185 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Louisville Gas and Electric Company — Docket Nos. EC98-2-006
Kentucky Utilities Company — ER18-2162-005

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued November 16, 2023)

1. On May 18, 2023, the Commission issued an order,[1] following a remand from the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit),[2] rejecting Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company's (KU) proposal[3] to modify Rate Schedule No. 402 (RS 402) to remove rate depancaking related to an earlier merger between LG&E and KU (1998 Merger). LG&E and KU filed a request for rehearing of the Remand Order on June 16, 2023.

2. Pursuant to *Allegheny Defense Project v. FERC*,[4] the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act (FPA),[5] we are modifying the discussion in the

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[1] *Louisville Gas & Elec. Co.*, 183 FERC ¶ 61,122 (2023) (Remand Order).

[2] *Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162 (D.C. Cir. 2022) (*KYMEA*).

[3] *See* LG&E and KU August 3, 2018 Joint Application under FPA Section 203 and 205 (Mitigation Removal Proposal).

[4] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

[5] 16 U.S.C. § 825*l*(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

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Remand Order and continue to reach the same result in this proceeding, as discussed below.[6]

I. Background

1. Prior Proceedings

3. In 1998, the Commission approved an application filed by LG&E and KU under section 203 of the FPA[7] for the merger of the holding company parents of LG&E and KU, subject to certain measures to mitigate the potential for increased horizontal market power in the KU destination market arising from the merger.[8] The Commission concluded that LG&E and KU's proposed measures, in conjunction with their continued participation in the then-newly formed Midwest Independent Transmission System Operator, Inc. (MISO), would ensure that the 1998 Merger would not adversely affect horizontal competition.[9] With respect to LG&E and KU's commitment to participate in MISO, the Commission observed that independent system operators (ISOs) "can make markets more competitive in a number of ways," including through the "expansion of geographic markets by eliminating pancaked transmission rates"—i.e., charges for deliveries crossing multiple transmission systems—in regions.[10] The Commission noted, however, that it would evaluate any subsequent request by LG&E and KU to withdraw from MISO in relation to its effect on competition in the KU destination market.[11] With respect to the effect of the transaction on rates, the Commission accepted the ratepayer protections proposed by LG&E and KU, which included a five-year rate cap and a pass-through of merger-related savings to wholesale requirements customers.[12]

4. In 2005, LG&E and KU filed a proposal to withdraw from MISO. As part of that proposal, LG&E and KU proposed that transmission rates for new service into and

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[6] *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Remand Order. *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

[7] 16 U.S.C. § 824b.

[8] *Louisville Gas & Elec. Co*., 82 FERC ¶ 61,308 (1998) (1998 Merger Order).

[9] *Id.* at 62,222-23.

[10] *Id*. at 62,222.

[11] *Id.* at 62,222-23.

[12] *Id.* at 62,223-24.

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through their system from MISO would remain depancaked.[13] One of the ways LG&E and KU proposed to implement this depancaking was through the creation of RS 402, an agreement between LG&E and KU and a group of Kentucky municipals and the Tennessee Valley Authority Distributors Group consisting, in total, of eighteen different municipalities in Kentucky and Tennessee.[14] LG&E and KU claimed that maintaining depancaked rates would address the horizontal market power issues that the Commission identified in the 1998 Merger Order. The Commission agreed, finding that, with some revisions, LG&E and KU's proposal would maintain depancaked rates between LG&E and KU's system and MISO, thereby establishing mitigation comparable to that previously provided through MISO membership.[15]

5. In 2018, LG&E and KU filed the Mitigation Removal Proposal under section 203(b),[16] proposing to modify RS 402 to remove the portions of the rate schedule that addressed rate depancaking. LG&E and KU argued that 20 years of market development and the addition of new sources of supply illustrated that the rate depancaking was no longer necessary to mitigate the horizontal market power concerns raised by the 1998 Merger.[17] Protestors argued that removal of the mitigation would increase transmission costs, limit the availability of alternative competitive supply, and have an adverse effect on rates for customers that entered into future power supply arrangements under the assumption that the rate depancaking would continue in force.[18]

6. The Commission conditionally approved the removal of the depancaking mitigation in RS 402, finding that the 1998 Merger continues to be consistent with the public interest without the mitigation.[19] The Commission stated that because the

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[13] *Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282, at PP 99-110 (2006) (MISO Withdrawal Order).

[14] LG&E and KU also instituted separate depancaking agreements with the Indiana Municipal Power Agency and the Illinois Municipal Electric Agency. *Id.* P 16.

[15] *Id.* PP 69, 110.

[16] 16 U.S.C. § 824b(b).

[17] *See Louisville Gas & Elec. Co.*, 166 FERC ¶ 61,206, at P 11 (2019 Mitigation Removal Order), *order on reh'g*, 168 FERC ¶ 61,152 (2019) (2019 Mitigation Removal Rehearing Order), *order on reh'g*, 172 FERC ¶ 61,228 (2020), *vacated in part*, *KYMEA*, 45 F.4th 162.

[18] 2019 Mitigation Removal Order, 166 FERC ¶ 61,206 at PP 54-61.

[19] *Id.* PP 2, 45.

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mitigation was implemented to remedy a horizontal market power concern, in evaluating the Mitigation Removal Proposal the Commission would only consider the effect of the removal on horizontal competition, rather than all of the factors the Commission traditionally considers when evaluating applications under section 203(a) (i.e., vertical competition, rates and regulation, and whether removal would result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company).[20] The Commission found that loads located in the LG&E and KU destination market would continue to have access to a sufficient number of competitive suppliers after the mitigation was removed and that competitive conditions had changed significantly since the 1998 Merger.[21] However, the Commission identified customers that had relied on depancaking mitigation when entering into future power supply arrangements. To address that reliance interest, the Commission required a transition mechanism that enabled LG&E and KU to remove the depancaking mitigation while allowing customers time to adjust.[22]

2. Court's Order

7. On August 5, 2022, the D.C. Circuit upheld in some respects, and overturned (vacated and remanded) in other respects, the 2019 Mitigation Removal Order and subsequent rehearing orders.[23] The court agreed with the Commission's determination that sufficient wholesale power competition would persist even with the return of pancaking and its attendant rate increases. However, the court disagreed with the Commission's decision to focus only on the effect of removing the mitigation on horizontal competition in its analysis; the court found that the challenged orders failed to address the effect repancaking would have on rates.[24] As to the transition mechanism

[20] *Id.* P 44.

