transmission owner in the service area (i.e., Entergy Louisiana) violates the participant funding and comparability requirements of the Entergy OATT. The Louisiana Commission contends that paragraph 2.2.3 of Attachment T of the Entergy OATT, stating that supplemental upgrades for network integration transmission service resources will be recovered from the requesting network customer, was intended to implement participant funding and assign the costs of supplemental facilities to the party for whom the facilities are built. The Louisiana Commission states that Entergy Louisiana does not fund supplemental facilities if a non-affiliate seeks transmission upgrades located in the Entergy Louisiana footprint for network service and, likewise, should not pay for upgrades that Entergy Arkansas needs for the Ouachita Plant network service. The Louisiana Commission argues that its point is particularly true given Entergy Arkansas' intent to exit the System Agreement in December 2013 and to not share those costs eligible for Service Schedule MSS-2 cost equalization thereafter. The Louisiana Commission adds that, according to the Entergy OATT comparability provisions, when Entergy Corporation addresses the funding of needed transmission upgrades, it must treat Entergy Arkansas like any network service customer that is not, or does not intend to be, a member of the Entergy system.

13. The Louisiana Commission also contends that the assignment of the transmission upgrade costs to Entergy Louisiana cross-subsidizes sales into the competitive market and constitutes affiliate abuse because Entergy Arkansas has sold large quantities of power into the wholesale markets over the past decade for the benefit of the Entergy Corporation shareholders and the Ouachita Plant's load-following capability will enable substantial future sales. The Louisiana Commission adds that Entergy Corporation's allocation of the transmission upgrade costs to Entergy Louisiana, coupled with Entergy's express claim that the Louisiana Commission is preempted from disallowing the costs for retail ratemaking, constitutes affiliate abuse.²⁶ The Louisiana Commission adds that requiring Entergy Louisiana to absorb the transmission upgrade costs needed to provide Entergy Arkansas load-following capacity constitutes affiliate abuse and unjust and unreasonable cross-subsidization by the native load of stockholder sales into the competitive market. The Louisiana Commission asserts that, even though a portion of the Entergy Louisiana upgrade costs will be equalized pursuant to Service Schedule MSS-2, the majority of Entergy Louisiana's costs are not eligible for equalization under that schedule because the upgrades are below 230 kV. The Louisiana Commission

²⁶ *Id.* at 15 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 133 FERC ¶ 63,008, at P 380-84 (2010)). The Louisiana Commission states that the presiding judge found that Entergy Arkansas' off-system sales of energy, made for the benefit of Entergy stockholders, violated the System Agreement and Commission policy and precedent against cross-subsidization of competitive sales. *Id.*

claims that, after Entergy Arkansas' withdrawal, Entergy Arkansas will bear none of the transmission upgrade costs under Entergy Corporation's allocation.

14. The Louisiana Commission requests that the Commission assign to Entergy Arkansas at least two-thirds of the transmission upgrade costs necessary to provide network resource status to the Ouachita Plant.

2. Entergy Answer

15. First, Entergy asserts that the Louisiana Commission has failed to meet its burden of proof to show that relief is warranted because a current rate, term or condition is unjust and unreasonable.²⁷ Specifically, Entergy argues that, contrary to the Louisiana Commission's assertions, the allocation of transmission construction responsibility to Entergy Louisiana and Entergy Mississippi for transmission upgrades built within their respective service areas is consistent with Service Schedule MSS-2 and Attachment T of Entergy's OATT.

16. Entergy states that, under the System Agreement, the individual Operating Companies' generation facilities are interconnected by transmission lines and operated as a coordinated electric system from a central dispatching center. Entergy notes that, pursuant to section 4.06 of the System Agreement, this obligation includes planning and constructing transmission upgrades required to transmit the power supply from generating or other resources to the load center. Entergy argues that, therefore, the System Agreement envisions that the Operating Companies will construct transmission upgrades necessary to ensure the deliverability of system resources, even where those resources are owned by other Operating Companies. Entergy also states that the System Agreement sets forth a voltage threshold (generally 230 kV) above which an investment in transmission facilities is considered to be an "inter-transmission investment," the cost of which is equalized among the Operating Companies pursuant to Service Schedule MSS-2. As for investments that are not inter-transmission investments because they fall below the 230 kV threshold, Entergy states that by providing for the planning and operation of transmission on a coordinated basis and establishing the above-described threshold for equalization of inter-transmission investment costs, the System Agreement contemplates that, at times, an Operating Company may make an investment in transmission facilities for the collective benefit of all the Operating Companies, the costs of which will not be equalized among the Operating Companies. Entergy states that this cost allocation methodology has applied even where the upgrades were necessary as a

²⁷ See Entergy Answer at 10-11 (citing *Louisiana Pub. Serv. Comm'n v. Entergy*, 119 FERC ¶ 61,212, at P 19 (2007); 5 U.S.C. § 556(d) (2006); *Steadman v. SEC*, 450 U.S. 91, 102 (1981); *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 267 (1994)).

result of a generation acquisition made by an Operating Company whose service territory is outside the area in which the upgrades are located. Entergy notes that Entergy Mississippi was responsible for the construction and cost of certain transmission upgrades in connection with the acquisition of the Perryville Power Station (Perryville Plant) by Entergy Louisiana.

