

149 FERC ¶ 61,262
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Entergy Arkansas, Inc.	Docket Nos. ER14-75-000 ER14-75-001
Entergy Gulf States Louisiana, L.L.C.	ER14-76-000 ER14-76-001
Entergy Louisiana, LLC	ER14-77-000 ER14-77-001
Entergy Mississippi, Inc.	ER14-78-000 ER14-78-001
Entergy New Orleans, Inc.	ER14-79-000 ER14-79-001
Entergy Texas, Inc.	ER14-80-000 ER14-80-001 (Consolidated)
Entergy Texas, Inc.	ER14-128-000
Entergy Louisiana, LLC	ER14-1328-000
Entergy Gulf States Louisiana, L.L.C.	ER14-1329-000

ORDER CONDITIONALLY ACCEPTING NOTICES OF CANCELLATION AND
ACCEPTING AND SUSPENDING PROPOSED AMENDMENT, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING
PROCEEDINGS

(Issued December 18, 2014)

1. On October 11, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ Entergy Services, Inc. (Entergy), as agent and on behalf of the Entergy Operating Companies (Operating Companies),² submitted a proposed amendment to revise section 1.01 of the Entergy System Agreement (System Agreement) by changing the notice period for an Operating Company to terminate its participation in the System Agreement from 96 months (8 years) to 60 months (5 years) (Notice Filing).³ Entergy requested an effective date of October 12, 2013 for the Notice Filing. On October 18, 2013, pursuant to section 205 of the FPA, Entergy Texas submitted in Docket No. ER14-128-000 a notice to withdraw from the System Agreement with a requested effective date of October 18, 2018 (60 months from the date of filing), or an effective date consistent with the Commission's ruling on the Notice Filing. On February 14, 2014, Entergy Louisiana and Entergy Gulf States Louisiana submitted, in Docket Nos. ER14-1328-000 and ER14-1329-000, respectively, notices to withdraw from the System Agreement, with a requested effective date of February 14, 2019 (60 months from the date of filing), or an effective date consistent with the ruling in the Notice Filing (collectively, Withdrawal Filings). In this order, we accept the Notice Filing, suspend it for a nominal period, to be effective October 12, 2013 as requested, subject to refund, establish hearing and settlement judge procedures, and consolidate the six Notice Filing proceedings for the purpose of settlement, hearing and decision. We also conditionally accept the Withdrawal Filings, to be effective on the dates requested in the respective filings, subject to the outcome of the Notice Filing proceedings.

I. Background

2. The System Agreement is an agreement among Entergy Services, Inc. and the Operating Companies that has provided the contractual basis for planning and operating the Operating Companies' generation and bulk transmission facilities on a coordinated,

¹ 16 U.S.C. § 824d (2012).

² The Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy Texas, Inc. (Entergy Texas) and Entergy New Orleans, Inc. (Entergy New Orleans).

³ Entergy originally submitted the Notice Filing in Docket Nos. ER14-75-000, ER14-76-000, ER14-77-000, ER14-78-000, ER14-79-000, and ER14-80-000. On October 25, 2013 Entergy filed, in the -001 subdockets of each of those dockets, to amend the metadata associated with the proposed effective date that accompanied the tariff records included in the October 11, 2013 filing. For the purposes of this order, we refer to these proceedings collectively as "Notice Filing proceedings".

single-system basis since 1951. The System Agreement, which was accepted by the Commission in 1982,⁴ is a Commission-approved rate schedule that currently requires that participating Operating Companies' generation and transmission facilities be operated as a single, integrated system and it allocates among the participating Operating Companies the benefits and costs of those facilities. Although each individual Operating Company owns its own generating and transmission assets, the Entergy system historically has been planned and operated as a single, integrated electric system pursuant to the System Agreement.

3. Section 1.01 of the System Agreement authorizes an Operating Company to terminate its participation in the System Agreement upon 96 months' written notice to the other Operating Companies. On December 19, 2005, Entergy Arkansas notified the other Operating Companies of its intent to withdraw from the System Agreement effective December 18, 2013. On November 8, 2007, Entergy Mississippi also gave notice, with its withdrawal effective November 7, 2015. The Commission accepted Entergy Arkansas' and Entergy Mississippi's Notices of Cancellation to withdraw from the System Agreement.⁵ Entergy Arkansas withdrew from the System Agreement effective December 18, 2013, one day before the Operating Companies integrated into the Midcontinent Independent System Operator, Inc. (MISO).

4. In April 2011, the Operating Companies announced their decision to join MISO. In order to join MISO, the Operating Companies sought approval from all five jurisdictions with authority to set retail rates of the Operating Companies, including the Public Utility Commission of Texas (Texas Commission). Upon evaluating Entergy Texas' request to join MISO, the Texas Commission concluded that the benefits of joining MISO would be eroded by Entergy Texas' continued participation in the System Agreement. Accordingly, the Texas Commission expressed its desire for Entergy Texas to exit the System Agreement sooner than the 96-month period provided under section 1.01 of the System Agreement.⁶

⁴ See *Middle S. Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305, *order on reh'g*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985), *aff'd sub nom. Miss. Indus. v. FERC*, 808 F.2d 1525 (D.C. Cir. 1987).

⁵ See *Entergy Servs., Inc.*, 129 FERC ¶ 61,143 (2009) (EAI/EMI Withdrawal Order), *reh'g denied*, 134 FERC ¶ 61,075 (2011) (EAI/EMI Withdrawal Rehearing Order), *aff'd sub nom. Council of the City of New Orleans v. FERC*, 692 F.3d 172 (D.C. Cir. 2012), *cert. denied*, 133 S. Ct. 2382 (2013) (collectively, EAI/EMI Withdrawal Orders).

⁶ Entergy Notice Filing Transmittal Letter at 4.

5. Thus, as a condition of Entergy Texas joining MISO, the Texas Commission required Entergy Texas to give notice by October 31, 2013 to withdraw from the System Agreement.⁷ The Texas Commission further required the completion of a study to examine the impact of Entergy Texas leaving the System Agreement and the earliest feasible date to do so. The Texas Commission also required Entergy to engage its retail regulators to search for a means to allow Entergy Texas to exit the System Agreement prior to the currently required 96-month notice of withdrawal period. The Texas Commission also required Entergy to perform a technical analysis to evaluate the timing for Entergy Texas' withdrawal from the System Agreement. On July 15, 2013, the Liberty Consulting Group completed the study (Transition Study) required by the Texas Commission, which concluded that Entergy Texas' exit from the System Agreement in less than 96 months would be in the best interests of Entergy Texas and its stakeholders but noted that there was not a consensus at that time on what a reasonable notice period would be.⁸

6. In November 2012, in Docket No. ER13-432-000, Entergy filed amendments to the System Agreement to reflect the integration of the Operating Companies into MISO as well as Entergy Arkansas' withdrawal from the System Agreement.⁹ In response to questions in that proceeding about Entergy Texas' continued participation in the System Agreement, Entergy submitted an answer that included an explanation of its proposal for addressing the Texas Commission's desire that Entergy Texas withdraw from the System Agreement in an accelerated manner.¹⁰ In that answer, Entergy stated that no later than October 18, 2013, it would submit two filings. The first filing would provide Entergy Texas' notice of cancellation to terminate its participation in the System Agreement. The second filing would amend the System Agreement in response to the Texas Commission's position that Entergy Texas be allowed to exit the System Agreement prior to the 96-month period required under section 1.01. With regard to the second filing,

⁷ *Id.*

⁸ *Id.* at 6 (citing *Entergy Texas, Inc. Transition Study, Final Report*, filed in Texas Commission Docket No. 40979 (July 15, 2013)).

⁹ In an order issued on December 18, 2013, the Commission accepted Entergy's proposed amendments subject to a further compliance filing and subject to the outcome of a related proceeding in Docket No. ER14-73-000. The Commission also established hearing and settlement judge procedures regarding the allocation of proceeds from a settlement between Entergy Arkansas and Union Pacific Corporation. *Entergy Servs. Inc.* 145 FERC ¶ 61,247 (2013).

¹⁰ *Entergy Servs., Inc.*, Docket No. ER13-432-000, Motion for Leave to Answer and Answer of Entergy Servs., Inc. (Mar. 12, 2013).

Entergy stated that it would exercise reasonable best efforts to engage the Operating Companies and their retail regulators in reaching a consensus. If one was reached, that resolution would be included in the section 205 filing. If one was not reached, the filing would reflect Entergy's position regarding the appropriate notice period and any necessary amendments to the System Agreement. As of October 18, 2013, Entergy and its retail regulators had not reached a consensus.

7. On October 11, 2013, Entergy submitted the Notice Filing and on October 18, 2013, Entergy Texas submitted, in Docket No. ER14-128-000, its notice of cancellation of its First Revised Rate Schedule No. 181, which will terminate Entergy Texas' participation in the System Agreement in light of notice given by Entergy Texas to the other Operating Companies under section 1.01 of the System Agreement.

8. On January 13, 2014, the Louisiana Public Service Commission (Louisiana Commission) held a meeting in which it discussed, among other things, Entergy Louisiana's and Entergy Gulf States Louisiana's continued participation in the System Agreement. During that meeting, the Louisiana Commission directed Entergy Louisiana and Entergy Gulf States Louisiana to provide, no later than February 15, 2014, their respective notices of cancellation to terminate participation in the System Agreement.

9. On February 14, 2014, Entergy Louisiana and Entergy Gulf States Louisiana submitted concurrent notices to withdraw from the System Agreement with a requested effective date of February 14, 2019 (60 months from the date of filing), or an effective date consistent with the Commission's determination in the Notice Filing, if the Commission establishes a notice period other than what Entergy requested in that proceeding.

II. Entergy's Notice Filing (Docket No. ER14-75-000, *et al.*)

10. In the Notice Filing, Entergy proposes to amend section 1.01 of the System Agreement by changing the notice period for an Operating Company to terminate its participation in the System Agreement from 96 months to 60 months. The proposed amendment also provides that the revised notice period applies to any written notice of termination received on or after October 12, 2013. Entergy does not propose any other changes to the System Agreement. Entergy contends that the proposed amendment is just and reasonable and consistent with Commission precedent.

