

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI

**FILED**  
DEC 30 2019

STATE OF MISSISSIPPI *ex rel.*  
JIM HOOD, ATTORNEY GENERAL

EDDIE JEAN CARR, CHANCERY CLERK  
  
PLAINTIFF

VS.

CAUSE NO. 25CH1:08-cv-2086

ENERGY MISSISSIPPI, INC., et al.

DEFENDANTS

**ORDER GRANTING SUMMARY JUDGMENT**

BEFORE THIS COURT is Defendants' *Motion for Summary Judgment Based on the Exclusive Jurisdiction of the Federal Energy Regulatory Commission, or Alternatively, the Mississippi Public Service Commission*. This Court has held full hearing on the matter, receiving all oral and written argument in support and opposition thereto. After careful review of all relevant case and statutory law, the Court finds that Defendants' *Motion* is well taken and is hereby granted.

The procedural history of the current matter is lengthy and complex. Plaintiff originally filed this complaint in Hinds County Chancery Court on December 2, 2008, alleging violations of law under the Mississippi Antitrust Statutes, the Mississippi Consumer Protection Act, the rules and regulations of the Mississippi Public Service Commission, and common law. On December 29, 2008, Defendants herein had the case removed to the United States District Court for the Southern District of Mississippi. The matter lingered in the United States District Court for the Southern District of Mississippi until late 2016 when it was reassigned to a different district court judge. After reassignment, the case continued through lengthy and extensive discovery for the following two years. Trial commenced in the United States District Court on April 1, 2019. Proceedings continued until April 3, 2019, when the court *sua sponte* considered

the issue of subject matter jurisdiction. On April 4, 2019, the case was remanded to Hinds County Chancery Court for lack of subject matter jurisdiction. On May 30, 2019, this Court convened a telephonic status conference with counsel for the parties. Being advised that numerous motions were pending and remained unresolved, the Court set threshold jurisdictional motions for hearing on August 16, 2019. On that date, this Court held hearing on Defendants' *Motion to Dismiss* and *Motion for Summary Judgment* as well as Plaintiff's *Motion to Transfer Venue to Circuit Court*.

Mississippi law provides that a request for summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c). Defendants herein seek summary judgment asserting that this case is federally preempted and therefore within the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC").

Our Mississippi Supreme Court has held that federal preemption is proper in three circumstances: (1) "where Congress explicitly preempts state law"; (2) "where preemption is implied because Congress has occupied the entire field"; or (3) "where preemption is implied because there is an actual conflict between federal and state law." *Cooper v. Gen. Motors Corp.*, 702 So.2d 428, 434(¶ 16) (Miss.1997) (citing *English v. Gen. Elec. Co.*, 496 U.S. 72, 78–79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990)). See also *Hulsman v. Behavioral Health Sys., Inc.*, 13 So. 3d 838, 840 (Miss. Ct. App. 2009). In the Federal Power Act, Congress vested FERC with exclusive jurisdiction over interstate wholesale energy rates. See 16 U.S.C. §§ 824(b), 824(d), 824(e). See also

*Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 953, 106 S. Ct. 2349, 2352, 90 L. Ed. 2d 943 (1986). Federal courts developed the “filed rate doctrine” to enforce the exclusive jurisdiction vested in FERC. 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*, 476 U.S., at 962, 106 S.Ct. 2349. “When the filed rate doctrine applies to state regulators, it does so as a matter of federal pre-emption through the Supremacy Clause.” *Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm’n*, 539 U.S. 39, 47, 123 S. Ct. 2050, 2056, 156 L. Ed. 2d 34 (2003) (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 581–582, 101 S.Ct. 2925, 69 L.Ed.2d 856 (1981)). “FERC’s exclusive jurisdiction applies not only to rates but also to power allocations that affect wholesale rates.” *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 371, 108 S. Ct. 2428, 2439, 101 L. Ed. 2d 322 (1988) (citing *Nantahala*, 476 U.S., at 966, 106 S.Ct., at 2356–2357)). Furthermore, the U.S. Supreme Court has concluded that states are preempted from “second-guessing” cost allocations even when the FERC tariff “delegates discretion to the regulated entity to determine the precise cost allocation”. *Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm’n*, 539 U.S. 39, 42, 123 S. Ct. 2050, 2053, 156 L. Ed. 2d 34 (2003). “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 that classification should be made.” *ELI*, 539 U.S. 39, 50, 123 S. Ct. 2050, 2057, 156 L. Ed. 2d 34 (2003).

Plaintiff’s “principal claim is that Entergy Corporation, acting through EMI and with the assistance of other subsidiaries, forced EMI’s captive consumer base in Mississippi to pay for high-cost electricity produced by their own outdated and inefficient generation

plants...[r]ather than ... accepting offers of cheaper power from newer, more efficient generation facilities owned by independent producers....” The State’s claim for recovery is almost identical to that set forth in the case of *Entergy Corp. v. Jenkins*. In that matter, Plaintiffs alleged that Entergy Corporation “had devised and operated an improper energy-purchasing scheme under which it had selected internally generated, higher-priced electrical power while rejecting less expensive, available third-party power...” *Entergy Corp. v. Jenkins*, 469 S.W.3d 330, 335 (Tex. App. 2015). Similar to the case at hand and the *ELI* case, the *Jenkins* case involved a group of energy companies with a System Agreement which provided for the classification of ERS units within the discretion of the operating committee instead of involving a specific FERC-mandated cost-allocation. *Jenkins*, 469 S.W.3d 330, 341 (Tex. App. 2015). The case at hand involves the consideration of the same Entergy System Agreement (“ESA”) addressed in the *ELI* and *Jenkins* case. “Although [Plaintiff] does not allege breach of the FERC-approved ESA as a cause of action, [it] challenges Entergy’s purchasing decisions—whether to use allegedly available third-party electricity or system-generated electricity—which Entergy undertook pursuant to the ESA. Determining whether Entergy permissibly exercised its discretion in making its purchasing decisions thus necessarily requires consideration of the ESA, a FERC-approved tariff.” *Entergy Corp. v. Jenkins*, 469 S.W.3d 330, 343 (Tex. App. 2015). Because resolving the dispute in this matter involves the consideration and interpretation of the ESA, a FERC-approved tariff, this Court must conclude that the matter falls within FERC’s exclusive jurisdiction. See *Entergy Corp. v. Jenkins*, 469 S.W.3d 330, 345 (Tex. App. 2015). See also *Entergy*

*Louisiana, Inc. v. Louisiana Pub. Serv. Comm'n*, 539 U.S. 39, 42, 123 S. Ct. 2050, 2053, 156 L. Ed. 2d 34 (2003).

Based upon the foregoing, this Court finds that it lacks subject matter jurisdiction to consider Plaintiff's *Complaint*. The same falls squarely within the purview of FERC's exclusive jurisdiction. Accordingly, Defendants' *Motion for Summary Judgment Based on the Exclusive Jurisdiction of the Federal Energy Regulatory Commission*, or *Alternatively, the Mississippi Public Service Commission* is hereby granted.

SO ORDERED, ADJUDGED AND DECREED, this 30<sup>th</sup> day of December, 2019.



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CHANCELLOR J. DEWAYNE THOMAS