17. Entergy states that Attachment T of the Entergy OATT addresses the classification of transmission investments and the recovery of upgrade costs.²⁸ Entergy notes that Entergy Arkansas is not a separate network customer under the Entergy OATT. Entergy states that the Operating Companies have historically been treated as a single network customer due to the coordinated planning and operations under the System Agreement. Entergy points out that, under section 4 of Attachment T, the cost of supplemental transmission upgrades required to accommodate network customer service requests (including designation of new network resources) are recovered from the requesting network customer. Entergy adds that, under that provision, the customer who funds a supplemental upgrade receives certain financial payments if (1) additional transmission service is subsequently granted to another customer using the facility that was created or expanded by the funding customer's supplemental upgrade, or (2) the ICT determines that the supplemental upgrade is necessary to serve forecasted load growth in the next calendar year.²⁹ Entergy agrees with the Louisiana Commission that Attachment T provides for participant funding of supplemental upgrades and section 2.4 of Attachment T addresses comparability but denies that the allocation of the Ouachita Plant transmission upgrade costs violates these provisions.

18. With respect to the Ouachita Plant, Entergy states that, consistent with the System Agreement, the Operating Committee approved the construction of the transmission upgrades necessary to make the Ouachita Plant deliverable. Entergy notes that the costs of the upgrades that qualify as inter-transmission investment (those above the voltage threshold of generally 230 kV) are equalized.³⁰ Entergy states that some of the identified transmission upgrades are in service and the remaining upgrades will be completed in 2012 and 2013. Entergy states that, because the identified transmission upgrades are primarily located in the areas in which Entergy Louisiana and Entergy Mississippi provide service, the construction of the upgrades below the 230 kV threshold that were requested on behalf of the Operating Companies was assigned to Entergy Louisiana and Entergy Mississippi, consistent with prior practice.

²⁸ *Id.* at 8.

²⁹ *Id.*

³⁰ *See id.* at 12.

19. Entergy also claims that the Louisiana Commission has underestimated the benefits of the Ouachita Plant transmission upgrades to the Entergy system now and in the future. Entergy explains that, since 2008 and until Entergy Arkansas exits the Entergy system, the entire facility has been and will be a resource that is subject to the joint dispatch of all the Operating Companies' generation resources pursuant to the System Agreement. Entergy adds that the Ouachita Plant transmission upgrades are necessary to provide transmission service for the Entergy Gulf States Louisiana portion of the facility, which Entergy Gulf States Louisiana will still own after Entergy Arkansas exits the Entergy system. Entergy notes that the Louisiana Commission does not raise an issue with respect to the treatment of Entergy Gulf States Louisiana's unit of the Ouachita Plant but rather acknowledges that the Entergy Gulf States Louisiana share of the Ouachita Plant will still provide benefit to the Operating Companies, including the benefits from low-cost excess energy.³¹

20. As for the Louisiana Commission's claims of affiliate abuse and cross-subsidization, Entergy argues that the Louisiana Commission has failed to provide a nexus between the Ouachita Plant transmission upgrades and the Entergy Arkansas opportunity sales. Entergy states that the Louisiana Commission has not provided any evidence that Entergy Arkansas made opportunity sales from the Ouachita Plant. Entergy contends that the Louisiana Commission is attempting to bootstrap the Ouachita Plant transmission upgrade issue onto a grievance about Entergy Arkansas' opportunity sales that has repeatedly been made elsewhere and is currently pending in Docket No. EL09-61-001. Entergy asserts that, unlike the capacity used to source Entergy Arkansas' opportunity sales at issue in Docket No. EL09-61-001, the Arkansas Commission did not designate any portion of Entergy Arkansas' share of the Ouachita Plant as wholesale capacity for which Entergy Arkansas' retail ratepayers would not bear cost responsibility.³² Entergy argues that, therefore, Entergy Arkansas' native load customers are bearing full cost responsibility for the two units of the Ouachita Plant that Entergy Arkansas owns. Entergy claims that this difference distinguishes the Ouachita Plant from the capacity excluded from Entergy Arkansas' retail rate base by the Arkansas Commission that was used to make the Entergy Arkansas opportunity sales that are at issue in Docket No. EL09-61-001.