[21] *Id.* PP 67-73.

[22] *Id.* PP 74-82. Specifically, the Commission required that depancaking mitigation "must continue for a transition period equal to the initial term of each power purchase agreement entered into by a Transition Customer that relies on transmission service on the MISO transmission system and that a Transition [C]ustomer entered into in reliance on the [depancaking mitigation] prior to the issuance of this order." *Id.* P 82; *see also id.* P 80 (defining "Transition Customer").

[23] *KYMEA*, 45 F.4th 162.

[24] *Id.* at 177, 179 (noting that, when determining if a proposed merger is consistent with the public interest under 18 C.F.R. § 2.2.6(b) (2022), the Commission considers its effects on rates, and that "[r]ate effects can have that same importance when the Commission evaluates supplemental merger orders under Section 203(b)").

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adopted by the Commission, the court found it to be reasonable in most respects, with two exceptions.[25] Accordingly, the court vacated the Commission's orders accepting LG&E and KU's proposal to end depancaking under RS 402 and remanded to the Commission for consideration of rate impacts.

3. Remand Order

8. On May 18, 2023, the Commission issued an order rejecting the Mitigation Removal Proposal and directing LG&E and KU to make a compliance filing reinstituting the depancaking provisions of RS 402.[26] In assessing the effect on rates, the Commission determined that it would "compare rates prior to the Mitigation Removal Proposal (i.e., depancaked rates implemented through RS 402) to those that will exist after implementation of the Mitigation Removal Proposal (i.e., repancaked rates)."[27] In support of this approach, the Commission relied on three considerations. First, "the D.C. Circuit [in *KYMEA*] directed the Commission to consider 'the effect of its supplemental order on rates,' and suggested that the appropriate frame of analysis was to look at rates with and without de-pancaking."[28] Second, "the depancaking provisions in RS 402 were implemented as part of the provisions established when LG&E and KU exited MISO" and, at that time, the Commission accepted that proposal because it "concluded that it would provide mitigation comparable to that achieved by LG&E and KU's MISO membership."[29] Third, RS 402 provided that "[a]ny proposed changes to these requirements are governed by Section 203 of the FPA."[30]

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[25] The court found that the Commission erred in allowing for the transition mechanism to cover the entirety of a contract for Princeton and Paducah, Kentucky that extends to 2057, and in not allowing for the transition mechanism to cover the full eight-year transmission reservation purchased by Kentucky Municipal Energy Agency from MISO. *Id*. at 187-88.

[26] Remand Order, 183 FERC ¶ 61,122 at P 2.

[27] *Id.* P 12. The Commission adopted this approach rather than considering whether the 1998 Merger would have an adverse effect on rates if the depancaking mitigation were removed. *See id.* P 13.

[28] *Id.* (citing *KYMEA*, 45 F.4th at 177-78).

[29] *See id.* (citing MISO Withdrawal Order, 114 FERC ¶ 61,282 at P 110).

[30] *Id.* (citing 2019 Mitigation Removal Order, 166 FERC ¶ 61,206 at P 28 (quoting Rate Schedule No. 402, § 1.a.v)).

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9. The Commission then found that the Mitigation Removal Proposal would have an adverse effect on rates. Here, the Commission relied on the D.C. Circuit's opinion, which stated that "'rate hikes are not only likely—they are certain'"[31] and cited testimony that municipalities' rates would increase "between 15% and 47%, with the potential in lost savings for [LG&E and KU] customers of at least $200 million between 2018 and 2028."[32] The Commission also rejected LG&E and KU's argument that RS 402 customers are, through the depancaking provisions of RS 402, receiving an undue benefit that is subsidized by customers not covered by RS 402.[33] The Commission explained that "the arguments raised by LG&E and KU regarding the undue benefit to RS 402 customers were equally true at the time RS 402 was implemented in 2006" and that RS 402 customers have, in the interim, relied on the rate depancaking provisions to seek out alternative supply arrangements.[34] The Commission concluded that RS 402 customers were not receiving an undue benefit but, instead, "were placed in the same position they would have been in had LG&E and KU not withdrawn from MISO, which was a condition for the Commission's approval of LG&E and KU's merger."[35]

II. Request for Rehearing

10. On rehearing, LG&E and KU argue that, rather than evaluating the effect on rates by comparing the rates prior to the Mitigation Removal Proposal to those that will exist after implementation of that proposal, the Commission should have considered whether the 1998 Merger would remain in the public interest if the proposal were accepted.[36] LG&E and KU assert that the Commission acted arbitrarily and capriciously in failing to follow its precedent in *Westar Energy, Inc.*,[37] which requires a review of an application to modify a merger condition under FPA section 203(b) to refer back to the circumstances

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[31] *Id*. P 14 (quoting *KYMEA*, 45 F.4th at 177).

[32] *Id.* (citing *KYMEA*, 45 F.4th at 177-78); *see also id.* P 17.

[33] *See id.* PP 16-17.

[34] *Id.* P 17.

[35] *Id.*

[36] Rehearing Request at 17-18.

[37] 164 FERC ¶ 61,060 (2018) (*Westar*).

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that led to the implementation of the merger conditions in the first place and failed to provide any reasoned explanation for its departure.[38]

11. In addition, LG&E and KU claim that the approach the Commission adopted in the Remand Order results in analysis of the Mitigation Removal Proposal that is "untethered" to the 1998 Merger, and treats that proposal as an entirely new transaction analyzed under FPA section 203(a) rather than section 203(b).[39] This, LG&E and KU assert, is contrary to D.C. Circuit precedent in *Atlantic City Electric Co. v. FERC*,[40] because the Remand Order impermissibly treats the removal of depancaking as a stand-alone section 203(a) event.[41] LG&E and KU also contend that the D.C. Circuit's decision in *KYMEA* does not support the approach adopted in the Remand Order[42] and that the language in RS 402 providing that "proposed changes to these requirements are governed by Section 203 of the FPA" does not support this approach.[43]

12. LG&E and KU also contend that the Commission failed to engage in reasoned decision-making in concluding that accepting the Mitigation Removal Proposal would lead to adverse rate impacts. They argue that the Commission erroneously treated any rate increase as *de facto* "adverse," in contravention of Commission precedent stating that the Commission will consider whether the transaction affects rates in a negative manner;

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[38] Rehearing Request at 13, 18-20.