11. Entergy provides an Affidavit from Anthony P. Walz (Walz Affidavit) to support its statement that the purpose of the notice provision is to allow the remaining Operating Companies sufficient time to adjust their long-term resource plans and develop and construct additional capacity, including base load capacity as necessary.¹¹ Entergy states

¹¹ Entergy Notice Filing Transmittal Letter at 8.

that the Commission and the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have recognized that the purpose of the notice of termination provision in section 1.01 is to “provide all of the Operating Companies time to adjust their long-term plans and to acquire any needed capacity.”¹² Entergy contends that in 1982, Entergy’s resource plans contemplated the use of coal plants to serve incremental base load capacity, and that the 96-month time period was based on the approximate time it took to plan and construct a coal plant at that time.¹³ However, Entergy contends that its resource plans now contemplate the use of combined cycle gas turbine technology (Combined Cycle Gas) to serve its base load capacity, and that there is a five-year lead time for deploying a new Combined Cycle Gas resource.

12. Entergy asserts that the five-year lead time assumption for new Combined Cycle Gas resources consists of a two-year pre-construction development period and a three year period for actual construction.¹⁴ Entergy further asserts that the five-year lead time assumption is consistent with its own experience, including the development of the Ninemile Point Station in Louisiana (Ninemile 6),¹⁵ and with industry resources, such as the Electric Power Research Institute’s Technical Guide Study 10, Cases for 2011 and the

¹² *Id.* at 9 (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 61); *La. Pub. Serv. Comm’n v. Entergy Corp.*, 119 FERC ¶ 61,224, at P 48 (2007) (“Presumably, the 96-month notice period provides Operating Companies affected by Entergy Arkansas’ departure the opportunity to make reasonable alternative resource arrangements if they believe it appropriate to do so, and for all members to try to address disputes, before the departure of Entergy Arkansas actually occurs.”); EAI/EMI Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 33 (“We further disagree with the argument that the Commission erred in relying upon the 96-month notice provision as intended to provide time for individual Operating Companies to adjust their long-term plans and acquire any needed capacity.”); *Council of the City of New Orleans v. FERC*, 692 F.3d at 176 (“In this case, FERC reasonably concluded that ninety-six months provided sufficient time for the Operating Companies to plan for withdrawal.”)).

¹³ *Id.* at 8-9 (citing *La. Pub. Serv. Comm’n v. Entergy Corp.*, Docket No. EL00-66-000, Louisiana Public Service Commission Initial Brief at 48 (Apr. 5, 2001) (“The 8 year notice period was based on the 1982 planning horizon for a coal generator, which was about 8 years”); *La. Pub. Serv. Comm’n v. Entergy Corp.*, Docket No. EL00-66-000, Tr. 1394 (Mar. 9, 2001)).

¹⁴ *Id.* at 9.

¹⁵ Ninemile 6 is a 550-megawatt Combined Cycle Gas generating unit being built at Entergy’s existing Ninemile Point Station in Westwego, Louisiana. Entergy asserts that the unit will come online in 2015.

Electricity Market Module prepared by the Department of Energy's Energy Information Administration.¹⁶

13. Finally, Entergy contends that the revised 60-month notice period is supported by Entergy's integration into MISO and the MISO markets.¹⁷ According to Entergy, the MISO capacity markets act as a backstop and provide access to alternatives to mitigate unforeseen circumstances, such as an unforeseen delay in the construction of a Combined Cycle Gas resource or an Operating Company having excess capacity due to an Operating Company's exit. Entergy asserts that no similar markets existed in the region when the current version of section 1.01 was entered into in 1982.¹⁸

A. Notice and Responsive Pleadings

14. Notice of Entergy's Notice Filing was published in the Federal Register, 78 Fed. Reg. 62,610 (2013), with interventions and protests due on or before November 12, 2013. The Texas Commission, the Council of the City of New Orleans (New Orleans Council), and the Louisiana Commission filed notices of intervention and protests. The Arkansas Public Service Commission (Arkansas Commission) and the Mississippi Public Service Commission (Mississippi Commission) filed notices of intervention. Entergy, the Texas Commission and the New Orleans Council filed motions for leave to answer and answers. The New Orleans Council filed a motion for leave to file a supplemental response.

1. Protests

a. Texas Commission

15. In its protest, the Texas Commission states that it supports shortening the notice period in section 1.01 of the System Agreement, but protests Entergy's reasoning that results in a 60-month notice period.¹⁹ It argues that the appropriate measure is the time required for an Operating Company to become operationally ready to participate in MISO in its own right, but in no event longer than 36 months.²⁰ The Texas Commission requests that the Commission order Entergy to conduct a study to determine the time it

¹⁶ Entergy Notice Filing Transmittal Letter at 9.

¹⁷ *Id.* at 10.

¹⁸ *Id.*

¹⁹ Texas Commission Notice Filing Protest at 1-2.

²⁰ *Id.* at 1.

believes an Operating Company would need to become operationally ready to participate in MISO and to submit that study along with a revised proposal of the time needed for operational readiness.²¹

16. The Texas Commission contends that post-MISO integration, Entergy will have the opportunity to participate in MISO's energy and capacity markets, and that the availability of the energy and capacity markets provides the Operating Companies a level of planning flexibility unavailable prior to integration into MISO.²² It asserts that while Entergy gives some recognition to the existence of the capacity markets in reasoning that these markets can address capacity needs temporarily, Entergy does not explain why it is necessary to tie the notice of termination to the 60-month period presumed needed to build new capacity sources.²³ The Texas Commission contends that Entergy's presumption that the non-terminating companies would construct new generation in response to another Operating Company's withdrawal from the System Agreement does not give any recognition to the signals that the MISO capacity market is designed to send.²⁴ The Texas Commission asserts that the Operating Companies in need of capacity will not necessarily build new capacity, and even if they do, Entergy acknowledges that they will be able to rely on the MISO capacity markets.²⁵ The Texas Commission also asserts that MISO conducts annual one-year forward capacity auctions,²⁶ a design that will enable those Operating Companies in need of capacity to obtain it more quickly than the five-year lead time associated with constructing new generation.²⁷

17. The Texas Commission argues that a notice period that is also measured in the time required for the terminating company to become operationally ready to participate in the MISO markets in its own right ensures that the withdrawing Operating Company will have sufficient time to train or acquire personnel to engage in resource planning within the MISO energy and capacity markets and either perform the functions associated with

²¹ *Id.*

²² *Id.* at 7.

²³ *Id.* at 8 (citing Entergy Notice Filing Transmittal Letter at 7).

²⁴ *Id.* at 9.

²⁵ *Id.* at 8 (citing Entergy Notice Filing Transmittal Letter at 7).

²⁶ *Id.* (citing MISO Tariff, Module E-1, Section 69A.7).

²⁷ *Id.* at 7.

MISO and market participation or be capable of managing an outside contractor.²⁸ The Texas Commission further argues that a notice period that also corresponds to the operational readiness in MISO balances Entergy's energy and capacity needs with the signals the MISO capacity markets send to its participants.²⁹

18. The Texas Commission asserts that based on analyses by outside consultants, it has reason to believe that an Operating Company would need 18 to 24 months to achieve operational readiness to participate in the MISO capacity markets but no more than 36 months.³⁰ It argues that any longer notice period is unjust and unreasonable because it unnecessarily prolongs the terminating company's preclusion from direct participation in MISO and its markets, and it would prevent Entergy and its customers from benefitting from the increased transparency and independence that MISO's markets provide.³¹

19. The Texas Commission urges the Commission to reject the 60 months' notice period and order Entergy to develop and submit to the Commission a notice period corresponding with the time required for operational readiness and participation in the MISO markets.³²

b. New Orleans Council

20. In its protest, the New Orleans Council asserts that Entergy has failed to carry its burden under FPA section 205 to demonstrate that shortening the notice period under section 1.01 of the System Agreement is just and reasonable.³³ It argues that Entergy offers very little in support for its proposal and that the Commission should reject the proposed change, or, in the alternative, set it for hearing and/or settlement judge proceedings.³⁴

21. The New Orleans Council also asserts that the Walz Affidavit and the Transition Study are inadequate support for the proposed amendment. The New Orleans Council

²⁸ *Id.* at 8.

²⁹ *Id.*

³⁰ *Id.* at 9.

³¹ *Id.* at 2.

³² *Id.* at 10.

³³ New Orleans Council Notice Filing Protest at 10.

³⁴ *Id.* at 2, 13.

contends that although the Walz Affidavit states that the Entergy long-term resource plan assumes a five-year lead time for developing and constructing new Combined Cycle Gas resources, Entergy's only experience with new Combined Cycle Gas construction in the region, Ninemile 6, undercuts that assumption.³⁵ The New Orleans Council asserts that the pre-construction development activities for Ninemile 6 took longer than the two-year estimate, which means that the entire project will take longer than five years from conception to completion. Therefore, the New Orleans Council contends that the one concrete example Entergy offers in support of a five-year notice period shows that five years is inadequate.³⁶

22. The New Orleans Council contends that the Transition Study is not objective evidence in support of Entergy's proposal because the study was required by the Texas Commission specifically to bolster Entergy Texas' early departure from the System Agreement, and it analyzes early exit from only Entergy Texas' perspective.³⁷ The New Orleans Council contends that other than the Transition Study, Entergy has presented the Commission with no analyses, economic or otherwise, of what a shortened notice period will mean for the remaining Operating Companies.³⁸ It asserts that during the efforts to reach consensual agreement regarding a shorter notice period, the information Entergy provided to its retail regulators caused some of them to ask for more detailed analyses regarding what Entergy forecasted for Entergy New Orleans and its ratepayers as a result of a shorter notice period. The New Orleans Council asserts that while it cannot disclose the specifics,³⁹ the negative financial implications were significant and require more investigation by the affected parties and the Commission.⁴⁰ It argues that Entergy should provide the Commission with this additional information so that the Commission may

³⁵ *Id.* at 10.

³⁶ *Id.* at 10-11.

³⁷ *Id.* at 11.

³⁸ *Id.* at 12.

³⁹ *Id.* at 9. The New Orleans Council states that Entergy designated the specifics of this information as "Highly Sensitive Protected Material," which hinders the New Orleans Council's ability to attach quantitative examples of the financial impact Entergy anticipates.