21. Finally, Entergy argues that, with respect to the post-withdrawal allocation of transmission upgrade costs, the Complaint is unnecessary and premature because the Commission has stated that Entergy will have to file under FPA section 205 to reflect the arrangements that will be in place after Entergy Arkansas' and Entergy Mississippi's

³¹ *Id.* at 2-3 (citing Complaint at 12).

³² *Id.* at 17 (citing Order No. 14 at 49).

withdrawal from the System Agreement.³³ Entergy points out that the Commission has stated that it will address legitimate concerns with the structure of the post-withdrawal Entergy system when it considers Entergy's filing on transition measures.³⁴ Entergy commits that the post-withdrawal operating arrangement filing will address the Ouachita Plant transmission upgrade cost allocation. Entergy states that it plans to make the filing on or about June 1, 2012 (about 18 months prior to Entergy Arkansas' withdrawal date).

3. Arkansas Commission Protest

22. The Arkansas Commission argues that the Commission should dismiss the Louisiana Commission's arguments as an impermissible collateral attack on earlier Commission orders rejecting similar arguments made to support the imposition of "exit" conditions on Entergy Arkansas due to its exit from the System Agreement in December 2013.³⁵

23. The Arkansas Commission also contends that the Ouachita Plant transmission upgrade cost re-allocation and direct assignment claim is unfounded. The Arkansas Commission argues that the Louisiana Commission does not cite any System Agreement provision that authorizes the requested re-allocation of transmission costs to another Operating Company. The Arkansas Commission claims that the Louisiana Commission does not allege that a System Agreement provision has been violated. The Arkansas Commission notes that the Louisiana Commission does not seek a change to Service Schedule MSS-2 or any other provision of the System Agreement nor an addition of new authority or provision to the System Agreement to achieve its requested remedy.

24. The Arkansas Commission argues that the Louisiana Commission has provided insufficient reason to depart from Entergy's historical practice under the System Agreement of assigning the cost responsibility of constructing new transmission facilities to the owning company in whose territory such facilities are located. The Arkansas Commission claims that this practice adheres to the principle that the cost responsibility for new transmission follows the ownership of that transmission. The Arkansas Commission claims that, if the Ouachita Plant transmission upgrade facilities were

³³ *Id.* at 3 (citing Withdrawal Order, 129 FERC ¶ 61,143 at P 60, 63, 67).

³⁴ *Id.* (citing Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 37, n.54).

³⁵ Arkansas Commission October 6, 2011 Protest, Docket No. EL11-63-000, at 1-5 (citing Withdrawal Order, 129 FERC ¶ 61,143 at P 62; Withdrawal Rehearing Order, 134 FERC ¶ 61,075; *NSTAR Elec. Co. v. ISO New England*, 120 FERC ¶ 61,251 (2008); *Alamito Co.*, 41 FERC ¶ 61,312 (1987), *order on reh'g*, 43 FERC ¶ 61,274 (1998); *Entergy Servs., Inc.*, 132 FERC ¶ 61,065 (2010)) (Arkansas Commission Protest).

directly assigned to and owned by Entergy Arkansas, it will be physically impossible for those facilities to be part of Entergy Arkansas' transmission footprint once it exits the System Agreement. The Arkansas Commission states that this consequence should be avoided.

25. The Arkansas Commission questions why the Louisiana Commission fails to ask that Entergy Gulf States Louisiana be assigned a one-third share of the responsibility of the Ouachita Plant transmission upgrade costs, commensurate with Entergy Gulf States Louisiana's ownership share of the Ouachita Plant. The Arkansas Commission notes that, based on the Louisiana Commission's arguments, no more than two-thirds of the Ouachita Plant transmission upgrade costs can be assigned to Entergy Arkansas given its two-third ownership of the Ouachita Plant. The Arkansas Commission also notes that, if the Louisiana Commission prevails, then the transmission upgrade costs at the Perryville Plant should be re-assigned from Entergy Mississippi to Entergy Louisiana and Entergy Gulf States Louisiana for consistency.

26. The Arkansas Commission disagrees that the assignment of the Ouachita Plant transmission upgrade costs by Entergy Corporation to Entergy Louisiana violates the participant funding requirement of the Entergy OATT. The Arkansas Commission argues that, until Entergy Arkansas becomes a transmission customer under the transmission service tariffs of a regional transmission organization or a standalone customer under the Entergy OATT, Entergy, not an individual Operating Company like Entergy Arkansas, is the transmission customer under the Entergy OATT. The Arkansas Commission contends that, therefore, it is correct and consistent with the participant funding requirement to assign the cost responsibility for the Ouachita Plant transmission upgrades to Entergy under the Entergy OATT.