[39] *Id.* at 17-18; *see id.* at 19-20 (arguing that, in initially analyzing the Mitigation Removal Proposal in 2019, the Commission rejected the approach it now adopts because it would treat the application to modify the merger condition as a new transaction to be reviewed under section 203(a)); *id.* at 20-22 (arguing that the Remand Order is contrary to D.C. Circuit precedent in *Atl. City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) because the Remand Order impermissibly treats the removal of depancaking as a stand-alone section 203(a) event).

[40] 295 F.3d 1.

[41] In particular, LG&E and KU observe that FPA section 203(a) is limited to listed categories of corporate transactions, and that the removal of depancaking is not, itself, a listed section 203(a) event. *See* Rehearing Request at 21.

[42] *Id.* at 22-23.

[43] *Id.* at 23-24.

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whether there are offsetting benefits; and whether the applicant has offered ratepayer protection.[44]

13. Regarding offsetting benefits, LG&E and KU further claim that the Commission improperly disregarded that the depancaking mitigation is a "subsidy" to RS 402 customers, the costs of which are necessarily borne by other customers, contrary to principles of cost causation.[45] In this vein, LG&E and KU argue that accepting the Mitigation Removal Proposal will carry the benefit of eliminating a rate subsidy to RS 402 customers that is paid for by LG&E and KU's other customers,[46] thereby aligning with principles of cost causation by ensuring that RS 402 customers bear the costs they cause,[47] and similarly ensuring parity among similarly situated classes of customers.[48] LG&E and KU also assert that the Commission failed to consider, in assessing the Mitigation Removal Proposal, that the 1998 Merger had the benefit of eliminating pancaked rates between LG&E and KU.[49]

14. As to the Commission's conclusion that LG&E and KU's arguments in favor of ending depancaking were equally true in 2006 when depancaking was implemented,[50] LG&E and KU contend that the depancaking provisions were adopted to mitigate concerns about the impact of pancaked rates on wholesale competition, such that "the relative equities of continuing the subsidy today are far different than in 2006."[51] Moreover, LG&E and KU assert that—in addressing the reliance interests of customers

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[44] *Id.* at 25-27 (asserting that ending depancaking mitigation "will only end RS 402 Customers' *exemption from paying just and reasonable rates*" and that this is not an adverse effect (emphasis LG&E and KU's)).

[45] *Id.* at 29-31.

[46] *Id.* at 29-30.

[47] *Id.* at 30-31.

[48] *Id.* at 31 ("If [merger mitigation depancaking] is removed, RS 402 Customers transacting with MISO will simply be paying the same charges for transmission service that apply to any other similarly situated entity outside of an [regional transmission organization].").

[49] *Id.* at 30.

[50] Remand Order, 183 FERC ¶ 61,122 at P 17.

[51] *See* Rehearing Request at 29-30. LG&E and KU also argue that they had a right to withdraw from MISO. *See, e.g.*, *id.* at 34.

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who have made supply arrangements predicated on the existence of rate depancaking under RS 402—the Commission failed to consider that it had ordered transition mechanisms to protect these reliance interests.[52] They further argue that the Commission's finding that implementing the Mitigation Removal Proposal would have an adverse rate impact will necessarily mean that rate depancaking under RS 402 must continue in perpetuity.[53]

15. Next, LG&E and KU argue that because the Commission in 1998 did not find an adverse impact on rates and did not find that depancaking between MISO and LG&E was necessary to approve the merger under the "effects on rates" factor, the removal of depancaking cannot be an adverse impact on rates.[54] Similarly, LG&E and KU contend that merger mitigation depancaking "has always been tied to the Commission's concerns regarding horizontal market power arising from the 1998 LG&E/KU merger" and the Commission has concluded (and D.C. Circuit upheld) that those concerns are no longer applicable.[55] Thus, they claim, it was arbitrary and capricious for the Commission to reject the Mitigation Removal Proposal.[56]

16. LG&E and KU also claim that the Commission failed to "wrestle at all with the voluminous record" in various respects.[57] They contend that the Commission failed to give weight to Commission policy and the practices of other regulatory agencies favoring time-limited mitigation measures.[58] Likewise, LG&E and KU argue that the Commission overlooked that RS 402 "clearly contemplates that [depancaking mitigation] may be

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[52] *See id.* at 32-34 (characterizing the transition mechanisms as "ratepayer protections" and asserting that, by ordering that the depancaking provisions of RS 402 be reinstated, "the Commission has only expanded de-pancaked rate benefits to those contracts for which there was no reasonable reliance interests or, worse, *new* such contracts" (emphasis LG&E and KU's)); *id.* at 39.

[53] *See id.* at 2, 34-35.

[54] *Id.* at 35-36; *see also id.* at 16, 23.

[55] *Id.* at 36-38.

[56] *Id.* at 38 ("It is therefore undeniable that [merger mitigation depancaking] is no longer needed to protect the KU Requirements Customers from market power concerns rooted in the LG&E/KU merger. As a result, the Commission acted arbitrarily and capriciously.").

[57] *Id.* at 40.

[58] *Id.* at 40-41.

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removed," because RS 402 states that proposed changes to its requirements are governed by section 203 of the FPA.[59] Moreover, they assert that depancaking may be limiting competition from PJM Interconnection, L.L.C. (PJM) resources, such that "removal of [merger mitigation depancaking] could have the benefit of enhancing competition by removing RS 402 Customers' bias towards transacting with MISO resources and allowing more PJM resources to compete."[60] And LG&E and KU claim that the Commission failed to weigh the other factors that the Commission considers for filings under section 203.[61]

17. Finally, LG&E and KU assert that the Remand Order is procedurally deficient because the Commission directed that LG&E and KU submit a compliance filing reinstituting the depancaking provisions of RS 402 but did not consider that there were pending FPA section 205[62] filings cancelling RS 402 and superseding RS 402 with the transition mechanisms.[63]

III. Discussion

A. The Commission did not err in its approach to analyzing the Mitigation Removal Proposal in the Remand Order.

18. We disagree with LG&E and KU's arguments that the Commission's approach in the Remand Order to evaluating the Mitigation Removal Proposal—focusing on the effect on rates of the Mitigation Removal Proposal, as opposed to looking at the merger's effect on rates when accounting for the Mitigation Removal Proposal—was an insufficiently justified departure from precedent, such as *Westar*, or otherwise contrary to law.[64] As the Remand Order explained, the Commission took this approach "based on

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[59] *Id.* at 41.

