UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Entergy Services, Inc. Docket No. EL07-48-000

ORDER DENYING PETITION FOR DECLARATORY ORDER

(Issued July 6, 2007)

1. On March 15, 2007, Entergy Services, Inc. (Entergy Services), on behalf of the Entergy Operating Companies[1] (collectively, Entergy), submitted a petition for declaratory order (Petition) requesting that the Commission find that, where a resource to be acquired or constructed by one or more of the Entergy Operating Companies has met certain approval requirements, including a public interest finding by such retail regulator(s) as may have jurisdiction, such resource shall be a system resource and all costs of such facility may be reflected in the applicable formula rates contained in the Entergy System Agreement.[2]

2. If such relief is not granted, Entergy requests that the Commission determine that Entergy Gulf States' purchase of the Calcasieu Generating Facility (Facility) is prudent and that Entergy Gulf States may reflect all costs associated with the Facility in the System Agreement formula rates.

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[1] The Entergy Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), and Entergy New Orleans, Inc. (Entergy New Orleans). The Entergy system is made up of the Entergy Operating Companies and their electric generation resources and bulk transmission facilities, which are planned and operated as a single, integrated system.

[2] The Entergy system has operated for over fifty years under the System Agreement and its predecessor System Agreements, which act as an interconnection and pooling agreement, provides for the joint planning, construction and operation of the Operating Companies' facilities, allocates costs among the Entergy Operating Companies, and maintains a coordinated power pool among the five companies.

3. For the reasons discussed below, we will deny Entergy's Petition.

I. Background

4. In the Petition, Entergy requests guidance on certain issues related to Entergy's generation planning and procurement activities and practices following the Commission's issuance of Opinion Nos. 480 and 480-A.[3] As relevant here, in those orders, the Commission affirmed the presiding judge's finding that the Entergy system was no longer in rough production cost equalization and that the existing System Agreement, the intent of which is to balance costs over time through the assignment of new resources, was no longer just and reasonable.[4] The Commission also affirmed the presiding judge's finding that a bandwidth remedy was just and reasonable, but reversed his determination on the appropriate bandwidth remedy in favor of a broader bandwidth. Specifically, the Commission concluded that, in order to help keep the Entergy system in rough production cost equalization, the Entergy Operating Companies' total production costs, prospectively and on an annual basis, must be within a bandwidth of +/-11 percent of the total average production costs on the Entergy system.[5] In addition, the Commission summarily affirmed the presiding judge's findings rejecting a proposal to modify Service Schedule MSS-3.[6]

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[3] *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc*., Opinion No. 480, 111 FERC ¶ 61,311 (Opinion No. 480), *aff'd*, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A), *appeal docketed*, No. 05-1462 (D.C. Cir. 2005).

[4] Opinion No. 480 at P 28-29 (*citing Entergy Services, Inc*., 106 FERC ¶ 63,012, at P 30 (2004) (Initial Decision)).

[5] Opinion No. 480 at P 144. The Commission stated that the bandwidth remedy is an "insurance policy" in the event that particularly severe cost disparities continue into the future. *Id*. at P 44; Opinion No. 480-A at P 26.

[6] Initial Decision, 106 FERC ¶ 63,012 at P 149; Opinion No. 480 at P 14. Service Schedule MSS-3 allocates energy each hour among the Entergy Operating Companies on an after-the-fact basis such that each Operating Company that generates power in excess of its needs is deemed to sell energy into the system Exchange for the use of the other Operating Companies in the Entergy system. Service Schedule MSS-3 was approved by the Commission in Opinion No. 234 as part of the 1982 System Agreement. *Middle South Energy, Inc*., Opinion No. 234, 31 FERC ¶ 61,305, at 61,660-62 (1985).

