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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

#### Syllabus

# ENTERGY LOUISIANA, INC. v. LOUISIANA PUBLIC SERVICE COMMISSION ET AL.

### CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 02-299. Argued April 28, 2003—Decided June 2, 2003

The Federal Energy Regulatory Commission (FERC), which regulates the sale of electricity at wholesale in interstate commerce, must ensure that wholesale rates are "just and reasonable," 16 U.S.C. §824d(a). Under the filed rate doctrine, FERC-approved cost allocations between affiliated energy companies may not be subjected to reevaluation in state ratemaking proceedings. Nantahala Power & Light Co. v. Thornburg, 476 U. S. 953; Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354. Petitioner Entergy Louisiana. Inc. (ELI), one of five public utilities owned by Entergy Corporation (Entergy), shares capacity with its corporate siblings in other States, which allows each company to access additional capacity when demand exceeds the supply generated by that company alone. The resulting costs are allocated among the companies; and that allocation is critical to the setting of retail rates by state regulators, such as respondent Louisiana Public Service Commission (LPSC). Entergy allocates costs through a tariff approved by FERC called the system agreement. Service Schedule MSS-1, which is included in the system agreement, provides a formula under which those companies that use more capacity than they contribute make payments to companies that contribute more than their fair share of capacity. ELI has typically made, rather than received, MSS-1 payments. In the 1980's, the operating committee initiated the Extended Reserve Shutdown (ERS) program, which responded to systemwide overcapacity by allowing some generating units not immediately necessary for capacity needs to be effectively mothballed. Because ERS units could be reactivated if needed, they were considered available for purposes of calculating MSS-1 payments. On August 5, 1997, FERC found that Entergy had violated the system agreement in classifying ERS units as

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available, but determined that a refund was not due to ELI customers as a result of MSS-1 overpayments by ELI to other operating companies. FERC also approved an amendment to the system agreement allowing an ERS unit to be treated as available under MSS-1 if the operating committee determines it intends to return the unit to service at a future date. In 1997, ELI made its annual retail rate filing with the LPSC. One of the contested issues in this proceeding was whether the cost of ERS units should be considered in setting ELI's retail rates. Confining its review to MSS-1 payments made after August 5, 1997, the LPSC concluded that it was not preempted from disallowing MSS-1 related costs as imprudent subsequent to that date. Thus, ELI was not permitted to charge retail rates that reflected the cost of its MSS-1 payments. The State District Court denied ELI's petition for review, and the State Supreme Court upheld the LPSC's decision.

*Held: Nantahala* and *MP&L* rest on a foundation that is broad enough to require pre-emption of the LPSC's order. Pp. 7–11.

- (a) The filed rate doctrine requires "that interstate power rates filed with FERC or fixed by FERC must be given binding effect by state utility commissions determining intrastate rates," Nantahala, supra, at 962. In Nantahala and MP&L, this Court applied the doctrine to hold that FERC-mandated cost allocations could not be second-guessed by state regulators. The state order in Nantahala, which involved two corporate siblings, allocated more of Nantahala's purchases to low-cost power than the proportion approved by FERC. By requiring Nantahala to calculate its rates as if it needed to procure less high-cost power than under FERC's order, the state order "trapped" a portion of the costs incurred by Nantahala in procuring its power. This ran counter to the rationale for FERC approval of cost allocations because, when costs under a FERC tariff are categorically excluded from consideration in retail rates, the regulated entity cannot fully recover its costs of purchasing at the FERCapproved rate. In MP&L, the Court concluded that, contrary to the Mississippi Supreme Court's ruling, the pre-emptive effect of FERC jurisdiction does not turn on whether a particular matter was actually determined in FERC proceedings. Pp. 7-9.
- (b) Applying Nantahala and MP&L here, the LPSC order impermissibly "traps" costs that have been allocated in a FERC tariff. That the operating committee has discretion to classify ERS units, while Nantahala and MP&L involved specific mandates, does not provide room for the LPSC's imprudence finding. The FPA specifically allows for the use of automatic adjustment clauses, and MSS-1 constitutes such a clause. The Louisiana Supreme Court's other basis for upholding the LPSC's order—that FERC had not specifically

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approved the MSS-1 cost allocation after August 5—revives precisely the same erroneous reasoning advanced by the Mississippi Supreme Court in MP&L. It matters not whether FERC has spoken to the precise classification of ERS units, but only whether the FERC tariff dictates how and by whom the classification should be made. Because the amended system agreement clearly does so, the LPSC's second-guessing of the classification here is pre-empted. Finally, respondents advance the contention that including ERS units in MSS-1 calculations violated the amended agreement despite the LPSC's own prior holding that it does not have jurisdiction to determine whether the agreement was violated and the State Supreme Court's acceptance of that concession. The question here is whether the LPSC order is pre-empted under Nantahala and MP&L; that order does not rest on a finding that the system agreement was violated. Consequently this Court has no occasion to address the question of the exclusivity of FERC's jurisdiction to determine whether and when a filed rate has been violated. Pp. 9-11.

815 So. 2d 27, reversed.

Thomas, J., delivered the opinion for a unanimous Court.