[60] *Id.* at 41-42.

[61] *Id.* at 42-43 (arguing that there are no vertical market power concerns, that removal of depancaking mitigation would not have an adverse impact on regulation, and that removal of such mitigation would not result in cross-subsidization of a non-utility associate company or the pledge of encumbrance of utility assets of a company serving customers at cost-based rates for the benefit of an associate company).

[62] 16 U.S.C. § 824d.

[63] Rehearing Request at 5, 17, 43-44 (claiming that this will lead to conflicting rates on file with the Commission).

[64] *See id*. at 13-14, 17-24.

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[*KYMEA*]"[65] where the court "directed the Commission to consider 'the effect of its supplemental order on rates,' and suggested that the appropriate frame of analysis was to look at rates with and without de-pancaking."[66] Specifically, the "material" and "not even disputed" rate impacts that the court held the Commission must consider were measured based on a comparison of rates before and after implementation of the Mitigation Removal Proposal, consistent with the approach in the Remand Order.[67]

19. Moreover, LG&E and KU argue that if the Commission were to evaluate the Mitigation Removal Proposal with a focus on the underlying merger, the Commission would be compelled to accept the proposal because the depancaking provisions were not initially contemplated under the 1998 Merger Order or justified based on concerns about rate impacts.[68] This argument is unavailing because it devolves into essentially the same argument that the LG&E and KU presented[69] and the D.C. Circuit rejected in *KYMEA* when it ordered the Commission to "go back to the drawing table" and "reconsider its decision"[70] by considering the effect on rates. Essentially, LG&E and KU claim that the fact that rate impacts were not a consideration on which the Commission relied in approving the 1998 Merger prevents them from being a current basis for maintaining

[65] Remand Order, 183 FERC ¶ 61,122 at P 12.

[66] *Id.* P 13 (quoting *KYMEA*, 45 F.4th at 177-78).

[67] *See KYMEA*, 45 F.4th at 177-78, 180 (discussing rate effects if "depancaking continued" versus if it were eliminated, citing Transmittal, Ex. LG&E/KU-1 (Jessee Test.) at 21:10-16 and Kentucky Municipals October 2, 2018 Protest, Ex. KM-1 (Painter Aff.) at 16).

[68] *See* Rehearing Request at 23 (arguing that the Commission must conclude that the 1998 Merger remains consistent with the public interest without depancaked rates because the depancaking provisions in RS 402 were not required by the 1998 Merger Order); *id.* at 35 ("Because the Commission did not find an adverse impact on rates in 1998 and did not rely on depancaking between MISO and [LG&E and KU] in approving the LG&E and KU merger, the removal of depancaking now cannot have an adverse impact on rates."); *id.* at 2, 36-38.

[69] Intervenor Brief of LG&E and KU, *KYMEA*, Dkt. No. 19-1236, 2021 WL 3077852 at *7-13 (D.C. Cir. July 20, 2021) (arguing that consideration of rate effects, at all, would result in treating the Mitigation Removal Proposal as a new transaction, and citing *Westar*, similar to the arguments now advanced on rehearing).

[70] *KYMEA*, 45 F.4th at 177-78.

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mitigation.[71] This approach is at odds with the court's conclusion in *KYMEA* that "[b]ecause increases in electricity rates—independent of competition concerns—were an important consideration under the facts of this case, as well as under agency and judicial precedent, the Commission erred by backhanding the effect that pancaking would have on rates."[72] We therefore disagree with LG&E and KU's attempt to disregard the court's direction in *KYMEA* that the Commission must analyze the effect on rates,[73] particularly on the facts of this case.[74]

20. Similarly, we are not persuaded by LG&E and KU's argument that because the Commission did not find an adverse impact on rates and did not rely on depancaked rates in approving the 1998 Merger, removal of depancaking now cannot be deemed an adverse rate impact.[75] Likewise, LG&E and KU's argument that the competitive landscape has materially changed since 1998, such that horizontal market power concerns are no longer relevant,[76] is not a sufficient basis to accept the Mitigation Removal Proposal. The court in *KYMEA* was clear that, in this case, the Commission must

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[71] *See id.* at 177; *see also* 2019 Mitigation Removal Order, 166 FERC ¶ 61,206 at PP 41-42; 2019 Mitigation Removal Rehearing Order, 168 FERC ¶ 61,152 at P 29.

[72] *KYMEA*, 45 F.4th at 177.

[73] *See* Rehearing Request at 19-20 (asserting that the "[t]he *Westar* standard[ ] . . . presents no tension with the D.C. Circuit's requirement that the Commission consider all of the public interest factors" in this case).

[74] In particular, "the depancaking provisions in RS 402 were not required, nor contemplated, under the original merger order" and at the time of the MISO Withdrawal Order, when they were imposed, "the Commission evaluated the effect of LG&E and KU's depancaking proposal on maintaining rate depancaking between LG&E and KU's combined system and the footprint of the remaining MISO membership." Remand Order, 183 FERC ¶ 61,122 at P 13. That the depancaking mitigation being considered here was not a condition imposed for approval of the 1998 Merger at that time, and its eventual imposition was not justified by comparison to pre-merger conditions, supports our view, in light of *KYMEA*, that in this case we appropriately do not consider the Mitigation Removal Proposal by comparison to such pre-merger conditions.

[75] Rehearing Request at 35-36.

[76] *See id.* at 36-38.

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consider rate impacts,[77] and it would thus not be appropriate to accept the Mitigation Removal Proposal on these bases, which do not account for such impacts.