⁴⁰ *Id.* at 12-13.

make an informed determination regarding the justness and reasonableness of the proposed amendment to shorten the notice period.⁴¹

23. The New Orleans Council contends that Entergy has acknowledged that it has not provided all of the information necessary to assess this proposal by stating that it is in the process of preparing more detailed analyses on the impact of Entergy Texas' early departure on the remaining Operating Companies.⁴² The New Orleans Council contends that the potential financial and operational impact on the remaining Operating Companies implicates contested issues of material fact that require more investigation by the affected parties and the Commission.⁴³ The New Orleans Council also argues that the remaining Operating Companies cannot rely on MISO membership and the availability of the MISO capacity markets as a backstop because at this point it is far from certain that all of the Operating Companies will transition into MISO.⁴⁴ The New Orleans Council requests that the Commission reject the proposed amendment to section 1.01 of the System Agreement, or in the alternative, set the proposed amendment for hearing and/or settlement judge proceedings.

c. Louisiana Commission

24. In its protest, the Louisiana Commission argues that Entergy fails to make provision for unjust and unreasonable consequences that would flow from an Operating Company's withdrawal from the System Agreement in 60 months, and particularly the planned withdrawal within 60 months of Entergy Texas.⁴⁵

25. The Louisiana Commission also argues that this filing is one of four pending before the Commission related to the modification or termination of the System Agreement, and that all these cases should be consolidated and set for hearing.⁴⁶ The Louisiana Commission states that the Commission would promote administrative efficiency by consolidating the dockets. It argues that the cases raise significant issues

⁴¹ *Id.* at 9.

⁴² *Id.* at 13.

⁴³ *Id.*

⁴⁴ *Id.* at 10-11.

⁴⁵ Louisiana Commission Notice Filing Protest at 2.

⁴⁶ The other proceedings that the Louisiana Commission references are Docket Nos. ER13-432-000, ER14-73-000, and ER14-128-000.

related to the reasonableness of the System Agreement in the MISO environment and the impact on Operating Companies that remain in the System Agreement, and therefore, the cases should be consolidated and set for hearing.⁴⁷

26. The Louisiana Commission contends that Entergy has not justified its proposal and offers only one reason for its choice of a notice period, the time that it might take to plan and construct a new generating unit, but Entergy makes no effort to show that this criterion should be the basis to determine the notice period. The Louisiana Commission further contends that Entergy does not show that Entergy Texas or any other Operating Company would likely plan and construct a generator in the normal course, rather than acquiring capacity through a competitive market. The Louisiana Commission argues that since the 1980s, construction of new combined cycle gas turbine generators has been a rarely used strategy employed by Entergy. The Louisiana Commission argues that, as such, when evaluating the term of the exit provision, focusing on the time it takes to construct such a generator is at odds with the system's history and makes little sense.⁴⁸

27. The Louisiana Commission asserts that since the mid-1980s, Entergy has constructed a new Combined Cycle Gas generating facility only once and that Entergy's focus on the time to construct a new gas-fired plant is at odds with the Entergy system's history.

28. The Louisiana Commission also asserts that Entergy's claimed justification for the 60-month notice period conflicts with the amendments to the System Agreement that Entergy proposed in Docket No. ER13-432-000. The Louisiana Commission contends that while Entergy asserts that its only practical alternative for new construction today is a combined cycle Gas unit, its new System Agreement proposed in Docket No. ER13-432-000 states:

It is recognized that the Companies have traditionally used natural gas as their primary boiler fuel and that curtailments by suppliers have necessitated a conversion to oil as boiler fuel. Minimizing current and future costs of electricity and reducing energy dependence on oil and gas require the Companies to move toward a new fuel base of [oil] and nuclear. [section 3.03, Proposed Entergy System Agreement].⁴⁹

⁴⁷ Louisiana Commission Notice Filing Protest at 2-3.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 4-5 (citing *Entergy Servs., Inc.*, Docket No. ER13-432-000, Proposed Entergy System Agreement section 3.03 (Nov. 20, 2012)).

29. The Louisiana Commission states that both this provision, and Entergy's justification here, cannot be true. It contends that Entergy's proposed amendment and the notice of withdrawal filed on behalf of Entergy Texas cannot be found just and reasonable in the absence of consideration of other relevant factors, including the degree and nature of mutual undertakings by the Operating Companies and their consequences. For instance, the Louisiana Commission states that if other Operating Companies have acquired or constructed generation and transmission to facilitate service to Entergy Texas, which is in a transmission-constrained area that borders the Electric Reliability Council of Texas, the time necessary to construct a new generator would be at most a small factor in judging the reasonableness of the withdrawal. Instead, the Louisiana Commission states that the long-term cost consequences of mutual arrangements and the means to address them would have to be taken into account.⁵⁰

30. In the case of Entergy Texas, the Louisiana Commission states that there are unique considerations that do not apply to the previous notices of withdrawal of Entergy Arkansas and Entergy Mississippi. The Louisiana Commission asserts that until the end of 2007, Entergy Texas was a part of a larger company, Entergy Gulf States, Inc., which split into two Operating Companies at the end of 2007—Entergy Texas and Entergy Gulf States Louisiana. The Louisiana Commission states that all of the generation facilities of Entergy Gulf States, Inc. were split between the companies through joint ownership or long-term power purchase agreements in order to maintain the then-existing cost responsibilities including any System Agreement cost allocations that existed at the time. The Louisiana Commission argues that it would be unjust and unreasonable to permit Entergy Texas to terminate participation in the System Agreement without considering whether that action necessitates the termination of some or all of the other power supply agreements between the Operating Companies. The Louisiana Commission states that a full airing of that issue can only occur with discovery and hearing procedures.⁵¹

31. The Louisiana Commission also argues that Entergy fails to demonstrate why its focus on constructing a new Combined Cycle Gas unit is reasonable in light of available alternatives within MISO. It contends that MISO provides access to capacity through capacity markets, and will set reserve requirements for the Operating Companies, rendering the system reserve margin largely irrelevant to reliability. It contends that MISO will displace the economic dispatch of the Entergy System with a market-based, MISO-wide dispatch. The Louisiana Commission argues that in light of the fast-paced change occurring in Entergy's operating environment, Entergy's reliance on an update of a 30-year-old planning criterion appears antiquated, and at the least, the Commission

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 5-6.

should develop a record to permit an evaluation of all the consequences of a withdrawal in 60 months.⁵²

32. Further, the Louisiana Commission states that even before Entergy decided to join MISO, the Commission recognized that a thorough investigation and examination of Entergy's revision of the System Agreement to provide for the departure of Entergy Arkansas would be required.⁵³ The Louisiana Commission contends that Entergy filed nothing to ensure that the Operating Companies will have just and reasonable rates given the departures.

33. Furthermore, the Louisiana Commission states that Entergy does not propose standards for its representation of Entergy System entities in the MISO environment but simply proposes discrete pricing allocations to ensure that all MISO charges are distributed among the Operating Companies and their customers, rather than to stockholders. The Louisiana Commission contends that Entergy seeks assurance that customers will bear all the risks associated with congestion and similar charges that will result from Entergy's planned structure for entering MISO, which is designed largely to insulate Entergy Arkansas from any remaining consequences of a half century of centralized planning. The Louisiana Commission adds that Entergy filed the System Agreement in 1982 when regional transmission organizations (RTO) were unknown in the electric industry. It contends that Entergy proposes to continue these provisions, even though many are now obsolete.

34. The Louisiana Commission also contends that while state agencies have the ability to examine utility decisions for prudence and reasonableness, because this Commission has jurisdiction over the System Agreement and the planning provisions contained therein, Entergy is able to assert preemption and the discretion of its Operating Committee, pursuant to section 3.01 of the System Agreement, in an effort to insulate decisions that reflect the interests of Entergy rather than consumers.⁵⁴

⁵² *Id.* at 6.

⁵³ *Id.* at 7 (citing *La. Pub. Serv. Comm'n v. Entergy Corp.*, 119 FERC ¶ 61,224 (2007)).

⁵⁴ *Id.* at 9 (citing *Entergy Louisiana, Inc. v. Louisiana Public Service Comm'n*, 539 U.S. 39 (2003); *Mississippi Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354 (1988)).

35. The Louisiana Commission states that Entergy's failure to propose any rules governing how it will conduct Entergy System affairs in its new environment makes its proposal unjust and unreasonable on its face.⁵⁵ Also, the Louisiana Commission argues that Entergy's failure to recognize that only four of the signatories even still exist in the same corporate form, with different names, demonstrates the absurdity of grafting cost allocations into an anachronistic agreement. The Louisiana Commission argues that this Commission must require a comprehensive agreement that addresses Entergy's proposed new environment in a just and reasonable manner.⁵⁶

36. The Louisiana Commission states that a full examination of Entergy's proposed structure must be conducted to ensure that rates remain just and reasonable going forward, as both the Commission and the Court of Appeals have decreed.⁵⁷ The Louisiana Commission provides a number of issues that it contends merit examination. For instance, it asserts that there has been a change of fundamental premise.⁵⁸ The Louisiana Commission contends that Entergy conducted an alternative dispute resolution process prior to its filing in Docket No. ER13-432-000 based on the premise that the Operating Companies still in the System Agreement would receive a single bill from MISO because they would be a single market participant. However, the Louisiana Commission asserts that on January 15, 2013, Entergy revealed that all six Operating Companies would be separate market participants in MISO, which calls into question the need for, and the justification for, many of the allocation proposals in Entergy's filing, particularly the need for Service Schedule MSS-3.⁵⁹

37. The Louisiana Commission also argues that there is an immediate need for a modern, comprehensive tariff that addresses the planning and operation of the Entergy System in the MISO environment, including describing how Entergy will nominate and bid resources into the MISO market, stating whether the Financial Transmission Rights of some Operating Companies may be sacrificed for the greater good of the system, clarifying that Entergy may not act to enrich its affiliates at the expense of consumers, specifying whether the system can require Operating Companies to incur counterflow costs for the benefit of other Operating Companies, and similar matters.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* (citing Summary of Joint Implementation Filing and Request for Associated Approvals at 19, Docket No. 11-32148 (Louisiana Commission)).