4. Louisiana Commission Reply

27. The Louisiana Commission disagrees with the burden of proof put forth by Entergy, instead arguing that the standard set forth in FPA section 306 applies.³⁶ The Louisiana Commission states that FPA section 306 permits a state regulatory commission to file a complaint and "requires that the public utility 'satisfy' the complaint or provide an answer."³⁷ The Louisiana Commission argues that Entergy has failed to satisfy the FPA section 306 requirement because its answer is "full of unsupported conclusory statements."³⁸ Therefore, the Louisiana Commission argues that a hearing is warranted.

³⁶ Louisiana Commission November 1, 2011 Reply, Docket No. EL11-63-000, at 3 (Louisiana Commission Reply).

³⁷ *Id.*

³⁸ *Id.*

In addition, the Louisiana Commission argues that the Commission should not wait until Entergy files its promised FPA section 205 filing to correct the unjust or preferential rates raised by the Louisiana Commission's FPA section 206 Complaint. The Louisiana Commission questions whether Entergy will make the promised filing.

28. The Louisiana Commission argues that, even if Entergy makes an FPA section 205 filing addressing allocation of transmission upgrade costs associated with the Ouachita Plant, there is no assurance that Entergy's promised filing will address the harm related to the large percentage of the Ouachita Plant transmission upgrade costs that do not meet the threshold for Service Schedule MSS-2 cost sharing because they are for facilities below 230 kV. The Louisiana Commission adds that such a filing would only address them prospectively and not address the harm the transmission upgrades are causing now. The Louisiana Commission contends that, due to the Commission's policy against granting refunds in FPA section 206 cases, any delay in considering its Complaint will cause irreparable harm to Louisiana customers and would constitute arbitrary decision-making.³⁹

29. The Louisiana Commission disputes Entergy's and the Arkansas Commission's assertions that the System Agreement permits the allocation to other companies of the transmission upgrade costs required for the Entergy Arkansas acquisition. The Louisiana Commission contends that neither party points to a specific provision to support their position. The Louisiana Commission adds that the premise of the System Agreement, as indicated in section 3.01, is that the Operating Companies will mutually benefit from system generation and transmission facilities for the life of those assets. Therefore, the Louisiana Commission states that any established practice by which an Operating Company pays for transmission upgrades to benefit another Operating Company would also require that the generating assets remain in the system for the time period in which the transmission upgrade costs are recovered.

30. The Louisiana Commission argues that, just as each Operating Company is only required to pay the costs for facilities from which it will derive a commensurate benefit (as indicated in section 3.09 of the System Agreement), there is no reason why Entergy Louisiana must own these upgrades just because they are in Entergy Louisiana's geographic territory. The Louisiana Commission claims that Entergy Louisiana does not own the Ouachita Plant and should not own or pay for the transmission upgrades. The Louisiana Commission argues that cost causation requires assigning the costs to those who will benefit and only Entergy Arkansas customers will benefit from the completed transmission upgrades because all the necessary upgrades will not be completed until shortly before Entergy Arkansas withdraws from the System Agreement. The Louisiana

³⁹ *Id.* at 5 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 135 FERC ¶ 61,218 (2011)).

Commission also asserts that Entergy's statement that the Ouachita Plant currently provides benefits to all Operating Companies is misleading because today the Ouachita Plant does not serve its intended purpose and presumably will not do so until the transmission upgrades are completed to provide it network status.

31. The Louisiana Commission challenges Entergy's argument that assignment of the Ouachita Plant transmission upgrade costs to Entergy Louisiana is permissible because Entergy, not Entergy Arkansas, is the transmission customer who requested network transmission service. The Louisiana Commission contends that Entergy has admitted that Entergy Louisiana was not the requesting customer. The Louisiana Commission alleges that Entergy incurred the transmission upgrade costs to permit Entergy Arkansas full access to the Ouachita Plant after 2013, when the upgrades will be completed.

32. The Louisiana Commission disputes analogizing the Ouachita Plant transmission upgrade costs to those incurred by Entergy Mississippi when Entergy Louisiana acquired the Perryville Plant. The Louisiana Commission contends that the situations can be distinguished because (1) Entergy Louisiana acquired the Perryville Plant to serve the system long before Entergy Mississippi announced its intent to withdraw from the System Agreement, and (2) the Perryville Plant acquisition occurred before the Commission issued Opinions Nos. 480 and 480-A, requiring rough equalization of production costs on the Entergy system.

33. The Louisiana Commission contends that its Complaint is not a collateral attack on the Withdrawal Order and Withdrawal Rehearing Order because the Commission never reached the merits of the Ouachita Plant transmission upgrade cost allocation issue.

34. As for cross-subsidization, the Louisiana Commission contends that the Ouachita Plant will be devoted to retail service. The Louisiana Commission claims that, once the Ouachita Plant assumes its load-following role, it will run most of the time and displace cheaper energy from base load units that would otherwise be devoted to serving retail customers. The Louisiana Commission asserts that the retail jurisdiction will then have to absorb the more expensive energy, at which point Entergy will sell the cheap energy into the market unburdened by the transmission upgrade costs required to make the Ouachita Plant available all the time. The Louisiana Commission argues that the Commission must prevent this cross-subsidization.