21. In addition, the text of FPA section 203(b) provides the Commission flexibility as to how it will conduct its analysis in issuing supplemental orders, authorizing the Commission to issue such orders "for good cause . . . as it may find necessary or appropriate."[78] The statute does not circumscribe or limit the Commission's analysis to comparing the depancaking proposal before it to the facts that pertained in 1998, prior to the merger transaction that led to the issuance of an order under section 203(a).[79] Thus, we do not agree with LG&E and KU's assertion that the Remand Order's evaluation of the Mitigation Removal Proposal is an evaluation under FPA section 203(a). Rather, in the Remand Order we appropriately performed an analysis of the Mitigation Removal Proposal consistent with FPA section 203(b).[80]

22. We also are not persuaded by LG&E's and KU's claim that the Remand Order conflicts with *Atlantic City*. As relevant here, the court in that case held the Commission lacked jurisdiction under FPA section 203(a) to require Commission approval prior to a utility's withdrawal from an ISO, explaining that "[a] utility does not 'sell, lease, or otherwise dispose' of facilities when it agrees to the change in operational control

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[77] *KYMEA*, 45 F.4th at 177 (citing *Westar*, 164 FERC ¶ 61,060 at P 15; 18 C.F.R. § 2.26(b)).

[78] 16 U.S.C. § 824b(b) ("The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.").

[79] The Remand Order—even though it does not analyze the Mitigation Removal Proposal by comparison to the conditions prior to the 1998 Merger—comfortably falls within this statutory text, as it is an "order[ ] supplemental to" the Commission's previous orders in which it approved the merger and, later, approved the depancaking mechanism in RS 402.

[80] Accordingly, for the reasons discussed above, we also have reconsidered the Commission's analysis to this effect in the 2019 Mitigation Removal Rehearing Order, 168 FERC ¶ 61,152 at PP 26-28; *see also* Rehearing Request at 17-19 (arguing that the Commission in the 2019 Mitigation Removal Order and 2019 Mitigation Removal Rehearing Order "faithfully applied its *Westar* section 203(b) standard of review"). Likewise, we find that the standard of review articulated in *Westar* does not preclude the Commission from considering, on the facts of this case, the effect on rates of the Mitigation Removal Proposal, as opposed to looking at the merger's effect on rates when accounting for the Mitigation Removal Proposal.

necessary to initially join or to withdraw from an ISO."[81] LG&E and KU assert that jurisdiction under section 203(a) is limited to specified categories of corporate transactions, and interpreting the statutory text of section 203(a) in light of *Atlantic City* means that the Commission lacks authority to regulate removal of a depancaking condition under FPA section 203(a) rather than section 203(b).[82] The Commission, however, did not assert authority in the Remand Order to review the Mitigation Removal Proposal as a freestanding transaction under section 203(a). Rather, the Commission has reviewed the Mitigation Removal Proposal and issued a supplemental order under section 203(b)—having already issued a prior order under section 203(a) pursuant to its undisputed jurisdiction arising from the 1998 Merger—which, as explained above,[83] does not prescribe the method of analysis that LG&E and KU request.[84]

23. The Commission also stated in the Remand Order that one consideration favoring its focus on the effect on rates of the Mitigation Removal Proposal, as opposed to the merger's effect on rates when accounting for the Mitigation Removal Proposal, was text in RS 402 that states: "Any proposed changes to these requirements are governed by Section 203 of the FPA."[85] In response to LG&E and KU's arguments on rehearing,[86] we now find that this text is consistent with—even if it does not compel—analyzing the effect on rates of the Mitigation Removal Proposal, as the Commission did in the Remand Order.[87] As discussed above, the Commission's conclusion in the Remand

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[81] 295 F.3d at 11 (quoting 16 U.S.C. § 824b(a)(1)(A)).

[82] Rehearing Request at 21.

[83] *See supra* P 21.

[84] *Cf. Atl. City*, 295 F.3d at 12 (explaining that the court's analysis did not prohibit the Commission from reviewing entry to or exit from an ISO; rather the court was addressing only the specific jurisdictional question presented under section 203).

[85] Remand Order, 183 FERC ¶ 61,122 at P 13; 2019 Mitigation Removal Order, 166 FERC ¶ 61,206 at P 28 (quoting Rate Schedule No. 402, § 1.a.v.).

[86] *See* Rehearing Request at 23-24 (arguing that the Commission's reliance on this RS 402 language in the Remand Order departed from its prior findings with regard to RS 402 and ignored the statutory limits of section 203(a)).

[87] We further conclude that the other considerations discussed in the Remand Order and herein are sufficient to sustain the result of the Remand Order, including the Commission's focus on the effect on rates of the Mitigation Removal Proposal, as opposed to the merger's effect on rates when accounting for the Mitigation Removal Proposal.

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Order is consistent with FPA section 203(b), and the Commission has therefore treated the Mitigation Removal Proposal as "governed by Section 203 of the FPA."

B. <u>The Commission appropriately rejected the Mitigation Removal Proposal based on its adverse effect on rates.</u>

24. LG&E and KU also assert that the Commission's decision to reject the Mitigation Removal Proposal based on its adverse effect on rates was inadequate, including because it was contrary to Commission precedent and failed to consider certain purported offsetting benefits of ending depancaking mitigation or the impact of the transition mechanisms.[88] We disagree with LG&E and KU's suggestion that the Commission found that "any rate impact [due to terminating depancaking mitigation] is *necessarily* adverse" by simply finding that "because customers will pay more, there is an adverse impact"[89] or that the Commission ignored its precedent.[90] The Commission evaluated LG&E and KU's claims regarding offsetting benefits, but was not persuaded that these purported benefits rendered the rate impact of accepting the Mitigation Removal Proposal non-adverse.[91] As explained below, we continue to find that the Mitigation Removal Proposal does not carry offsetting benefits that warrant its acceptance.

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[88] Rehearing Request at 25-43; *see id.* at 25-26 (arguing that, under Commission precedent, finding an "adverse effect" on rates requires that "(a) the transaction affects rates in a negative manner; (b) there are no offsetting benefits; and (c) the applicant has offered no ratepayer protection").

[89] *Id.* at 26-27. Similarly, LG&E and KU claim that the Commission "states that offsetting benefits simply do not matter since the Commission had already found an adverse impact *before* even considering benefits." *Id.* at 28. This is a mischaracterization of the Remand Order's analysis, which appropriately evaluated "the effect that a proposed transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the proposed transaction." *ITC Midwest LLC*, 140 FERC ¶ 61,125, at P 19 (2012); Remand Order, 183 FERC ¶ 61,122 at PP 16-18.