38. The Louisiana Commission also argues that a hearing is necessary to determine who bears responsibility for stranded costs. It argues that imposing the stranded costs on remaining Operating Companies, or on the last Operating Company to depart the System Agreement, constitutes undue discrimination.⁶⁰ It also argues that the Commission needs to establish rules for how Entergy will participate in MISO, such as how it will nominate resources for Auction Revenue Rights on behalf of Operating Companies in the System Agreement and how Entergy will allocate costs incurred by an Operating Company because of a decision made for the benefit of the Entergy system. The Louisiana Commission contends that leaving these crucial matters to the discretion of Entergy would be an abdication of responsibility, unless the Commission clearly decrees that the cost allocations will not preempt state authority to disallow resulting costs.

39. The Louisiana Commission also argues that the Commission should require an examination of whether individual Service Schedules of the System Agreement will remain just and reasonable after Entergy becomes part of MISO.⁶¹ The Louisiana Commission argues that Entergy should be required to establish why the Service Schedule MSS-3 energy allocation provisions will be just and reasonable after Entergy's entry into MISO.⁶² It contends that Entergy's cost transfers through Service Schedule MSS-3 will be redundant to MISO's Locational Marginal Pricing scheme and may conflict with objectives of Locational Marginal Pricing-based pricing.

40. In addition, the Louisiana Commission contends that Entergy's proposal for allocating long-term congestion charges based on allocations of short-term purchases is unjust, unreasonable and unduly discriminatory.⁶³ It argues that because Entergy proposes to allocate costs of congestion caused by particular resources based on short-term energy purchases from entirely different resources, Entergy's proposal violates the fundamental cost allocation principle of cost causation.

41. The Louisiana Commission also contends that in *Louisiana Public Service Comm'n v. Entergy Services, Inc.*,⁶⁴ the Commission indicated that the proper treatment of the proceeds of a settlement between Entergy Arkansas and the Union Pacific Railway should be determined in the proceeding in which the System Agreement is modified for

⁶⁰ *Id.* at 11.

⁶¹ *Id.* at 12.

⁶² *Id.*

⁶³ *Id.* at 13.

⁶⁴ 138 FERC ¶ 61,029 (2012).

Entergy Arkansas' withdrawal.⁶⁵ The Louisiana Commission argues that Entergy fails to address that issue in any of its filings.

42. Finally, the Louisiana Commission also argues that in its answer filed in Docket No. ER13-432-000, Entergy proposed to replace its rate filing with a new rate filing.⁶⁶ It argues that the Commission cannot accept this provisional proposal and fulfill its statutory responsibility because Entergy does not justify its original section 205 filing or its new proposal with evidence or substantive arguments. The Louisiana Commission contends that Entergy instead proposes that the Commission approve the revised proposal conveyed in its answer, without suspension or potential refund liability, and wait two years for Entergy to assimilate data that will either show the proposal is lawful or that it is unlawful. The Louisiana Commission contends that Entergy also proposes to change its original allocation methodology through its answer asserting that although Entergy originally proposed allocating losses, ancillary services and uplift charges on the basis of Responsibility Ratios, it now commits to file revisions to the System Agreement to incorporate an energy-based allocator in a compliance filing. The Louisiana Commission asserts that it protested this change as procedurally improper, without statutory notice, and unjustified. It further argues that Entergy does not explain what sort of energy-based allocator it proposes to use and that the Commission cannot approve a proposal it has never seen.

2. Answers

a. Entergy

43. In its answer, Entergy states that the Commission should accept the proposed amendment to section 1.01 of the System Agreement, without a hearing and with an effective date of October 12, 2013 (one day after the filing), as requested. Entergy states that if the Commission sets the filing for hearing, the Commission should deny the Louisiana Commission's request to consolidate these proceedings with the Entergy Texas withdrawal filing in Docket No. ER14-128-000 and with the System Agreement amendments pending in Docket Nos. ER14-73-000 and ER14-432-000.⁶⁷

44. Entergy states that its filing satisfies the standard for a public utility seeking Commission approval under FPA section 205 and, therefore, the Commission should deny the New Orleans Council's request to reject the filing and the intervenors' request to

⁶⁵ Louisiana Commission Notice Filing Protest at 7.

⁶⁶ *Id.* at 13 (citing Docket No. ER13-432-000, Entergy Ans. at 5).

⁶⁷ Entergy Notice Filing Answer at 2-3.

set it for hearing. Entergy contends that it demonstrated that the existing 96-month notice period was based on the time required at that time to plan and construct a coal plant, as coal plants were used at the time to serve incremental baseload capacity. Entergy further contends that it demonstrated that the Entergy system no longer uses coal plants to serve incremental baseload capacity needs and instead uses Combined Cycle Gas units. Entergy states that it showed that 60 months is a reasonable estimate of the time it takes for the Operating Companies to plan and construct a new Combined Cycle Gas unit. To support this conclusion, Entergy states that it relied on the analysis of the Operating Companies' planning and construction process by Entergy's Director of Planning Analysis, recent prior experience constructing a Combined Cycle Gas plant (Ninemile 6), and industry resources.

45. Entergy states that it also showed that the availability of capacity markets in MISO supports shortening the notice period because the MISO capacity markets can be used to mitigate limited-term risks if there are delays in developing long-term resources. Entergy also states that the New Orleans Council's argument that Entergy's reliance on the Ninemile 6 plant is unpersuasive is unsupported. Entergy argues that the additional time to construct Ninemile 6 was due to unusual factors (such as complications in the request for proposals and a temporary suspension of the project due to economic conditions), and, if normal circumstances had existed, the planning and construction time would have been in line with the 60-month estimate.⁶⁸

46. Entergy also argues that, contrary to assertions by the New Orleans Council, the Operating Companies are fully prepared to integrate into MISO on December 19, 2013.⁶⁹ Further, Entergy disagrees with arguments by the New Orleans Council that it failed to provide information demonstrating how the shortened notice period will financially impact the remaining Operating Companies. Entergy argues that it has demonstrated that the 60-month notice period will give the remaining Operating Companies sufficient time to adjust their long-term plans, acquire any needed capacity (through construction or the MISO capacity markets), and, thereby, help to mitigate any financial impacts that might be caused by withdrawal of an Operating Company.⁷⁰

47. With regard to the Texas Commission's contention that the 60-month notice period is unreasonable, Entergy states that while it agrees that the existence of the MISO capacity markets supports shortening the current notice period, the notice period should not be based solely on the MISO capacity markets. Entergy contends that this is because

⁶⁸ *Id.* at 5.

⁶⁹ *Id.* at 6.

⁷⁰ *Id.*

MISO capacity markets are not a replacement for long-term resources and the Entergy system's resource plan assumes that capacity requirements will be met largely through long-term resources, whether owned or contracted.

48. Also, Entergy disagrees with the Texas Commission's argument that Entergy's proposal unnecessarily prolongs the terminating company from direct participation in MISO and its markets. Entergy states that the Commission has held that the purpose of the notice provision is to protect the remaining Operating Companies, not the withdrawing company.⁷¹ Also, Entergy states that even if the Texas Commission's alternative proposal was reasonable, the existence of other reasonable alternatives is not material to the question of whether the proposed approach is just and reasonable under section 205 of the FPA.⁷²

49. Entergy asserts that the Louisiana Commission's arguments with regard to the 2007 separation of Entergy Gulf States, Inc. is an attempt by the Louisiana Commission to complicate the Commission's task by raising issues here that are, at most, relevant to the post-termination arrangements among the Operating Companies. Entergy also disagrees with the Louisiana Commission's argument that Entergy has not demonstrated why its focus on constructing a new Combined Cycle Gas resource is reasonable in light of the alternatives available in the MISO capacity markets. Entergy states that the notice period in section 1.01 of the System Agreement should be based on the development of long-term resources, and the MISO capacity markets are not a replacement for long-term resources.⁷³

50. Entergy states that even if the Commission sets this proceeding for hearing, the Commission should reject the Louisiana Commission's motion to consolidate because consolidation of the four proceedings would undermine, not promote, administrative efficiency. Entergy contends that, as it explained in Docket No. ER14-128-000, no purpose would be served by consolidating this proceeding and Docket No. ER14-128-000. It contends that the Entergy Texas withdrawal filing in Docket No. ER14-128-000 does not propose any specific notice period but merely asks the Commission to set the effective date consistent with whatever notice period is established in this proceeding.

51. Entergy also argues that consolidation of this proceeding with Docket Nos. ER13-432-000 and ER14-73-000 would needlessly complicate the Commission's determination of the appropriate notice period. Entergy states that those proceedings do not relate to the

⁷¹ *Id.* at 6-7.

⁷² *Id.* at 7.

⁷³ *Id.* at 9.

appropriate notice period under section 1.01 of the System Agreement but rather involve amendments to the System Agreement to allocate MISO charges among the Operating Companies and to address Entergy Arkansas' withdrawal from the System Agreement. Therefore, Entergy states that consolidation would needlessly entangle the narrow issues raised in this proceeding with issues that are not relevant to the appropriate notice period. Entergy states that, as the Commission has held in an analogous context, issues about the justness and reasonableness of post-withdrawal arrangements should not be combined with issues relating to the lawfulness of the withdrawal itself.⁷⁴

b. Texas Commission

52. In its answer, the Texas Commission reiterates the arguments it made in its protest. In addition, the Texas Commission contends that while it continues to question the viability of any system agreement if the Operating Companies are in MISO, the scope of this proceeding is limited to the determination of how much time is just and reasonable for an Operating Company to notify other Operating Companies that it will terminate participation in the System Agreement.⁷⁵ The Texas Commission argues that the proper forum for the Commission to decide whether the System Agreement should continue once Entergy integrates into MISO is either in Docket No. ER13-432-000 or in response to a formal complaint.⁷⁶

53. The Texas Commission asserts that the Commission has already determined that the sole requirement for an Operating Company terminating its participation is that it provide the other Operating Companies written notice of a set period before terminating its participation.⁷⁷ The Texas Commission therefore asserts that the Louisiana Commission's arguments that the Commission should consider other relevant factors, such as mutual undertakings by the Operating Companies, constitute a collateral attack on the EAI/EMI Withdrawal Orders.⁷⁸ The Texas Commission argues that if the

⁷⁴ *Id.* at 10-11 (citing EAI/EMI Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 37).

⁷⁵ Texas Commission Notice Filing Answer at 3.

⁷⁶ *Id.* at 5.

⁷⁷ *Id.* at 4 (citing Entergy System Agreement, Section 1.01; EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 59 (“The [Entergy System Agreement] contains no restrictions on [Entergy] Operating Companies’ ability to withdraw, nor does it place any further conditions on withdrawal beyond the 96 month notice requirement.”)).