B. Union Pacific Settlement

1. Complaint

35. The Louisiana Commission argues that, because the damages that occurred affected all Operating Companies, all should benefit from the Union Pacific Settlement in proportion to their incurred damages. The Louisiana Commission complains that a large portion of the settlement benefits will occur after Entergy Arkansas withdraws from the

System Agreement. The Louisiana Commission claims that, absent a remedy that matches the pre-withdrawal costs and the benefit of the settlement, the rates of system customers will be unjust, unreasonable and unduly discriminatory. The Louisiana Commission suggests that Entergy Arkansas should amortize the post-2012 benefits as negative costs in Service Schedule MSS-3 bandwidth calculations prior to 2014, through a new Service Schedule enacted by the Commission here, or through an equivalent remedy.

2. Entergy Answer

36. Entergy argues that the Commission should summarily dismiss the Complaint with respect to this issue. Entergy argues that it is inappropriate for the Louisiana Commission to suggest that Entergy should treat the Union Pacific Settlement as a system benefit in bandwidth cases because the Louisiana Commission argued to the contrary with respect to a fuel supply settlement between Texaco and Entergy Louisiana.⁴⁰ Further, Entergy contends that it is false to claim that, because Entergy Arkansas was a participant in the System Agreement during this period, damages to Entergy Arkansas created damages to the system as a whole, including all of the Operating Companies. Entergy asserts that the System Agreement does not include any provision for prospective transfers of benefits from Entergy Arkansas to other Operating Companies after Entergy Arkansas' withdrawal from the System Agreement. Entergy argues that future rail transportation costs should be treated no differently than any other production cost component after Entergy Arkansas withdraws from the System Agreement. Entergy asks the Commission to reject the Louisiana Commission's request to invent a method of estimating what Union Pacific Settlement benefits Entergy Louisiana would receive if Entergy Arkansas was still a party to the System Agreement through a special tariff enacted in this proceeding. Entergy argues that the Louisiana Commission's legal support for this request has been rejected by the Commission in several instances and the Commission should dismiss the request as an effort to sidestep those rulings.⁴¹ Finally, Entergy states that all of the parties entitled to the power produced at the two coal generating stations pay a cost-based rate that reflects the effects of the Union Pacific Settlement on future coal purchases. Entergy states that this satisfies the FPA requirement.

⁴⁰ Entergy Answer at 17-18 (citing *Louisiana Pub. Service Comm'n v. Entergy Servs., Inc.*, 106 FERC ¶ 63,012 at P 101-06; Philip R. May March 6, 2009, Answering Testimony, Exh. ESI-18 at 28:12-20, Docket No. ER08-1056).

⁴¹ *Id.* at 19 (citing *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 119 FERC ¶ 61,224, at P 47 (2007); Withdrawal Order, 129 FERC ¶ 61,143 at P 62; Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 35, n.50).

3. Arkansas Commission Protest

37. The Arkansas Commission argues that the retroactive relief the Louisiana Commission seeks is driven by Entergy Arkansas' withdrawal from the System Agreement in 2013. The Arkansas Commission claims that the provisions of the bandwidth formula on file with the Commission in Service Schedule MSS-3 preclude the type of retroactive remedy sought. The Arkansas Commission contends that permitting the transport of speculative, future, post-withdrawal savings to Entergy Arkansas back to prior historical bandwidth test years would lead to a lack of explicit parameters for what constitutes production costs in a given historical calendar year, which would lead to endless disputes over timing issues.

4. Louisiana Commission Reply

38. The Louisiana Commission contends that its Complaint is not a collateral attack on the Withdrawal Order and Withdrawal Rehearing Order because the Commission never reached the merits of the Union Pacific Settlement issue. The Louisiana Commission reiterates that benefits under the Union Pacific Settlement need to be shared on a system basis because Entergy Arkansas received compensation for system consequences, including pool energy consequences. The Louisiana Commission argues that the fuel supply settlement between Texaco and Entergy Louisiana does not provide a basis for dismissing the Louisiana Commission's Union Pacific Settlement claims. The Louisiana Commission also contends that the Arkansas Commission's argument that the Louisiana Commission's Union Pacific Settlement constitutes retroactive ratemaking is unfounded.

IV. Discussion

A. Procedural Matters

39. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Arkansas Electric Cooperative Corporation's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

40. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the Louisiana Commission's answer because it has provided information that assisted us in our decision-making process.