[90] *See* Rehearing Request at 27-28.

[91] *See* Remand Order, 183 FERC ¶ 61,122 at PP 16-18. We further explain this conclusion below. The Commission also rejected LG&E and KU's attempt to argue that ending depancaking mitigation should not be viewed as a rate increase, *see id.* P 15; *see also KYMEA*, 45 F.4th at 174, 177-78 (holding that "it was arbitrary and capricious for the agency to ignore the effect pancaking would have on rates" and "[t]he refusal to look at rate effects was quite consequential in this case because rate hikes are not only likely—they are certain. All parties agree that they will happen"), and we sustain this

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25. We are also not persuaded by LG&E and KU's argument that, in *Silver Merger Sub, Inc.*,[92] the Commission found that "the existence of pancaked rates is *not* an adverse effect on rates under section 203."[93] In that case, the Commission did not require the applicants to eliminate pancaked rates where the applicants did "not propose any rate changes in connection with the Proposed Transaction," and the Commission found "no evidence that the Proposed Transaction itself will cause an increase in rates; nor [did] any of the protestors argue otherwise."[94] Here, by contrast, the Commission is evaluating the Mitigation Removal Proposal, which proposes to eliminate depancaking that is already in effect, thereby increasing rates.[95]

26. LG&E and KU next assert that accepting the Mitigation Removal Proposal would have four benefits that would purportedly offset any rate increase to RS 402 customers: (1) eliminating what they call a "rate subsidy" to RS 402 customers;[96] (2) eliminating pancaked rates between LG&E and KU; (3) aligning with principles of cost causation; and (4) ensuring parity between RS 402 customers and other customers in the cost of transmission service.[97] In finding that the Mitigation Removal Proposal would not deliver the claimed offsetting benefits, the Commission found that RS 402 customers are not "receiving an undue benefit; they were placed in the same position they would have

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determination for the reasons stated in the Remand Order.

[92] 145 FERC ¶ 61,261, at P 65 (2013).

[93] Rehearing Request at 27-28.

[94] *Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261 at P 65; *see id.* P 65 n.122 (citing *WPS Res. Corp.*, 83 FERC ¶ 61,196, at 61,839 (1998) (allowing use of zonal rates for intra-zonal transactions in interim period prior to the establishment of a regional transmission organization or physical interconnection among holding company affiliates, where merger does not adversely affect the current transmission rate)).

[95] *See* Remand Order, 183 FERC ¶ 61,122 at P 17 & n.40 (citing *NextEra Energy, Inc.*, 165 FERC ¶ 61,263, at P 40 (2018)); *KYMEA*, 45 F.4th at 177-78 (explaining that the rate impacts of eliminating depancaking are "certain," as "[a]ll parties agree that they will happen").

[96] We view this purported subsidy as better characterized as a "rate shift," and therefore use that terminology in our discussion below.

[97] Rehearing Request at 28-31 (arguing that the Commission's consideration of these benefits was inadequate).

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been in had LG&E and KU not withdrawn from MISO" in 2006.[98] On rehearing, LG&E and KU respond that, in 2006, "there were prevailing public interest considerations and concerns about the impact of pancaked [rates] on wholesale competition" which no longer pertain, such that "the relative equities of continuing the subsidy today are far different than in 2006."[99]

27. The MISO Withdrawal Order did not make any finding concerning the "relative equities" of the rate shift LG&E and KU assert as compared to the concerns regarding horizontal market power that the Commission relied on in that order.[100] Nor, of course, could the Commission, in the MISO Withdrawal Order, have addressed the record before us today. Thus, on rehearing, we no longer rely on the explanation in the Remand Order that the arguments LG&E and KU advance regarding this rate shift were equally true in 2006 or the conclusion that this reflects that RS 402 customers are, necessarily, not receiving an "undue benefit" as a result. However, we find that we have sufficient alternative and independent bases to continue to conclude that the Mitigation Removal Proposal would have an adverse rate impact, notwithstanding the purported offsetting benefits that LG&E and KU assert.

28. Specifically, we conclude that the rate impacts that would occur under the Mitigation Removal Proposal, which the D.C. Circuit found were "certain,"[101] are adverse. While a rate increase may not be adverse where there are offsetting benefits, LG&E and KU have not demonstrated offsetting benefits that show the rate increase will be non-adverse. Although LG&E and KU assert that their other transmission and retail

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[98] Remand Order, 183 FERC ¶ 61,122 at P 17 (asserting that "the arguments raised by LG&E and KU regarding the undue benefit to RS 402 customers were equally true at the time RS 402 was implemented in 2006" and concluding that the Commission therefore did not "view the Mitigation Removal Proposal as providing the benefits that LG&E and KU argue it would").

[99] Rehearing Request at 29-30.

[100] MISO Withdrawal Order, 114 FERC ¶ 61,282 at PP 109-10.

[101] *KYMEA*, 45 F.4th 177-78 (explaining that "[a]ll parties agree that [rate increases] will happen" and that there was agreement that there would be "material increases" in rates from eliminating depancaking mitigation under RS 402); *id.* at 180 ("A material effect on rates is not even disputed in this case . . . .").

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customers are bearing the costs of depancaking under RS 402,[102] they do not show that the cost shift away from those customers under the Mitigation Removal Proposal would offset the impacts of removing rate depancaking on RS 402 customers themselves. An important consideration under our section 203 analysis is whether there is an adverse effect on wholesale customer rates as a result of the transaction at issue and, if so, whether those negatively impacted customers receive any benefit to offset the harm.[103] Here, the customers receiving the purported offsetting benefit are not those suffering the certain effect on rates from the removal of rate depancaking. In this vein, the purported benefits of removing the rate depancaking—including eliminating the rate shift to LG&E and KU's non-RS 402 customers—that LG&E and KU advance are diffuse among LG&E and KU's retail and transmission customers.[104] By contrast, the adverse rate impacts of ending such depancaking will fall on RS 402 customers.[105]

29. In concluding that RS 402 customers were not receiving an undue benefit from depancaking mitigation, the Commission observed that "the rate depancaking provisions in RS 402 have been used by RS 402 customers to seek out alternative supply arrangements, which was a specific requirement by the Commission when LG&E and KU withdrew from MISO."[106] LG&E and KU argue that the Commission failed to

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[102] *See* LG&E and KU Transmittal, Ex. LG&E/KU-1 at 23:14-18 (asserting that "[a]bout 80% of the [merger mitigation depancaking] costs are recovered through [LG&E and KU's] retail rates approved by state regulators, and the remainder is recovered from wholesale transmission customers through the companies' Attachment O formula rate").