II. Petition

5. Entergy requests that the Commission find that, in circumstances where a resource to be acquired or constructed by, or a long-term purchase to be made by, one or more Operating Companies: (a) has been determined by Entergy to be a resource that is devoted to serving system load and thereby available to Operating Companies;[7] and (b) has been approved and found to be in the public interest and, therefore, prudent by such retail regulator(s) as may have jurisdiction over the acquisition or construction of the facility, such resource shall be a system resource and all costs of such facility, including the purchase price,[8] shall be reflected in the applicable formula rates contained in the System Agreement.[9]

6. Entergy explains that it will submit an informational filing with the Commission identifying the resource and attesting to the fact that such resource satisfied the criteria specified above, within 30 days of receipt of the necessary retail regulatory approval(s).

7. Alternatively, if the Commission does not provide the above relief, Entergy requests that the Commission determine that Entergy Gulf States' agreement with non-affiliate Calcasieu Power, LLC (Calcasieu),[10] to acquire the Facility[11] (hereinafter, the Transaction), is prudent and that Entergy Gulf States may reflect fully all costs associated with the Facility, including the purchase price, in the applicable formula rates contained in the System Agreement, including the rough production cost equalization calculation

[7] Entergy adds that this is only for so long as the Entergy Operating Companies participate in the Entergy System Agreement and only for so long as the resource continues to remain a system resource under the System Agreement and only for so long as the owning or acquiring Operating Company is participating in the System Agreement.

[8] Entergy explains that the costs will also be reflected in the rough production cost equalization calculation as set forth in Service Schedule MSS-3 of the System Agreement.

[9] Entergy explains that these costs will be reflected in the applicable formula rates in the absence of a showing before the Commission that the retail regulator had abused its discretion or violated a public policy when it made such a public finding at retail.

[10] Calcasieu is an indirect wholly owned subsidiary of Dynegy Inc. (Dynegy).

[11] The Facility is a 310 MW natural gas-fired combustion turbine generating facility, located in Calcasieu Parish, Louisiana, and consists of two combustion turbine generators.

set forth in Service Schedule MSS-3 of the System Agreement as a result of Opinion Nos. 480 and 480-A.[12]

8. In support of its request, Entergy explains that the post-Opinion No. 480 regulatory environment has created a significant level of both regulatory and cost recovery uncertainty.[13] It asserts that any construction or acquisition of a new generating resource by any Operating Company can affect the remedy payments (or lack thereof) under the Opinion No. 480 bandwidth by changing that Operating Company's production costs relative to total average production costs. Entergy states that it expects increases in natural gas costs, which will cause the total production costs of at least one of the Operating Companies to fall outside the Opinion No. 480 bandwidth, triggering an approximately $284 million payment for 2007. Given this significant level of payments under the rough production cost equalization calculation formula, and the history of litigation regarding matters arising under the System Agreement, Entergy states that the purchase of the Facility (or any generating facility) will likely be challenged by one or more retail jurisdictions. Those retail jurisdictions, it argues, will seek to remove the costs of the new facility from the rough production cost equalization calculation, based on an assertion that the incremental resource was not a system resource, or claim that certain costs should not be allowed, on the basis that they were not prudently incurred.

9. In addition, Entergy notes that the Commission has long recognized that a matter subject to the Commission's exclusive jurisdiction may nonetheless have strong local

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[12] Petition at 2. Contemporaneous with the Petition, Entergy made a filing with the Commission seeking approval of the Transaction under section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (2000), as amended by the Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109-58, § 1289, 119 Stat. 594 982-83 (2005).

[13] Id. at 8-9. Entergy notes that, since the issuance of Opinion Nos. 480 and 480-A, the Arkansas Public Service Commission (Arkansas Commission) filed a complaint with the Commission, Docket No. EL06-76-000, asserting that the Commission should investigate Entergy's generation planning practices, as a result of Opinion Nos. 480 and 480-A. The Commission recently denied the Arkansas Commission complaint. *See Arkansas Pub. Serv. Comm. v. Entergy Services, Inc.*, 119 FERC ¶ 61,223 (2007). Similarly, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint, Docket No. EL07-25-000, arguing that Entergy Arkansas' notice to withdraw from the System Agreement will adversely affect Entergy's ability to engage in long-term resource planning. The Commission recently denied the Louisiana Commission complaint. *See Louisiana Pub. Serv. Comm. v. Entergy Corp.*, 119 FERC ¶ 61,224 (2007).