41. As for the standard of review applicable here, we note that FPA section 206 applies to rate changes for public utility tariffs, and FPA section 306 permits the filing of complaints regarding any violation of the FPA. Although FPA section 306 requires a public utility to answer a complaint filed by a state regulatory commission, it does not, as the Louisiana Commission implies, change the burden of the complainant. Complainants bear the burden to prove their allegations under both sections of the FPA, irrespective of the FPA section 306 requirement that a public utility provide an answer to the complaint.⁴²

42. As noted above, New Orleans states that, to the extent that its ratepayers are currently absorbing or will be paying any of these costs going forward through the operation of Service Schedule MSS-2 or otherwise, New Orleans raises the same complaint that the Louisiana Commission has raised.⁴³ Effectively, New Orleans is requesting that it be joined with the Louisiana Commission's Complaint. That is improper; allowing a third party to join in a complaint by filing comments would circumvent our public notice requirements and deprive the "respondent" of the opportunity to address the assertions of that third party.⁴⁴ If New Orleans seeks Commission action for a perceived violation against it, it is free to file its own complaint alleging each violation, presenting facts in support, and requesting specific relief, either here or in another forum.⁴⁵

B. Commission Determination

1. Allocation of the Ouachita Plant Transmission Upgrade Costs

43. We find that the issues that the Louisiana Commission raises related to the allocation of the Ouachita Plant transmission upgrade costs following Entergy Arkansas' proposed withdrawal from the System Agreement in 2013 are premature and dismiss the Complaint in this respect. As the Commission has previously stated, the Louisiana Commission should raise its concerns with the post-withdrawal allocation of the Ouachita

⁴² See *Richard Blumenthal v. ISO New England Inc.*, 135 FERC ¶ 61,117 (2011).

⁴³ See New Orleans October 3, 2011 Comments, Docket No. EL11-63-000, at 4; see *supra* note 22.

⁴⁴ *Interstate Power and Light Co. v. ITC Midwest, LLC*, 127 FERC ¶ 61,043, at P47 (2009), *reh'g denied*, 135 FERC ¶ 61,162 (2011); *ConocoPhillips Co. v. Entergy Servs., Inc.*, 124 FERC ¶ 61,085, at P 31 (2008), *reh'g denied*, 129 FERC ¶ 61,243 (2009).

⁴⁵ See *supra* note 44.

Plant transmission upgrade costs in the future proceeding regarding the structure of the post-withdrawal Entergy system.⁴⁶ The Commission has required Entergy to make this filing,⁴⁷ and Entergy has committed to submit that filing on or about June 1, 2012.⁴⁸ We expect Entergy to fulfill this commitment.

44. To the extent that the Louisiana Commission is arguing that the *current* allocation of the Ouachita Plant transmission upgrade costs is unjust, unreasonable or unduly discriminatory, we deny the Complaint. As noted in *AEEC v. Entergy*, the System Agreement remains in effect until a replacement agreement is accepted by the Commission.⁴⁹ Therefore, the allocation of the Ouachita Plant transmission upgrade costs prior to Entergy Arkansas' withdrawal should follow the requirements of the System Agreement.

45. Under the System Agreement, bulk transmission costs (generally above 230kV) are equalized among the Operating Companies as set forth in Service Schedule MSS-2.⁵⁰ The equalization of these costs has been the historical practice on the Entergy system, and the Louisiana Commission concedes that Entergy has allocated the bulk transmission costs related to the Ouachita Plant in this manner.⁵¹ We agree with Entergy that, for transmission upgrades below the bulk transmission voltage threshold (generally 230 kV), the System Agreement contemplates that an Operating Company may make such an investment in transmission facilities for the collective benefit of all the Operating Companies and that the related costs will not be equalized among the Operating Companies.⁵² As Entergy explains, this cost allocation method has applied even where the upgrades were necessary as a result of a generation acquisition by an Operating Company whose service territory is outside where the upgrades are located.⁵³ Neither Service Schedule MSS-2 nor any other Service Schedule provides for cost allocation, or other compensation, between different Operating Companies for the construction of

⁴⁶ See Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at n.54.

⁴⁷ See Withdrawal Order, 129 FERC ¶ 61,143 at P 60, 63, 67.

⁴⁸ Entergy Answer at 3.

⁴⁹ *AEEC v. Entergy*, 126 FERC ¶ 61,051, at P 38 (2009).

⁵⁰ See Complaint at 8, 12.

⁵¹ *Id.* at 12.

⁵² Answer at 12.

⁵³ *Id.*

transmission facilities below the bulk transmission level. Therefore, the assumption of such costs by individual Operating Companies is the sole mechanism for allocating such costs.