⁷⁸ *Id.* (citing Louisiana Commission Notice Filing Protest at 5).

Louisiana Commission seeks changes to the System Agreement on file with the Commission that would provide for additional exit requirements, the Louisiana Commission must pursue and satisfy the requirements of a filing subject to section 206 of the FPA.⁷⁹

54. Lastly, the Texas Commission argues that the Commission should assume that Entergy will eventually satisfy all conditions necessary to integrate into MISO for the purpose of calculating the appropriate notice period.⁸⁰

c. New Orleans Council

55. The New Orleans Council contends that Entergy's answer contains certain mistakes and omissions. Specifically, the New Orleans Council argues that Entergy incorrectly asserts that the Walz Affidavit adequately demonstrates that 60 months is a reasonable long-term resource planning period for the Operating Companies. The New Orleans Council reiterates that Entergy points to only one actual new Combined Cycle Gas generation project (Ninemile 6), which, the New Orleans Council states, is taking longer than five years to complete.

56. The New Orleans Council also argues that although Entergy characterizes the length of time for completion for Ninemile 6 as being due to unusual factors, Entergy has provided no baseline for normal circumstances related to building a new Combined Cycle Gas facility in the Entergy service area and presents no evidence that complications in the Ninemile 6 request for proposal process and difficult economic conditions are particularly unusual.⁸¹ The New Orleans Council further states that Entergy did not present any evidence that new construction projects would be able to avoid similar delays.

57. The New Orleans Council also argues that Entergy mischaracterized the New Orleans Council's explanation of why it is premature for Entergy to rely on MISO's capacity market as a backstop for any capacity shortfalls that the remaining Operating Companies may experience. The New Orleans Council states that it argued that Entergy's reliance on the Operating Companies' access to the MISO capacity markets is premature based on the current status of the MISO integration approval processes before several of the Entergy Operating Companies' retail regulators. The New Orleans Council argues that Entergy fails to acknowledge that the New Orleans Council has directed

⁷⁹ *Id.*

⁸⁰ *Id.* at 6.

⁸¹ New Orleans Council Notice Filing Response at 3.

Entergy New Orleans to appear at a hearing to investigate whether Entergy New Orleans has complied with the conditions set by the New Orleans Council for MISO membership.⁸²

58. The New Orleans Council reiterates its argument that Entergy should have provided the Commission with Entergy's previously-conducted preliminary analyses of the expected financial impact of Entergy Texas' early withdrawal from the System Agreement and with the more detailed analyses Entergy committed to give certain of its retail regulators "in the near future."⁸³ The New Orleans Council contends that without all the relevant information the Commission cannot determine whether this proposal is just and reasonable and, therefore, the Commission should reject the filing, or at a minimum, set it for hearing.⁸⁴

59. In its supplemental response, the New Orleans Council renews its request, in light of the February 14, 2014 notices to terminate participation in the System Agreement filed by Entergy Louisiana and Entergy Gulf States Louisiana, that the Commission set this matter for evidentiary hearing to examine the justness and reasonableness of the proposed shortened notice period.⁸⁵ The New Orleans Council argues that, once accepted, these notices to terminate will have the practical effect of terminating the System Agreement with Entergy New Orleans as the only Operating Company that has not filed a notice of withdrawal.⁸⁶ The New Orleans Council contends that the imminent termination of the System Agreement alters the relationship among the affiliated parties to the agreement, and will have a significant impact on Entergy New Orleans and the City of New Orleans.⁸⁷ The New Orleans Council contends that the withdrawal of all but one of the affiliated Operating Companies changes the purpose and dynamic of the notice period, which will no longer be a joint planning horizon, but instead will become the time that each company has to procure its own resources to permit it to operate as a stand-alone company and to limit the exposure of ratepayers.⁸⁸ The New Orleans Council argues that Entergy has not submitted evidence that it is possible for the Operating Companies to

⁸² *Id.* at 3-4.

⁸³ *Id.* at 5.

⁸⁴ *Id.* at 5-6.

⁸⁵ New Orleans Council Notice Filing Supplemental Response at 1-4.

⁸⁶ *Id.* at 2.

⁸⁷ *Id.*

⁸⁸ *Id.*

achieve this within the proposed shortened time frame, and, in particular, Entergy has not provided evidence that it is possible for Entergy New Orleans to be able to achieve this within the shortened notice period.⁸⁹

60. The New Orleans Council asserts that the System Agreement is a long-term affiliate transaction, and any modification to the arrangement requires careful examination by the Commission to ensure that ratepayers are protected from inappropriate cost shifting and financial harm.⁹⁰ The New Orleans Council contends that where a filing does not contain sufficient information to allow the Commission to assess whether an affiliate transaction will have an adverse effect on customers or wholesale competition, “the Commission examines these matters in evidentiary hearings.”⁹¹ It further asserts that there is directly relevant precedent for the Commission to establish a hearing.⁹²

B. Discussion

1. Procedural Matters

61. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention serve to make the entities that filed them parties to these proceedings. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that has assisted us in our decision-making process.

62. The Louisiana Commission requests that the Commission consolidate the Notice Filing proceedings with the ongoing proceedings in Docket Nos. ER13-432-000 and ER14-73-000, which involve revisions to the System Agreement to address entry of Entergy into MISO, and with Entergy Texas’ Withdrawal Filing in Docket No. ER14-128-000. In this case, we conclude that consolidating the Notice Filing proceedings with the ongoing proceedings in Docket Nos. ER13-432-000 and ER14-73-000 is not

⁸⁹ *Id.* at 3.

⁹⁰ *Id.*

⁹¹ *Id.* at 4 (citing *Southern Co. Servs., Inc.*, 111 FERC ¶ 61,146, at P 6 (2005); *Entergy Servs., Inc.*, 103 FERC ¶ 61,256, at P 53 (2003)).

⁹² *Id.* (citing *La. Pub. Serv. Comm’n v. Entergy Corp.*, 92 FERC ¶ 61,171, at 61,601 (2000)).

appropriate given that they do not involve sufficiently common issues of law and fact. With regard to the Louisiana Commission's request to consolidate the Notice Filing proceedings with Entergy Texas' Withdrawal Filing in Docket No. ER14-128-000, the Commission typically consolidates proceedings only for purposes of hearing and decision.⁹³ As discussed below, we are not setting Entergy Texas' Withdrawal Filing for hearing. Accordingly, there is no need to consolidate the dockets.

2. Commission Determination

63. The proposed revisions to the System Agreement in the Notice Filing raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

64. Our preliminary analysis indicates that the Notice Filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Notice Filing, suspend it for a nominal period, to be effective October 12, 2013, subject to refund, and set it for hearing and settlement judge procedures. Because of the existence of common issues of law and fact, we will consolidate the Notice Filing proceedings in Docket Nos. ER14-75, ER14-76, ER14-77, ER14-78, ER14-79, and ER14-80 for purposes of settlement, hearing and decision.

65. While we are setting these matters for a trial-type evidentiary hearing, we encourage parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁹⁵ The settlement judge shall report to the Chief Judge and the Commission within sixty (60) days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief

⁹³ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 105 FERC ¶ 61,108, at P 14 (2003) (citing *Ariz. Public Service Co.*, 90 FERC ¶ 61,197, at 61,139 (2000)).

⁹⁴ 18 C.F.R § 385.603 (2014).

⁹⁵ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

Judge shall provide the parties with additional time to continue their settlement discussions or provide commencement of a hearing by assigning the case to a presiding judge.

III. Withdrawal Filings

1. Entergy Texas Notice of Withdrawal Filing (Docket No. ER14-128-000)

66. Entergy Texas submitted a notice of cancellation of Entergy Texas's First Revised Rate Schedule No. 181 to terminate its participation in the System Agreement (Entergy Texas Notice of Cancellation), as this rate schedule represents the System Agreement Entergy Texas filed with the Commission. Entergy Texas requests an effective withdrawal date of October 18, 2018, or an effective withdrawal date that is consistent with the Commission's ruling on the Notice Filing. It explains that if the Notice Filing is made effective on October 12, 2013, as requested, Entergy Texas requests an effective date of October 18, 2018 for its Notice of Cancellation. If the Commission establishes a different effective date or a different notice period in the Notice Filing proceeding, then Entergy Texas requests an effective date for the Entergy Texas Notice of Cancellation consistent with the Commission's ruling in the Notice Filing proceeding.⁹⁶

67. Entergy Texas states that section 1.01 of the System Agreement, as revised in the Notice Filing, gives each Operating Company the right to terminate its participation in the System Agreement upon 60 months' written notice to the other Operating Companies.⁹⁷ It states that it has complied with this provision and, therefore, has the right to terminate its participation in the System Agreement and cancel First Revised Rate Schedule No. 181. Entergy Texas affirms its recognition that its obligations under the System Agreement will continue until the termination date established in the Entergy Texas Notice of Cancellation proceeding.⁹⁸

68. Entergy Texas states that the Commission should accept the Entergy Texas Notice of Cancellation for the same reasons that it previously accepted the Entergy Arkansas and Entergy Mississippi notices of cancellation in the EAI/EMI Withdrawal Orders. Entergy Texas notes that in the EAI/EMI Withdrawal Orders, the Commission found that the "System Agreement contains no restrictions on Operating Companies' ability to withdraw, nor does it place any further conditions on withdrawal beyond the 96-month

⁹⁶ Entergy Texas Withdrawal Filing Transmittal Letter at 1.

⁹⁷ *Id.* at 4-5.