interests.[14] Entergy states that the Commission has concluded that when a matter involves strong local interests, it can defer to a retail regulator's determination regarding that matter so long as the retail regulator satisfied certain standards of review.[15] Entergy argues that providing deference when an acquisition has been approved by the Operating Committee and found to be in the public interest, and therefore prudent, by retail regulator(s) that reviewed the acquisition, is consistent with the Commission's deference policy. Of course, Entergy states, the final determination about whether an acquisition is in the public interest, and thus prudent is the Commission's; retail regulators' determinations on these issues could not be permitted to interfere with a Commission determination regarding System Agreement billings.[16] Finally, Entergy notes, applying this approach will not cause the Commission to abandon its statutory obligations because providing deference to a retail regulator is not the equivalent of improperly delegating authority over a matter that is within the Commission's jurisdiction.[17]

10. Regarding Entergy's alternative request for relief, a finding that Entergy Gulf States' purchase of the Facility is prudent and that all costs of the Transaction may be included in the System Agreement formula rates, Entergy notes that the Commission typically refuses to entertain issues of prudence on matters, even those subject to the Commission's exclusive jurisdiction, until a utility seeks to recover the costs at issue in its rates.[18] However, it states that this general policy is not an absolute bar to advance prudence determinations and that the general rule can be overcome in the right circumstances.[19] Entergy argues that the unique facts here warrant an exception to this

[14] *Id*. at 12-13 (*citing Puget Sound Energy, Inc.,* 110 FERC ¶ 61,229, at P 13-14 (2005) (*Puget*); *Northwestern Wisconsin Electric Co.,* 65 FERC ¶ 61,302, at 62,391 (1993) (*Northwestern)*; *Consolidated Edison Company of NY, Inc.,* 15 FERC ¶ 61,174, at 61,405 (1981) (*ConEd*)).

[15] *Id*. at 13 (*citing Northeast Utilities Service Co.,* 117 FERC ¶ 61,337, at P 20 (2006)).

[16] *Id*. at 15.

[17] *Id*. at 16.

[18] *Id*. at 10.

[19] *Id*.

general rule and that the relief it is requesting should not contribute to other entities seeking upfront prudence reviews.[20]

11. Entergy explains that, based on a comprehensive due diligence investigation of the Facility, on January 31, 2007, Entergy Gulf States and Dynegy-Calcasieu entered into a purchase and sale agreement (Purchase Agreement). The Purchase Agreement, Entergy states, establishes the terms and conditions of the Transaction and a $56.5 million acquisition purchase price.[21] Entergy argues that Entergy Gulf States' decision to acquire the Facility and the costs associated with the Transaction are the result of a sound business determination and thus prudent.[22] It explains that the Transaction requires Entergy Gulf States to incur certain costs necessary to provide services to its customers, but that these expenditures are those that a reasonable utility management would make in good faith under the same circumstances and at the relevant point in time.

12. Specifically, Entergy states that the acquisition meets the Entergy system's resource supply objectives by providing a modern, quick-start, life-of-unit peaking resource that improves the Entergy transmission system and regional reliability.[23] Entergy explains that, based on its analysis, the Entergy system requires the capacity provided by the Facility because Entergy is currently over 3,000 MW of generating capacity short of its projected 2008 reliability requirement. Assuming no additional resources are added, it states, Entergy's portfolio of resources is projected to be nearly

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[20] *Id.* at 12.

[21] Entergy states that, assuming the Transaction closes by March 31, 2008, its estimated total capital outlay is $66 million, which includes: (a) the proposed acquisition purchase price of $56.5 million; (b) estimated equipment upgrades and contingencies of $6.5 million; and (c) estimated transaction, transition, and closing costs of $3 million. In the event that all required regulatory approvals (including full cost recovery) have not been received and all other closing requirements have not been met by March 31, 2008, the PSA provides Entergy Gulf States the option to extend the expiration date an additional twelve months, until March 31, 2009, subject to the payment of a one-time option premium to Dynegy-Calcasieu of $3 million. Petition at 21.