46. This finding is consistent with the historical practice on the Entergy system of assigning construction of transmission upgrades below the bulk transmission voltage threshold to the Operating Company in whose service territory the transmission upgrade is located, with the assigned Operating Company assuming such cost.⁵⁴ This historical practice is evident in the allocation to Entergy Mississippi of the costs associated with the transmission upgrades for the Perryville Plant below the voltage threshold.⁵⁵ In that case, the Operating Committee allocated Perryville Plant construction obligations to Entergy Mississippi, even though Entergy Mississippi was not entitled to the output of the Perryville Plant.⁵⁶ We find that the Operating Committee's practice of assigning construction of transmission upgrades below the bulk transmission voltage threshold among Operating Companies based upon the location of the transmission upgrades is within the authority provided to the Operating Committee in the System Agreement.⁵⁷ Under the System Agreement, the Operating Committee has expansive powers, including a duty to plan for and construct transmission upgrades "required to transmit the power supply from generating or other sources to the load centers"⁵⁸ and to "undertake any other duties that may from time to time be assigned to it or deemed appropriate."⁵⁹

47. We find that the Louisiana Commission's argument that Entergy's treatment of the Ouachita Plant transmission upgrade costs is unjust, unreasonable and unduly discriminatory fails because the Louisiana Commission improperly examines the issue of

⁵⁴ *Id.* at 9.

⁵⁵ *See* Complaint, Attachment J.

⁵⁶ *Id.*

⁵⁷ *See AEEC v. Entergy*, 126 FERC ¶ 61,051 at P 37 (rejecting AEEC's request "to require the entire output of the Ouachita Plant to be designated as solely an Entergy Arkansas resource" because doing so "would be contrary to the decision of the Entergy Operating Committee made pursuant to the terms of the System Agreement. The Operating Committee authorizes power transfers that benefit the system as a whole instead of just one Operating Company and its customers.").

⁵⁸ System Agreement, § 4.06.

⁵⁹ *Id.* § 5.06(r).

transmission upgrade cost allocation on a piecemeal basis.⁶⁰ Although it complains about requiring Entergy Louisiana to pay for transmission upgrade costs related to the Ouachita Plant units owned by Entergy Arkansas, the Louisiana Commission does not consider the benefits and burdens among the Operating Companies from the historical application of this cost allocation methodology to other generation previously planned for the Entergy system. For example, it does not dispute the assignment to Entergy Louisiana of construction duties for transmission upgrades to Entergy Gulf States Louisiana's portion of the Ouachita Plant and related costs.⁶¹ Similarly, the Louisiana Commission fails to distinguish the treatment of transmission upgrade costs for the Perryville Plant from the analogous treatment of the Ouachita Plant transmission upgrade costs.⁶² In both instances, the Operating Company in whose service territory the transmission upgrades were located was responsible for the construction and cost of related transmission upgrades in its territory, even though it was not the owner of the unit or its capacity. Contrary to the Louisiana Commission's assertion, the fact that Entergy Louisiana acquired the Perryville Plant to serve the system long before Entergy Mississippi announced its intent to exit the System Agreement is not dispositive because the issue here is the time period prior to Entergy Arkansas' proposed withdrawal from the System Agreement. The Commission has already rejected a similar challenge concerning the acquisition of the Ouachita Plant for the Entergy system, claiming that Entergy Arkansas' impending withdrawal meant that Entergy can no longer plan acquisitions on a single system basis prior to withdrawal.⁶³ In that proceeding, the Commission specifically found that until Entergy Arkansas leaves the System Agreement, it continues to be part of the System Agreement and is bound by its terms, which authorize acquisitions that benefit the system as a whole instead of just one Operating Company and its customers.⁶⁴ The Commission further found that Entergy acted consistent with the System Agreement in planning the acquisition of the Ouachita Plant, balancing the needs of the entire Entergy system, not just Entergy Arkansas.⁶⁵ Accordingly, the fact that planning of the Ouachita Plant acquisition occurred after Entergy Arkansas provided notice of intent to

⁶⁰ See *Louisiana Public Serv. Comm'n v. Entergy Servs., Inc.*, 137 FERC ¶ 61,070, at P 72 (2011), *reh'g pending* (rejecting a "piecemeal approach" to allocating accumulated deferred income tax proffered by the Louisiana Commission).

⁶¹ See Complaint at 12.

⁶² See *id.*, Att. J.

⁶³ See *AEEC v. Entergy*, 126 FERC ¶ 61,051 at P 37.

⁶⁴ *Id.*

⁶⁵ *Id.* P 21, n.15.

withdraw from the System Agreement does not provide a basis for treating it differently from other system resources for the purpose of allocating associated transmission costs. Also, the Louisiana Commission's concern that the Perryville Plant acquisition occurred before issuance of Opinion Nos. 480 and 480-A is misplaced. Opinion Nos. 480 and 480-A address the equalization of production costs, not the allocation of the cost of transmission upgrades.