⁹⁸ *Id.* at 5.

notice requirement,” and, therefore, ruled that “Entergy Arkansas and Entergy Mississippi are permitted to leave the Entergy System following the 96-month notice period.”⁹⁹ It states that the Commission also concluded that the System Agreement does not require the terminating Operating Company to pay an exit fee to the other Operating Companies,¹⁰⁰ and that it “requires no continuing obligation on the part of the withdrawing Operating Companies” including obligations under the bandwidth remedy imposed in Order Nos. 480 and 480-A.¹⁰¹

69. Entergy Texas states that the notice provided by Entergy Texas to the other Operating Companies under section 1.01 of the System Agreement is virtually identical to the notices provided by Entergy Arkansas and Entergy Mississippi and that, therefore, consistent with the EAI/EMI Withdrawal Orders, the Commission also should accept the Entergy Texas Notice of Cancellation, effective on October 18, 2018.¹⁰²

70. Entergy Texas notes that in the EAI/EMI Withdrawal Order, the Commission stated that “Entergy has an obligation to ensure that any future operating arrangement is just and reasonable” and that “Entergy will have to file under section 205 of the FPA to reflect the arrangements to be in place after the withdrawal of Entergy Arkansas and Entergy Mississippi from the System Agreement.”¹⁰³ Entergy Texas submits that, upon withdrawal from the System Agreement, Entergy Texas will continue to participate in the MISO markets under the terms and conditions stated in the current MISO tariff on file with this Commission. Entergy Texas states that it therefore does not anticipate that it will need to make a filing under FPA section 205 reflecting Entergy Texas’ post-withdrawal arrangements. However, Entergy Texas states that it recognizes that administrative-type filings may be necessary, including to remove references to Entergy Texas from the System Agreement.¹⁰⁴

71. Entergy Texas requests waiver of the 120-day notice requirement in 18 C.F.R. §§ 35.3(a)(1) and 35.15(a) in order to establish the requested effective date. It notes that section 35.15(a) provides that notices of cancellation of rate schedules should be filed “at

⁹⁹ *Id.* at 6 (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 59).

¹⁰⁰ *Id.* (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 60).

¹⁰¹ *Id.* (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 62).

¹⁰² *Id.* at 6-7.

¹⁰³ *Id.* at 7 (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at PP 63, 67).

¹⁰⁴ *Id.*

least [60] days but not more than [120] days prior to the date such cancellation or termination is proposed to take effect.”¹⁰⁵ It states, however, that the Commission will grant waiver of the 120-day notice requirement upon a showing of good cause.¹⁰⁶

72. Entergy Texas states that good cause exists under the circumstances to grant waiver of the 120-day notice requirement, as waiver of the 120-day notice requirement will afford the remaining Operating Companies sufficient time to make efficient planning decisions for their operations after Entergy Texas’ withdrawal from the System Agreement. It notes that the Commission has stated that the purpose of section 1.01 of the System Agreement is to give the remaining Operating Companies “time to adjust their long-term plans and to acquire any needed capacity.”¹⁰⁷ It states that waiver of the 120-day notice requirement will facilitate this purpose. Entergy Texas states that the Commission often allows waiver of the 120-day notice requirement to afford parties sufficient time to complete planning and construction activities.¹⁰⁸

73. Entergy Texas states that in the EAI/EMI Withdrawal Order, Entergy Arkansas and Entergy Mississippi similarly asked the Commission to waive the 120-day notice requirement, claiming that waiver “will benefit all parties because it will provide the certainty needed in order to make timely future planning decisions for reliable and efficient operation of all of its Operating Companies.”¹⁰⁹ Entergy Texas states that the Commission granted the requested waiver and accepted the two notices of cancellation that were filed four and a half and six and a half years before the effective date and argues that the same result should apply in its withdrawal proceeding.

¹⁰⁵ *Id.* at 7 (citing 18 C.F.R. § 35.3(a)).

¹⁰⁶ *Id.* (citing *NV Energy, Inc.*, 144 FERC ¶ 61,105, at P 64 (2013); *Entergy Ark., Inc.*, 143 FERC ¶ 61,259, at P 34 (2013)).

¹⁰⁷ *Id.* at 8 (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 61; EAI/EMI Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 33).

¹⁰⁸ *Id.* (citing *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 16 (2012) (allowing waiver of the 120-day notice requirement so that “SPP may complete the remaining work required for commencement of the new market”); *Calif. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,236, at P 13 (2011) (granting waiver to give CAISO time to test the system in advance of the effective date); *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,246, at P 28 (2011) (granting waiver to give PJM time to implement modeling software changes)).

¹⁰⁹ *Id.* (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 7).

a. Notice and Responsive Pleadings

74. Notice of Entergy Texas' Withdrawal Filing was published in the Federal Register, 78 Fed. Reg. 64,486 (2013), with interventions and protests due on or before November 8, 2013. The Louisiana Commission and the New Orleans Council filed notices of intervention and protests. The Texas Commission filed a notice of intervention and comments. The Mississippi Commission filed a motion to intervene out-of-time. The Arkansas Commission filed a motion to intervene out-of-time and comments. Entergy Texas filed a motion for leave to answer and answer.

i. Protests and Comments

(a) New Orleans Council

75. The New Orleans Council argues that Entergy Texas has failed to meet its burden under FPA section 205 to demonstrate that the October 18, 2018 effective date proposed for its withdrawal from the System Agreement is just and reasonable. It states that Entergy Texas wants the Commission to set an effective date for its withdrawal that is based on a proposed amendment to section 1.01 of the System Agreement to change the termination notice provision to 60 months, not the 96-month notice provision in the Commission approved-version of the System Agreement. The New Orleans Council states that the effective date should be based on a notice provision that has been reviewed and approved by the Commission.¹¹⁰

76. The New Orleans Council contends that the pending Notice Filing is likely to be contested and that it plans to protest shortening the termination notice period based on confidential information provided to it by Entergy New Orleans showing that early withdrawal from the System Agreement by Entergy Texas (or other Operating Companies) will have significant negative financial ramifications for Entergy New Orleans and New Orleans ratepayers.¹¹¹

(b) Louisiana Commission

77. Reiterating arguments it made in its protest to the Notice Filing, the Louisiana Commission states that Entergy Texas' filing is one of four pending before the

¹¹⁰ New Orleans Council Texas-Withdrawal Filing Protest at 6.

¹¹¹ *Id.* The New Orleans Council states that Entergy New Orleans designated this information as "Highly Sensitive Protected Material," hindering the New Orleans Council's ability to attach specific, numeric examples of the negative financial impact of Entergy New Orleans' forecasts.

Commission related to the modification or termination of the System Agreement and that all these cases should be consolidated and set for hearing.¹¹²

78. In addition, the Louisiana Commission argues that Entergy Texas has not demonstrated that the Entergy Texas notice of cancellation, which relies on the 60-month withdrawal provision proposed in the Notice Filing, is just and reasonable, or that it will not produce unduly discriminatory consequences for the other Operating Companies.¹¹³ The Louisiana Commission contends that Entergy's proposal for a 60-month withdrawal provision has not been justified by the filing letter or the affidavit Entergy filed in the Notice Filing and that the lawfulness of Entergy Texas' withdrawal in 60 months cannot be determined absent a full examination of the issues that will be raised in the Notice Filing.

79. The Louisiana Commission asserts that the Commission would promote administrative efficiency by consolidating the four dockets and setting them for hearing, as the cases raise significant issues related to the reasonableness of the System Agreement in the MISO environment and the impact of the planned withdrawals on Operating Companies that remain in the System Agreement.¹¹⁴

(c) **Texas Commission**

80. The Texas Commission filed comments in support of Entergy Texas' Withdrawal Filing to the extent it comports with conditions in a related Texas Commission order.¹¹⁵ The Texas Commission states that it determined that once Entergy Texas integrates into MISO, Entergy Texas' continued participation in the System Agreement will not be in the public interest, in part because the System Agreement is obsolete and

¹¹² Louisiana Commission Texas-Withdrawal Filing Protest at 1-2. The other proceedings that the Louisiana Commission references are Docket Nos. ER13-432-000, ER14-73-000 and ER14-75-000.

¹¹³ *See id.*

¹¹⁴ *Id.*

¹¹⁵ Texas Commission Texas-Withdrawal Filing Comments at 1 (citing Application of Entergy Texas, Inc. for Approval to Transfer Operational Control of its Transmission Assets to the MISO RTO, Docket No. 40346, Order at 6, 26, 30, 31 (PUCT Oct. 26, 2012) (Texas Commission Order)).

counterproductive and because it will prevent Entergy Texas from realizing the full benefits of joining an RTO.¹¹⁶

81. The Texas Commission notes that the Texas Commission Order, as described above, required Entergy Texas and its parent companies to use reasonable best efforts to find a means for Entergy Texas to exit the System Agreement sooner than 96 months' notice so that Entergy Texas could terminate its participation in the System Agreement prior to the 96-month notice period that section 1.01 of the System Agreement currently requires.¹¹⁷ It also notes that the Texas Commission ordered Entergy Texas to issue notice of its intent to terminate participation in the System Agreement as a condition of entering MISO.¹¹⁸ The Texas Commission states that it supports Entergy Texas' filing and believes that Entergy Texas' participation in MISO should be as a direct market participant, "unfiltered and unaltered by the effects of the [System Agreement]," a belief it states was reflected in its order conditioning Entergy Texas' participation in MISO.¹¹⁹

82. The Texas Commission states that it believes that the 60-month proposed withdrawal notice period is still unreasonably long, but it favors 60 months as compared to 96 months. It also requests that Entergy Texas' notice of termination be made consistent with the notice period ultimately approved by the Commission in the Notice Filing.

ii. Answers

(a) Arkansas Commission

83. The Arkansas Commission opposes the Louisiana Commission's request to consolidate the Entergy Texas Withdrawal Filing with Docket Nos. ER13-432 and ER14-73.¹²⁰ The Arkansas Commission argues that Docket No. ER14-128 concerns only Entergy Texas' notice of cancellation of its participation in the System Agreement, not any non-System Agreement matters, such as matters related to MISO or Operating

¹¹⁶ *Id.* at 3 (citing Texas Commission Order at 6, 26, 30, 31).

¹¹⁷ *Id.* (citing Texas Commission Order at 7, 8, 32).

¹¹⁸ *Id.* (citing Texas Commission Order at 12).

¹¹⁹ *Id.* at 4.

¹²⁰ Arkansas Commission Texas-Withdrawal Filing Answer at 1.