[22] *New England Power Co.*, 31 FERC ¶ 61,047, *reh'g denied*, 32 FERC ¶ 61,112 (1985), *affd sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986). *See also Indiana and Michigan Municipal Distribution Association v. Indiana Michigan Power Co.*, 62 FERC ¶ 61,189, at 62,238 (1993).

[23] Petition at 17.

5,000 MW short of its reliability requirement by 2012. Entergy asserts that Entergy Gulf States' current portfolio of long-term generating resources is nearly 1,200 MW short of its projected 2008 peak demand plus reserve requirement and, assuming no additional resources are added, is expected to reach 1,748 MW by 2012.

13. Further, Entergy states that the cost of the Facility is economically attractive when compared to currently available and viable long-term alternatives. Entergy states that it considered three alternatives to the Facility for providing long-term peaking and reserve capacity, none of which were preferable to purchasing the Facility.[24] Entergy argues that, as a result of the Transaction, Entergy Gulf States' customers will enjoy significant cost savings because Entergy Gulf States will be purchasing an efficient peaking facility at a total cost of $205/kW, or approximately 40-50 percent of replacement cost. It states that the Transaction will also improve risk management by reducing the Entergy Operating Companies' reliance on short- and limited-term power purchase opportunities and the exposure to volatility experienced in the competitive wholesale market.

III. Notice and Responsive Pleadings

14. Notice of Entergy's Petition was published in the *Federal Register*, 72 Fed. Reg. 4,268 (2007), with interventions or protests due on or before April 16, 2007.

15. On March 26, 2007, the Mississippi Public Service Commission (Mississippi Commission), the Arkansas Public Service Commission (Arkansas Commission), the Louisiana Public Service Commission (Louisiana Commission), and the City Council of the City of New Orleans (New Orleans) collectively filed a motion for extension of time for filing interventions, comments, or protests. On March 29, 2007, the Commission issued a notice of extension of time for filing motions to intervene, comment, or protest to and including April 30, 2007.

16. The Arkansas Commission and the Mississippi Commission (collectively, Arkansas/Mississippi Commissions), the Louisiana Commission, and New Orleans filed notices of intervention and protests. The Arkansas Electric Energy Consumers, Inc. (AEEC) filed a timely motion to intervene with substantive comments. The NRG

[24] *Id*. at 25. The other three alternatives that Entergy considered were to: (a) immediately construct a new Combustion Turbine (CT) generating unit; (b) construct a new CT unit later in the planning horizon and purchase limited-term products in the interim; and (c) enter into long-term power purchase agreements with owners of CT resources.

Companies,[25] Occidental Chemical Corporation, the Electric Power Supply Association, the Louisiana Energy Users Group, and Union Power Partners, L.P. filed timely motions to intervene.

17. On May 15, 2007, Entergy filed an answer.

18. New Orleans and the Arkansas/Mississippi Commissions argue that the Petition should be denied as an attempt to deprive the Commission of its duty to ensure just and reasonable wholesale electric charges under sections 205 and 206 of the FPA.[26] They argue that Entergy's proposal would prohibit the Commission from, even on its own motion, investigating and providing a remedy for unjust, unreasonable, and unduly discriminatory rates, so long as Entergy's costs were approved by one retail regulator. They explain that Entergy's proposal does not ask the Commission to defer to the rate decisions made by a retail regulator, but rather to forego its own rate determination in light of decisions of a retail regulator on a separate topic, *i.e.*, the prudence of the acquisition or construction of a new resource.[27]

19. Further, New Orleans, the Arkansas/Mississippi Commissions, and AEEC assert that Entergy's proposal deprives other retail regulators and parties, who will bear some, if not most, of the acquisition's costs, of any right to challenge those costs before the Commission.[28] They argue that, under Entergy's proposal, a retail regulator would not have cause to consider whether charges resulting from a transaction outside of its jurisdiction are just and reasonable. Moreover, they assert, parties would be precluded

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[25] The NRG Companies include: NRG Power Marketing Inc., Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Big Cajun II Unit 4 LLC, Louisiana Generating LLC, and NRG Sterlington Power LLC.