[103] *Cf., e.g.*, *ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 23 (2010) (finding persuasive evidence that the transaction would result in customers paying for the benefits they would receive). LG&E and KU's argument that the Commission failed to consider the benefit of eliminating pancaked rates between LG&E and KU is unpersuasive for a further reason: depancaking will not be a benefit of accepting the Mitigation Removal Proposal, but rather represents the status quo. *See* Remand Order, 183 FERC ¶ 61,122 at PP 12-13; *supra* at PP 18-23 (sustaining this conclusion).

[104] Rehearing Request at 29-31 (arguing that accepting the Mitigation Removal Proposal will better comport with principles of cost causation and ensure parity between classes of customers).

[105] *See, e.g.*, Kentucky Municipal Power Agency October 2, 2018, Supplemental Protest at 21-22 (arguing that the retail rates for the cities of Princeton and Paducah, Kentucky would increase by approximately 7% each if rate depancaking were to be removed, while the rates for LG&E and KU would be expected to decrease by only 0.22%).

[106] Remand Order, 183 FERC ¶ 61,122 at P 17.

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recognize that, through the transition mechanisms, it protected RS 402 customers' reliance interests.[107] As explained above, however, we no longer rely on this portion of the Commission's analysis in the Remand Order, but instead reach our conclusion in this case on the alternative grounds discussed above.[108]

30. LG&E and KU also attempt to characterize the transition mechanisms as "comprehensive ratepayer protection" that the Commission required to protect the reasonable reliance interests of RS 402 customers.[109] However, the transition mechanisms were required by the Commission to protect the reliance interests of RS 402 customers, rather than as "ratepayer protections"[110] proposed by the applicant to support its request for an order under FPA section 203.[111] LG&E and KU did not propose any such mitigation. We therefore disagree with LG&E and KU's characterization of the transition mechanisms as a component of the Commission's analysis of the rate impacts of the Mitigation Removal Proposal.

31. Even were we to consider how these mechanisms might affect the rate impact in this case, LG&E and KU do not persuade us to reach a different result. Even to the extent that the transition mechanisms would reduce or eliminate the rate impact for

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[107] *See* Rehearing Request at 39.

[108] *See supra* at PP 27-28.

[109] *Id*. at 32 ("There cannot be an 'adverse' impact on rates if customers will not actually be impacted."); *see id.* at 33 ("The point of the transition mechanism – as articulated by the Commission – was to protect those customers who entered into power purchase or sale agreements in reasonable reliance on the existence of depancaked rates under RS 402").

[110] *See* 2019 Mitigation Removal Order, 166 FERC ¶ 61,206 at PP 45, 74-82. Indeed, at the time the Commission ordered these mechanisms, it took the position that evaluating the potential adverse rate impacts of the Mitigation Removal Proposal was beyond the proper scope of its inquiry. *Id*. P 44.

[111] *See Pol'y Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189, at P 6 (2016) ("[T]he Commission may base its finding that a transaction will not have an adverse effect on rates in whole or in part on an applicant's offer of specific ratepayer protections . . . .").

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certain LG&E and KU customers, there will still be a rate impact for other customers who are not subject to the transition mechanisms.[112]

32. We disagree with LG&E and KU that rejecting their current proposal to eliminate depancaking mitigation under RS 402 necessarily means that LG&E and KU "will be forced to maintain [their] depancaking scheme for RS 402 Customers in perpetuity."[113] We address here only the proposal before us, and do not prejudge any future proposal to alter the status quo as to depancaking mitigation, which would be assessed on the record in that case. Nevertheless, even assuming *arguendo* that LGE and KU's argument is correct, this argument does not establish that LG&E and KU have carried their burden to show that the Mitigation Removal Proposal—the only matter before us—should be accepted because doing so is in the public interest.

33. LG&E and KU also assert that the Commission failed to "consider a host of other arguments in the record that were not disturbed by the D.C. Circuit's decision" and which, they claim, favor ending depancaking mitigation.[114] We are not persuaded that any of these arguments warrant accepting the Mitigation Removal Proposal.

34. LG&E and KU's first two such arguments are that Commission policy generally supports imposing time limits on mitigation, as do the policies of other agencies regulating other industries.[115] However, at the time depancaking mitigation was proposed, LG&E and KU failed to include any such time limits. Indeed, the Commission's Policy Statement on Hold Harmless Commitments states that while applicants may "propose hold harmless commitments of any number of years, we caution that applicants retain the burden of demonstrating that proposed ratepayer protections are adequate."[116]

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[112] For example, the transition mechanisms would not cover power purchase or sales agreements that had not been executed at the time the Commission issued the 2019 Mitigation Rehearing Removal Order on September 10, 2019, that would otherwise be subject to RS 402 depancaking mitigation. Particularly given the rate impact and lack of offsetting benefits to such customers, as discussed above, from ending depancaking mitigation, LG&E and KU have not demonstrated why this result would be in the public interest.

[113] Rehearing Request at 34.

[114] *Id.* at 39-43.

[115] *See id.* at 40-41 (citing reasons that such time limitations are favored).

[116] *Pol'y Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 at P 85; *see also ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 128 (2007) (accepting a proposed

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35. LG&E and KU also argue that RS 402 contemplates changes to its requirements.[117] That changes to RS 402 are, in general terms, permissible does not demonstrate that the specific changes LG&E and KU propose do not have an adverse impact on rates or are warranted under the governing public interest analysis.