48. We also find that Entergy Corporation's current allocation of transmission upgrade costs does not violate the general provisions of the System Agreement. The Louisiana Commission cites to section 3.01 of the System Agreement for the general proposition that the Operating Companies share the imbalance of costs of facilities used for the mutual benefit of the Operating Companies. We reject the Louisiana Commission's implication that there must be a direct allocation of costs tied to individual Operating Companies' direct benefits from those facilities. The Commission has previously found that Entergy's rotation of the construction of new generation units, and associated costs and benefits, among different Operating Companies is consistent with the System Agreement.⁶⁶ Similarly, here, we find that it is consistent with the System Agreement for individual Operating Companies in whose service areas transmission upgrade facilities are located to assume the costs of such upgrades in order to facilitate network transmission service for the Entergy system, even if the generation units that will benefit from such upgrades are owned by other Operating Companies.

49. The Louisiana Commission mischaracterizes section 3.09 of the System Agreement as establishing the proposition that "[e]ach operating company is only required to pay the costs for facilities from which it will derive a commensurate benefit."⁶⁷ Rather, this provision states that "[i]t is intended that each Company shall be willing and able to provide its portion of the major facilities determined to be necessary and each Company shall share in the benefits and pay its share of the costs of coordinated operations as agreed upon in accordance with Service Schedules to be attached hereto from time to time and made a part hereof."⁶⁸

50. We also reject the Louisiana Commission's contention that the allocation of the Ouachita Plant transmission upgrade costs violates the participant funding rules in Attachment T of the Entergy OATT. The Louisiana Commission contends that, even assuming that Entergy is correct that the Entergy system as a whole was the customer requesting network transmission service, then Entergy should be assigned the costs of the

⁶⁶ See Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 29.

⁶⁷ Complaint at 7.

⁶⁸ System Agreement, § 3.09.

supplemental upgrades pursuant to section 2.2.3 of Attachment T.⁶⁹ As noted,⁷⁰ the System Agreement addresses allocation of transmission costs among the Operating Companies. While Attachment T of the Entergy OATT provides for recovery of transmission upgrade costs and provides for the application of Attachment T to the Transmission Provider and its affiliates, it does not make determinations regarding transmission cost allocations among Operating Companies. We find the Louisiana Commission's contentions regarding Attachment T inapposite to its Complaint.

51. The Louisiana Commission contends that the current allocation and assumption of Ouachita Plant transmission upgrade costs is unreasonable because the Entergy system will enjoy few benefits from the Ouachita Plant until the transmission upgrades are completed and the Ouachita Plant qualifies as a network resource. We find that the Louisiana Commission's showing is insufficient to support this contention. As Entergy has explained, the Ouachita Plant currently provides benefits to all Operating Companies.⁷¹ The Louisiana Commission does not dispute Entergy's statement that "the entire Ouachita Plant is a resource that is subject to the joint dispatch of all Operating Companies' generation resources pursuant to the System Agreement."⁷² Also, the Louisiana Commission has not alleged any attempt by Entergy to delay such upgrades to deprive the Entergy system of the Ouachita Plant's benefits. We also find that the Louisiana Commission's reliance upon its assertion that Arkansas Commission orders demonstrate that the Arkansas Commission believed that Entergy Arkansas should bear the facility upgrade costs is misplaced. The orders of the Arkansas Commission, even if making the point alleged, do not govern cost allocation under the System Agreement, which is a Commission-jurisdictional document.

52. We also reject the Louisiana Commission's contention that the assignment of transmission upgrade costs to Entergy Louisiana constitutes affiliate abuse and unjust and unreasonable cross-subsidization by allowing Entergy Arkansas load-following capacity to facilitate off-system sales of energy. As with its cost allocation arguments, the Louisiana Commission takes a piecemeal approach with respect to this issue, focusing on only one generator, failing to consider historical practices, and thereby ignoring the benefits and burdens of transmission costs to integrate other generators. Moreover, the

⁶⁹ Louisiana Commission Reply at 9. Section 2.2.3 of Attachment T requires that supplemental upgrades for network resources be recovered from the requesting network customer.

⁷⁰ *See supra* P 45.

⁷¹ *See* Entergy Answer at 13.

⁷² *Id.* at 2.

pattern of off-system energy sales objected to by the Louisiana Commission in Docket No. EL09-61-001 is pending in that proceeding.

2. Union Pacific Settlement

53. We find that the issues that the Louisiana Commission raises related to the allocation of Union Pacific Settlement benefits are premature and dismiss the Complaint in this respect. As the Commission previously stated, the Louisiana Commission should raise its concerns with the post-withdrawal allocation of Union Pacific Settlement benefits in the future proceeding regarding the structure of the post-withdrawal Entergy system.⁷³ As noted above, the Commission has required Entergy to make this filing, and Entergy has committed to submit that filing on or about June 1, 2012.⁷⁴

The Commission orders:

The Louisiana Commission's Complaint is hereby dismissed in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷³ See Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at n.54.

⁷⁴ See *supra* P 43.