[26] New Orleans' Protest at 7; Arkansas/Mississippi Commissions' Protest at 3-4 (*citing* 16 U.S.C. §§ 824d and 824e (2000)).

[27] Similarly, the Louisiana Commission asserts that the Petition should be denied because the Operating Committee must not be allowed to exclude some resources, and then have that decision be effectively unchallengeable. Louisiana Commission's Protest at 7.

[28] New Orleans' Protest at 7; Arkansas/Mississippi Commissions' Protest at 4-5; AEEC's Protest at 4.

from filing complaints under section 206 of the FPA, and would instead be required to demonstrate that the retail regulator abused its discretion or violated a public policy.[29]

20. New Orleans further argues that Entergy's proposed standard (*i.e.*, that the decision to pass costs of new capacity through the System Agreement to the entire Entergy system could only be challenged by a showing that the retail regulator has either: (1) abused its discretion or (2) violated public policy in making its prudence determination) is insufficient to protect consumers from unjust and unreasonable and not unduly discriminatory or preferential charges.[30] New Orleans explains that the Commission has no authority to overturn retail regulator decisions, including a retail regulator's prudence determination.[31] Specifically, it asserts that state courts have appellate jurisdiction over state regulatory agencies and a federal court may overturn a retail regulator's prudence determination disallowing the pass-through of Commission-approved costs, but the Commission itself does not have the power to overturn a retail regulator's decision.[32] Moreover, New Orleans argues that a retail regulator's decision would not necessarily be an abuse of discretion simply because it produces unjust and unreasonable charges in another jurisdiction. It asserts that a state's responsibility is to its own jurisdiction, not to surrounding states, and its decisions do not include determinations of just and reasonable wholesale electric rates and charges in interstate commerce.[33]

21. New Orleans contends that Entergy has offered no reason to support the argument that the Commission would defer to any retail regulator's decision under the circumstances it has presented here. New Orleans argues that, while Entergy cited several cases in support of its request for deference, none resemble the fact pattern at issue here or indicate that it would be appropriate for the Commission to offer deference to a retail regulator's decision in this case. In addition, New Orleans argues that deference to retail regulator decisions is inappropriate in this case because Entergy's proposal pertains to a regional, rather than a local, interest. It explains that since this case

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[29] New Orleans' Protest at 7; Arkansas/Mississippi Commissions' Protest at 4-5.

[30] New Orleans' Protest at 9.

[31] *Id*. at 8.

[32] *Id.* at n.15 (*citing New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 833 F.2d 583, 586-588 (5th Cir. 1987)).

[33] *Id.* at 8-9.

deals exclusively with system resources, and the cost of system resources are to be borne by the entire Entergy system, this is by definition a matter of system-wide interest. Further, New Orleans asserts that the Commission should be extremely cautious about deferring to the decisions of an individual retail regulator when costs can be pushed out to the remainder of the system.

22. New Orleans and the Louisiana Commission argue that Entergy has not offered any compelling reason to deny parties their statutory right to challenge Entergy's System Agreement charges before the Commission. They argue that Entergy's claim that there is uncertainty associated with any addition of a generating resource in the post-Opinion No. 480 regulatory environment is not sufficient to deprive other parties of their ability to challenge Entergy's charges under the just and reasonable standard. The Louisiana Commission asserts that while Opinion No. 480 recognized that production cost allocations are now discriminatory and set forth a bandwidth remedy, it did not create a new paradigm. It asserts that the only difference now is that Entergy seeks to take away the Commission's current prudence review jurisdiction and authority.[34] Moreover, New Orleans states that currently, the greatest uncertainty regarding the Entergy system is caused, not by Opinion No. 480, but by Entergy Arkansas' announcement that it will be leaving the System Agreement, a move wholly supported by Entergy.[35]

23. New Orleans and the Louisiana Commission also argue that Entergy's assertion that, if the Commission does not grant its petition, an increase in challenges to its charges is to be expected is speculative at best, and does not serve as sufficient grounds for excusing Entergy from the need to demonstrate that its charges are just and reasonable if a credible challenge is brought. They assert that Entergy's proposal, if granted, would increase litigation and uncertainty, inundating the Commission with preemptive complaints brought by regulators out of an abundance of caution.[36]

24. With respect to Entergy's alternative request, New Orleans argues that the Commission should deny Entergy's request for an advance prudence determination of its acquisition of the Calcasieu Facility.[37] New Orleans asserts that Entergy was unable to cite any cases wherein the Commission did grant an advance prudence review and that

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[34] Louisiana Commission' Protest at 5.