36. Next, LG&E and KU contend that the Commission erred because it failed to consider that depancaking mitigation could be limiting competition from PJM resources such that "removal of [merger mitigation depancaking] could have the benefit of enhancing competition."[118] The court in *KYMEA*, however, remanded this matter to the Commission to "reconsider its decision in light of the direct and indirect effects ending depancaking would have on customers' rates."[119] Given the court's focus on the rate impacts of repancaking, we are not persuaded that further analysis of the competitive effects of the Mitigation Removal Proposal is warranted here.

37. LG&E and KU further argue that "the Commission failed to weigh the other factors the Commission considers for filings under section 203."[120] The Commission, however, considered these other factors in its public interest analysis. It explained that "[e]ven if we consider the other factors in the Commission's merger analysis, we are not convinced that the other elements of the Commission's section 203 analysis would warrant accepting the Mitigation Removal Proposal given our finding that it will result in

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transaction, with a five-year hold harmless commitment precluding the collection of transaction-related costs that exceed demonstrated transaction related savings because the applicants had "shown that such benefits [to customers outweighing any rate effect of the transaction] exist in this case").

[117] *See* Rehearing Request at 41.

[118] *See id.* at 41-42.

[119] *KYMEA*, 45 F.4th at 180; *see also id.* at 166 (finding that the Commission adequately supported its analysis of competition but that it failed to consider the "significant effect that duplicative charges would have on customer rates"); *id.* at 179 ("[T]he Commission must address rates when they are an import aspect of the problem before it. . . . [H]ow restoring pancaking would affect rates was a critical part of the public-interest analysis to which the Commission could not close its eyes."); *see also* Remand Order, 183 FERC ¶ 61,122 at P 18 ("[T]he Commission made a finding that the Mitigation Removal Proposal was in the public interest when considering the effect on competition, a finding upheld by the Court.").

[120] Rehearing Request at 42-43.

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an adverse effect on rates."[121] It further stated that, while the Commission made a finding that the Mitigation Removal Proposal was in the public interest when considering the effect on competition, it "did not find that there was a specific benefit to competition from the Mitigation Removal Proposal that would outweigh an adverse effect on rates."[122] Likewise, the *absence* of negative effects of removing depancaking mitigation on other public interest factors—that there is not an "adverse impact on regulation" or that "removal of [merger mitigation depancaking] would not result in cross-subsidization"[123]—does not translate into positive benefits that outweigh the adverse effect on rates. These same reasons also lead us to conclude, based on the analysis in this order, that LG&E and KU have not shown that accepting the Mitigation Removal Proposal is in the public interest, and we therefore sustain our rejection of that proposal.

C. LG&E and KU's procedural argument is unpersuasive.

38. Lastly, LG&E and KU assert that the Remand Order is procedurally deficient because it "directs LG&E/KU to make a compliance filing 'reinstituting' the [merger mitigation depancaking] provisions of RS 402" but fails to recognize that LG&E and KU have submitted filings to cancel RS 402 and supersede them with the transition mechanism agreements (TMAs).[124] LG&E and KU therefore assert that reinstituting the depancaking provisions of RS 402 would immediately result in conflicting rates on file with the Commission. This argument is not persuasive. No conflicting rates are on file at this time. Furthermore, in the separate order on LG&E's compliance filing, issued concurrently with this order, the Commission addresses LG&E and KU's compliance filing, the TMAs and the pending settlement concerning the TMAs, consistent with the Remand Order.[125] Thus, there will be no conflicting rates on file with the Commission.

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[121] Remand Order, 183 FERC ¶ 61,122 at P 18.

[122] *Id.* ("Nor does the finding that the Mitigation Removal Proposal was in the public interest when considering the effect of the Mitigation Removal Proposal on competition result in an offsetting benefit.").

[123] Rehearing Request at 42-43.

[124] *Id.* at 43-44 (contending that "[b]ecause the TMAs are effective and no action has been taken in those dockets, reinstituting RS 402 would immediately result in conflicting rates on file with the Commission in violation of FPA section 205").

[125] *Louisville Gas & Elec. Co.*, 185 FERC ¶ 61,120, at P 1 (2023) (accepting LG&E and KU's compliance filing reinstituting the depancaking provisions of RS 402 in RS 525, effective March 17, 2021, subject to an additional compliance filing; accepting KU's certificate of concurrence for RS 525, effective March 17, 2021; rejecting the TMAs as moot, effective March 17, 2021, requiring LG&E and KU to make refunds over

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<u>The Commission orders</u>:

In response to the requests for rehearing, the Remand Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Commissioner Danly is dissenting with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

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the timeframe that the TMAs were in effect, and dismissing the settlement concerning the TMAs as moot; and rejecting as moot, effective March 17, 2021, the three certificates of concurrence for the TMAs and the notice of cancellation of RS 402).

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Louisville Gas and Electric Company Kentucky Utilities Company	Docket Nos. EC98-2-006 ER18-2162-005
Louisville Gas and Electric Company Kentucky Utilities Company	ER23-2656-000
Kentucky Utilities Company	ER23-2662-000
Louisville Gas and Electric Company Kentucky Utilities Company	ER21-894-000 ER21-895-000 ER21-896-000 ER21-897-000 ER21-900-000 ER21-904-000 (Consolidated)
Louisville Gas and Electric Company Kentucky Utilities Company	ER21-894-002 (Not Consolidated)

(Issued November 16, 2023)

DANLY, Commissioner, *dissenting*:

I dissent from the two above-captioned orders issued today.[1] I remain dismayed by the majority's imposition of a requirement that exceeds the Commission's authority under Federal Power Act section 203,[2] as described in my earlier statement in Docket

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[1] *Louisville Gas & Elec. Co.*, 185 FERC ¶ 61,121 (2023) (order addressing arguments raised on rehearing); *Louisville Gas & Elec. Co.*, 185 FERC ¶ 61,120 (2023) (order addressing a compliance filing and requiring an additional compliance filing, accepting a certificate of concurrence, rejecting transition mechanism agreements and related concurrences as moot, directing refunds and dismissing a settlement agreement).

[2] 16 U.S.C. § 824b.

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Nos. EC98-2-005, et al.[3] I write separately to direct the reader's attention to my separate statement in that underlying order.

For these reasons, I respectfully dissent.

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James P. Danly
Commissioner

[3] *Louisville Gas & Elec. Co.*, 183 FERC ¶ 61,122 (2023) (Danly, Comm'r, dissenting).

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