Companies like Entergy Arkansas that are non-parties to the System Agreement as of the October 18, 2018 requested effective date of Entergy Texas' filing.¹²¹

84. Specifically, the Arkansas Commission states that Docket No. ER13-432 concerns certain Entergy-proposed revisions to the System Agreement that are effective after Entergy Arkansas' withdrawal and allocation of costs under the MISO regime, also effective after Entergy Arkansas' withdrawal from the System Agreement. It asserts that Docket No. ER14-73 relates to certain Entergy-proposed revisions to the System Agreement that also will be effective after Entergy Arkansas' withdrawal from the System Agreement.¹²²

85. The Arkansas Commission also asserts that the Louisiana Commission's request to address unspecified issues related to the System Agreement concerning the impact of the planned withdrawals of Entergy Arkansas and other Operating Companies represents a collateral attack on the EAI/EMI Withdrawal Orders that should be deemed barred as a matter of law.¹²³

86. The Arkansas Commission states that the Louisiana Commission is improperly attempting to link a hearing request for Docket No. ER14-128-000 to the proceedings in Docket Nos. ER13-432 and ER14-73, notes that it has opposed such a hearing and consolidation for each of those dockets, and states that no basis for a hearing exists for any of them. The Arkansas Commission states that the Louisiana Commission is attempting to improperly expand the scope of a section 205 proceeding.¹²⁴ It states that the Louisiana Commission has not filed a section 206 complaint to impose additional conditions on Entergy Arkansas resulting from its withdrawal nor does Entergy's section 205 filing here raise any of the issues suggested by the Louisiana Commission in its protest.¹²⁵

¹²¹ *Id.* at 2.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* (citing *Southern Company Services, Inc.*, 116 FERC ¶ 61,070, at P 26 (2006); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,263, at P 17 (2006)).

¹²⁵ *Id.* at 4.

87. The Arkansas Commission requests late intervention in this docket should the Commission consolidate Entergy Texas' Withdrawal Filing with the other two dockets and initiate a hearing.¹²⁶ It states that the Arkansas Commission is a state regulatory body regulating intrastate activities of Entergy Arkansas, no other body can represent its interests, and its participation is in the public interest. It asserts that the Louisiana Commission did not file its request for consolidation of the three dockets until the November 8, 2013 deadline for timely interventions in this proceeding and that there was thus no reason for the Arkansas Commission to seek conditional intervention until the deadline passed. It states that it accepts the record as developed to date and states that granting its conditional motion to intervene will not disrupt the proceeding nor result in any prejudice or undue burden upon the parties.¹²⁷

(b) **Entergy Texas**

88. In its answer to the protests of the Louisiana Commission and the New Orleans Council, Entergy Texas states that neither protest seeks rejection of its filing.¹²⁸ It states that the New Orleans Council protests the filing on the grounds that the 60-month notice period proposed in the Notice Filing has not been adequately supported and seeks denial of any Entergy Texas withdrawal based upon such a notice period. It states that the Louisiana Commission also opposes the 60-month notice period, contends that Entergy Texas fails to address alleged unjust and unreasonable consequences that would result from Entergy Texas' termination of participation in the System Agreement, and argues for consolidation of the Notice Filing with two other pending dockets.

89. Entergy Texas asserts that the Commission should deny the protests and accept the Entergy Texas Notice of Cancellation without a hearing and with an effective date consistent with the notice period and effective date established by the Commission in the Notice Filing.¹²⁹

90. Entergy Texas contends that the New Orleans Council's and the Louisiana Commission's objections to the 60-month notice period should not be addressed in this proceeding, as Entergy Texas' filing does not raise the appropriate notice period under section 1.01 of the System Agreement but rather asks for the Commission to establish an effective date consistent with whatever notice period is determined in the Notice

¹²⁶ *Id.*

¹²⁷ *Id.* at 5.

¹²⁸ Entergy Texas Texas-Withdrawal Filing Answer at 1.

¹²⁹ *Id.* at 1-2.

Filing.¹³⁰ Entergy Texas states that no purpose would be served by consolidating this proceeding with the Notice Filing because Entergy Texas is not proposing any specific notice period. It states that the Commission should accept the Entergy Texas Notice of Cancellation with an effective date subject to the Commission's ruling in the Notice Filing.

91. Entergy Texas also argues that the Louisiana Commission's motion to consolidate this proceeding with Docket Nos. ER13-432 and ER14-73 should be denied.¹³¹ It states that those proceedings do not relate to the Entergy Texas Notice of Cancellation or the appropriate notice period for System Agreement withdrawals. Rather, because they instead concern amendments to the System Agreement to allocate MISO charges and credits among the Operating Companies and address ministerial revisions to the System Agreement caused by Entergy Arkansas' withdrawal, Entergy Texas states that consolidation would not promote efficiency.

92. Entergy Texas states that the Louisiana Commission's allegations of unjust and unreasonable consequences that would result from Entergy Texas' termination of participation in the System Agreement is contrary to the precedent of the EAI/EMI Withdrawal Orders, where the Commission did not order a hearing on such issues and stated that issues relating to the justness and reasonableness of the Operating Companies' post-termination arrangement should not be addressed in a proceeding involving notices of cancellation.¹³² Entergy Texas states that the Commission found instead that such post-termination consequences should be addressed when successor arrangements were filed, not when notices of cancellation were filed.¹³³

93. Entergy Texas argues that the Louisiana Commission's assertion of unique considerations, such as the 2007 split of Entergy Gulf States, Inc. into two Operating Companies, does not alter the Commission's reasoning in the EAI/EMI Withdrawal Orders, as no changes were made to the termination provisions of the System Agreement when the split occurred.¹³⁴ Therefore, Entergy Texas states that the interpretation of the System Agreement that the Commission applied to the notices of withdrawal by Entergy

¹³⁰ *Id.* at 3.

¹³¹ *Id.*

¹³² *Id.* at 4.

¹³³ *Id.* at 4-5 (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at PP 60-61; EAI/EMI Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 37).

¹³⁴ *Id.* at 5.

Arkansas and Entergy Mississippi should also apply to Entergy Texas' notice of withdrawal. Moreover, Entergy Texas states that the issues regarding the split-up of Entergy Gulf States, Inc. raised by the Louisiana Commission at most relate to the justness and reasonableness of the Operating Companies' post-withdrawal structure and arrangements, which Entergy Texas asserts the Commission found to be irrelevant to the issues presented by the filing of Entergy Arkansas' and Entergy Mississippi's notices of cancellation.

2. **Entergy Louisiana and Entergy Gulf States Louisiana Notice of Withdrawal Filings (Docket Nos. ER14-1328-000 and ER14-1329-000)**

94. Entergy Louisiana and Entergy Gulf States Louisiana filed notices of cancellation of Entergy Louisiana's Third Revised Rate Schedule No. 69 and Entergy Gulf States Louisiana's Rate Schedule No. 181, respectively (ELL/EGSL Notices of Cancellation), to terminate their participation in the System Agreement, as these rate schedules represent the System Agreements Entergy Louisiana and Entergy Gulf States Louisiana filed with the Commission.¹³⁵

95. The ELL/EGSL Notices of Cancellation seek to terminate Entergy Louisiana's and Entergy Gulf States Louisiana's participation in the System Agreement and reflect notices to terminate provided on February 14, 2014 by both Operating Companies to the other Operating Companies under section 1.01 of the System Agreement. Entergy Louisiana and Entergy Gulf States Louisiana request that the Commission accept the ELL/EGSL Notices of Cancellation with an effective date of February 14, 2019, which they explain is 60 months from the date that they provided notice to the other Operating Companies.

96. Entergy Louisiana and Entergy Gulf States Louisiana state that if the Commission imposes an effective date different from the requested effective date or establishes a different notice period in the Notice Filing, then they request an effective date for the ELL/EGSL Notices of Cancellation consistent with the Commission's ruling in that proceeding. Entergy Louisiana and Entergy Gulf States Louisiana request waiver of the

¹³⁵ Entergy Louisiana and Entergy Gulf States Louisiana Joint Withdrawal Filing Transmittal at 1 (Joint Transmittal). The two Operating Companies filed their notices of cancellation with a single transmittal letter and provided support for their filings that is nearly identical to the support that Entergy Texas provided in its filing. Therefore, this order describes the duplicative support only briefly in this section.

120-day notice requirement in 18 C.F.R. §§ 35.3(a)(1) and 35.15(a) in order to establish the requested effective dates.¹³⁶

97. Entergy Louisiana and Entergy Gulf States Louisiana state that their filings reflect directions given to them by the Louisiana Commission at a January 13, 2014 Louisiana Commission meeting. They state that these directions include providing notice of their intent to terminate their participation in the System Agreement and make necessary filings with the Commission by February 15, 2014. Also, they state that the Louisiana Commission directed Louisiana Commission staff, Entergy Louisiana, and Entergy Gulf States Louisiana to attempt to achieve a consensual resolution permitting early termination of the System Agreement. This direction instructed that if such a resolution is reached, then no later than September 2014, Entergy Louisiana and Entergy Gulf States Louisiana are to make a filing seeking the necessary approvals from this Commission.¹³⁷

98. Entergy Louisiana and Entergy Gulf States Louisiana state that section 1.01 of the System Agreement, as revised in the Notice Filing, gives each Operating Company the right to terminate its participation in the System Agreement upon 60 months' written notice to the other Operating Companies, that they have complied with this provision, and that they therefore have the right to terminate their participation in the System Agreement. They add that they recognize that their obligations under the System Agreement will continue until the termination date established in the ELL/EGSL Notices of Cancellation proceedings.

99. Entergy Louisiana and Entergy Gulf States Louisiana also state that the Commission should accept the ELL/EGSL Notices of Cancellation, without suspension or hearing and for the same reasons that it previously accepted the Entergy Arkansas and Entergy Mississippi notices of cancellation in the EAI/EMI Withdrawal Orders, because they have provided notice of termination in accordance with section 1.01 of the System Agreement.¹³⁸

100. Entergy Louisiana and Entergy Gulf States Louisiana state that their notice letter satisfies the contractual requirements for terminating their participation in the System Agreement and that the notices include built-in flexibility to ensure that the notices are timely and effective even if the Commission establishes a different effective date or a different notice period in response to the Notice Filing.

¹³⁶ *Id.* at 2.

¹³⁷ *Id.* at 3-4.

¹³⁸ *Id.* at 5.