[35] New Orleans' Protest at 10.

[36] Louisiana Commission's Protest at 5; New Orleans' Protest at 10.

[37] *Id*. at 17.

granting Entergy's request would be contrary to Commission precedent and bad public policy.[38] It also argues that Entergy is wrong when it argues that in the instant case the Commission does not run the risks usually assumed when it makes advanced prudence decisions (such as the Commission becoming involved in day-to-day utility management decisions and inviting more such requests for advanced prudence decisions). New Orleans asserts that the Commission faces both of those risks in this case. New Orleans argues that Entergy must accept as a tolerable incident of utility regulation the potential of a challenge to the charges it may seek to impose on its customers; such risk is not by any means unusual in the utility industry.

25. Similarly, the Louisiana Commission and the Arkansas/Mississippi Commissions argue that Entergy's Petition should be denied because Entergy seeks to exempt itself from the Commission's prudence standards, without providing any support for such an exemption, in violation of the FPA and long-standing Commission precedent.[39] The Louisiana Commission explains that Entergy's proposed exemption would essentially pre-approve Calcasieu *and* all future unidentified purchases, acquisitions, or construction, without any wholesale prudence review under federal standards, so long as one state regulator has not been shown to abuse its discretion.[40] The Louisiana Commission asserts that there is no basis to abandon the Commission's prudence standards here because these standards provide sufficient protection and certainty to utilities that make generation decisions. The Arkansas/Mississippi Commissions argue that Entergy's request for an advance determination "only under the unique facts presented," is merely an attempt by Entergy to use this case as precedent for future cases with "unique facts," in order to evade the Commission's review of its costs in this and future proceedings.[41]

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[38] *Id*. (*citing AEP*, 49 FERC ¶ 61,377 at 62,382; *Minnesota Power II*, 43 FERC ¶ 61,502 at 62,241).

[39] Louisiana Commission's Protest at 3; Arkansas/Mississippi Commissions' Protest at 10.

[40] Louisiana Commission's Protest at 3.

[41] Arkansas/Mississippi Commissions' Protest at 11-12.

IV. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[42] the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[43] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

B. Commission Determination

28. We will deny Entergy's petition for declaratory order, including its alternative request for relief. The Commission's ratemaking obligations under the FPA cannot be delegated to a state commission.[44] Similarly, as a general matter, a state commission cannot set Commission-jurisdictional rates[45] nor direct the filing of Commission-jurisdictional rates.[46] Likewise, the Commission cannot delegate to jurisdictional utilities its obligation to ensure the justness and reasonableness of jurisdictional rates.[47] Yet, that is what Entergy effectively asks us to do, *i.e.*, to delegate to state commissions and to Entergy itself the determination of the reasonableness of Entergy's Commission-jurisdictional rates.

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[42] 18 C.F.R. § 385.214 (2006).

[43] 18 C.F.R. § 385.213(a)(2) (2006).

[44] *See Entergy Louisiana, Inc. v. Louisiana Public Service Comm.*, 539 U.S. 39, 43 n.1 (2003); *City of New Orleans v. Entergy Corp.*, 55 FERC ¶ 61,211, at 61,729 (1991).

[45] And equally a state commission cannot set rates for another state.

[46] *See, e.g., Western Massachusetts Electric Co.*, 23 FERC ¶ 61,205, at 61,063-64, *reh'g denied*, 23 FERC ¶ 61,345, at 61,757 (1983); *Progress Energy, Inc.*, 97 FERC ¶ 61,141, at 61,628 (2001); *Kentucky Utilities Co. v. FERC*, 760 F.2d 1321, 1325-26 (D.C. Cir. 1985).

[47] *See, e.g., Monongahela Power Co.*, 39 FERC ¶ 61,350, at 62,096 (1987); *Nevada Sun-Peak Limited P'ship.*, 54 FERC ¶ 61,264, at 61,782 (1991).

29. It is true, as Entergy argues, that the Commission has found that where there is a strong local interest it may give deference to a state commission on a matter subject to the Commission's jurisdiction. First, however, according deference to a state commission decision where there is a strong local interest is not the same as delegating our authority to a state commission which is essentially what Entergy asks us to do. Second, the cases cited by Entergy simply do not apply to the situation before us in this proceeding.[48] Here, there is no "local interest" comparable to that present in the "unusual facts" of the cited cases.[49] Rather, any decision made by one state commission with jurisdiction over the retail rates of an operating company of Entergy will necessarily have an effect on another operating company of Entergy located in another state. As Entergy itself admits, "[e]ach retail regulator has an incentive to attempt to shift costs to other jurisdictions."[50]

30. Accordingly, we will deny Entergy's request that we defer – here, that we essentially delegate our statutory authority to judge the reasonableness of Entergy's rates – either to state commission determinations or to Entergy's own determinations.

31. As to Entergy's alternative request, the Commission "has consistently held that it will not entertain the issue of the prudence of a purchase until such time as the purchaser passes on the cost of the purchase to its customers."[51] The Commission has emphasized that advance prudence determinations pose the very real risk that the Commission will necessarily become involved in day-to-day utility management decisions.[52] Moreover, the Commission also has noted that if a decision was prudent when made, the utility will

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[48] *Citing Puget Sound Energy, Inc.*, 110 FERC ¶ 61,229, at P 13-14 (2005) (*Puget*); *Northwestern Wisconsin Electric Co.*, 65 FERC ¶ 61,302, at 62,391 (1993) (*Northwestern*); *Consolidated Edison Co. of NY, Inc.*, 15 FERC ¶ 61,174, at 61,405 (1981) (*ConEd*).

[49] *Northwestern*, 65 FERC ¶ 61,302 at 62,391; *ConEd*, 15 FERC ¶ 61,174 at 61,405.

[50] Entergy's Petition at 11-12.

[51] *See, e.g., American Electric Power Service Corp.*, 49 FERC ¶ 61,377, at 62,382 (1989); *Duke Power Co*., 46 FERC ¶ 61,315, at 61,962 (1989); *Minnesota Power & Light Co.*, 43 FERC ¶ 61,104, at 61,343 (*Minnesota Power I*), *reh'g denied*, 43 FERC ¶ 61,502 (1988) (*Minnesota Power II*).

[52] *Minnesota Power I*, 43 FERC ¶ 61,104 at 61,343; *Minnesota Power II*, 43 FERC ¶ 61,502 at 62,241.

not be placed at risk as a result of the Commission's declining to make an advance determination.[53] Further, the Commission has explained that it simply does not have the resources to investigate and decide the prudence of proposed transactions by utilities before the utility's decisions are actually implemented and the utility's rates changed to reflect those decisions.[54]

32. In this regard, the U.S. Court of Appeals for the District of Columbia Circuit has upheld the Commission's policy denying requests to make prudence findings regarding speculative future costs.[55] The court explained that, although Entergy may operate under a cloud until a final prudence determination is made,

> that risk must be accepted as a tolerable incident of utility regulation. [The Commission] has already explained in prior cases that postponing a prudence analysis until the rate-altering event occurs does not conflict with the duty to utilize the knowledge available at the time the decision was made.[56]

33. Thus, consistent with our longstanding policy of refusing to provide the kind of advance determination Entergy seeks, we will deny Entergy's alternative request that we make an advance prudence determination regarding Entergy Gulf States's purchase of the Calcasieu Facility.

The Commission orders:

Entergy's Petition is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[53] *Minnesota Power I*, 43 FERC ¶ 61,104 at 61,343.

[54] *Minnesota Power II*, 43 FERC ¶ 61,502 at 62,241.

[55] *City of New Orleans, Louisiana v. FERC*, 67 F.3d 947 at 955 (D.C. Cir. 1995).

[56] *Id.*