101. Like Entergy Texas, Entergy Louisiana and Entergy Gulf States Louisiana recite language from the EAI/EMI Withdrawal Orders as precedent for Commission acceptance of their notices, including the following Commission findings: (1) no restrictions on an Operating Company's right to withdraw from the System Agreement, other than the 96-months' notice requirement; (2) no further conditions upon withdrawing Operating Companies; (3) no obligations for a withdrawing Operating Company to pay exit fees to others; and (4) no continuing obligations related to the bandwidth remedy imposed by Order Nos. 480 and 480-A.¹³⁹

a. Notice and Responsive Pleadings

102. Notice of Entergy Louisiana's and Entergy Gulf States Louisiana's Withdrawal Filings was published in the Federal Register, 79 Fed. Reg. 10,793 (2014), with interventions and protests due on or before March 7, 2014. The New Orleans Council filed a notice of intervention and comments. Entergy Louisiana and Entergy Gulf States Louisiana filed a motion for leave to answer and answer. The New Orleans Council filed a motion for leave to respond and response.

i. Comments

103. The New Orleans Council urges the Commission to condition acceptance of the ELL/EGSL Notices of Cancellation upon 96-months' notice, as provided under the current System Agreement. In the alternative, the New Orleans Council requests that the ELL/EGSL Notices of Cancellation be consolidated with the pending proceedings addressing the Notice Filing and the Entergy Texas Withdrawal Filing and collectively set for evidentiary hearing to examine the justness and reasonableness of the proposed shortened notice period.¹⁴⁰

104. The New Orleans Council first questions the filings' requested effective date. It notes that the ELL/EGSL Notices of Cancellation request an effective date of termination of February 14, 2019, 60 months from the date that the notices of withdrawal were provided to the other System Agreement parties and were filed with the Commission. The New Orleans Council states, however, that under the provisions of the current System Agreement on file and approved by the Commission, a party is required to provide 96-months' notice to the other system members in order to terminate its participation.¹⁴¹ It states that Entergy Louisiana and Entergy Gulf States Louisiana base

¹³⁹ *Id.* at 6.

¹⁴⁰ New Orleans Council Louisiana-Withdrawal Filing Comments at 1.

¹⁴¹ *Id.* at 2.

their requested effective date of termination on the fact that Entergy has sought Commission approval to amend the System Agreement to shorten the notice period from 96 months to 60 months. The New Orleans Council notes, however, that the Commission has not yet acted on Entergy's proposed tariff amendment, and states that several parties, including the New Orleans Council, have expressed serious reservations about the proposed amendment and requested that the matter be set for hearing.¹⁴²

105. Among other issues, the New Orleans Council states that Entergy Louisiana and Entergy Gulf States Louisiana have: (1) failed to provide any information on the impact that a shortened notice period would have on the remaining Operating Companies, and (2) failed to demonstrate that a 60-month notice period provides sufficient lead time for the affected Operating Companies to plan, acquire or construct new generation resources to replace those that will no longer be shared under the System Agreement.¹⁴³ It states that the System Agreement's current 96-month notice provision has been extensively vetted by the Commission, and a proposal to change it must likewise be closely examined to determine whether it is just and reasonable and not unduly discriminatory.

106. The New Orleans Council also states that until the Commission issues an order addressing these and other significant issues raised in these other proceedings, it is inappropriate for Entergy Louisiana and Entergy Gulf States Louisiana to rely on a shortened notice period and that acceptance of the ELL/EGSL Notices of Cancellation must be made effective in accordance with the provisions of the System Agreement currently in place.¹⁴⁴

107. Second, the New Orleans Council states that when Entergy Arkansas and Entergy Mississippi filed notice that they would withdraw from the System Agreement, the Commission stated that "Entergy has an obligation to ensure that any future operating arrangement is just and reasonable."¹⁴⁵ The New Orleans Council states that the D.C. Circuit similarly directed the Commission to "review the post-withdrawal arrangements to ensure that they are just, reasonable, and not unduly discriminatory."¹⁴⁶ The New Orleans Council states that in ELL/EGSL Notices of Cancellation, Entergy Louisiana and Entergy Gulf States Louisiana imply that their participation in the markets overseen by

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 3.

¹⁴⁵ *Id.* (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 63).

¹⁴⁶ *Id.* (citing *Council of the City of New Orleans v. FERC*, 692 F.3d at 176).

MISO satisfies this requirement, but the New Orleans Council states there is no evidence to support that MISO membership alone constitutes just and reasonable “post-withdrawal arrangements.”¹⁴⁷ It states, further, that the Operating Companies have only been integrated as MISO members since mid-December 2013, and are operating under transitional provisions.¹⁴⁸

108. In addition, the New Orleans Council states that the withdrawal of Entergy Louisiana and Entergy Gulf States Louisiana will have the practical effect of terminating the System Agreement, as all but one Operating Company—Entergy New Orleans—will have given notice of termination. Given this fact, the New Orleans Council states that simple elimination of references in the System Agreement to the withdrawing parties (as was done in the case of Entergy Arkansas’ withdrawal) will not suffice to ensure that the post-withdrawal arrangements are just and reasonable.¹⁴⁹

109. Third, the New Orleans Council states that the withdrawal of all but one of the Operating Companies from the System Agreement changes the purpose and dynamic of the notice period, as it will no longer be a joint planning horizon, but instead will be a period in which each company must seek to procure its own resources and to limit the exposure of its ratepayers.¹⁵⁰

ii. Answers

(a) Joint Answer of Entergy Louisiana and Entergy Gulf States Louisiana

110. Entergy Louisiana and Entergy Gulf States Louisiana state that the New Orleans Council’s comments do not identify any viable grounds for denying acceptance of the ELL/EGSL Notices of Cancellation and urge the Commission, therefore, to disregard the New Orleans Council’s comments and accept their Notices of Cancellation, without hearing and with an effective date consistent with the notice period and effective date established by the Commission in the Notice Filing proceeding.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 4.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

111. Entergy Louisiana and Entergy Gulf States Louisiana note that the New Orleans Council was the only party to file a substantive pleading in response to their filings and assert that even the New Orleans Council's comments do not seek rejection of the filing.¹⁵¹

112. Entergy Louisiana and Entergy Gulf States Louisiana also state that the New Orleans Council's objection to the proposed 60-month notice period should not be addressed in these proceedings. They state that their filings do not raise the issue of the appropriate notice period under section 1.01 of the System Agreement; rather, they merely ask the Commission to establish an effective date consistent with whatever notice period is determined in the Notice Filing.¹⁵² They state that issues regarding the adequacy of the proposed notice period should be addressed in the Notice Filing proceeding.

113. In addressing the argument made by the New Orleans Council that the Notices of Cancellation should not be accepted without the Commission addressing the justness and reasonableness of the "post-withdrawal arrangements" among the Operating Companies, Entergy Louisiana and Entergy Gulf States Louisiana assert that the Commission held that post-withdrawal consequences should be addressed when the successor arrangements are filed, not when the notices of cancellation are filed.¹⁵³ Entergy Louisiana and Entergy Gulf States Louisiana argue that the same result should apply here.

(b) New Orleans Council

114. The New Orleans Council alleges that the Joint Answer contains misstatements of law and fact.¹⁵⁴ It states that the Joint Answer inappropriately suggests that the Commission should disregard the New Orleans Council's comments because "[the New Orleans Council] was the only party to file a substantive pleading in response to [Entergy Louisiana]'s and [Entergy Gulf States Louisiana]'s filing."¹⁵⁵ The New Orleans Council states that this contention is in direct contravention of the Commission's statutory duty to

¹⁵¹ Entergy Louisiana and Entergy Gulf States Louisiana Joint Withdrawal Filing Answer at 2 (Joint Answer).

¹⁵² *Id.* at 2-3.

¹⁵³ *Id.* at 4 (citing EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at PP 60-61, 66).

¹⁵⁴ New Orleans Council Louisiana-Withdrawal Filing Response at 1.

¹⁵⁵ *Id.* at 2 (citing Joint Answer at 2).

consider all arguments brought before it, regardless of whether those arguments were raised by a single party or several parties. It contends that is particularly the case when a filing that the Commission is evaluating relates to implementation of a non-arms-length agreement among holding company affiliates.¹⁵⁶

115. The New Orleans Council states that its interest in the outcome of this proceeding is particularly great because the withdrawal notices filed by Entergy Louisiana and Entergy Gulf States Louisiana, together with the withdrawal notice filed by Entergy Texas, will, once accepted, have the practical effect of terminating the System Agreement, as Entergy New Orleans, which the New Orleans Council regulates, will be the only party that has not filed a notice of withdrawal.¹⁵⁷ It states that termination of the System Agreement dramatically alters the relationships among the affiliated parties to that contract, and will have a significant impact on Entergy New Orleans and the City of New Orleans.

116. The New Orleans Council argues that the Joint Answer's statement that the New Orleans Council's request to consolidate this proceeding with the Notice Filing would serve "no purpose...because [Entergy Louisiana] and [Entergy Gulf States Louisiana] are not proposing any specific notice period" is incorrect.¹⁵⁸ It states that the ELL/EGSL Notices of Cancellation propose a 60-month notice period tied to the date of the filings and/or the outcome of the Commission's proceeding in the Notice Filing. In doing so, the New Orleans Council states that the notice period in the ELL/EGSL Notices of Cancellation is in direct violation of the 96-month notice period.¹⁵⁹

117. The New Orleans Council contends that despite Entergy Louisiana's and Entergy Gulf States Louisiana's claims to the contrary, the inter-relationship between their withdrawal notices in this proceeding and Entergy's proposal to shorten the notice period under the System Agreement in the Notice Filing demonstrates that, in the interest of administrative efficiency and limited Commission resources, it is reasonable and consistent with Commission precedent to consolidate and consider these matters together.¹⁶⁰

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 3.

¹⁵⁸ *Id.* at 3 (citing Joint Answer at 3).

¹⁵⁹ *Id.* at 4.

¹⁶⁰ *Id.*

118. The New Orleans Council asserts that the Joint Answer incorrectly argues that the New Orleans Council in its comments asked that the Commission condition its approval of the termination notices on “the Commission addressing the justness and reasonableness of the ‘post-withdrawal arrangements’ among the Operating Companies.” The New Orleans Commission states that it did not do so.¹⁶¹

3. Discussion

a. Procedural Matters

119. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention serve to make the entities that filed them parties to the proceedings in which they filed them. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will also grant the Mississippi Commission’s and Arkansas Commission’s late-filed motions to intervene in Docket No. ER14-128-000 given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that has assisted us in our decision-making process.

b. Commission Determination

120. We conditionally accept the Withdrawal Filings, effective upon the dates requested, subject to the outcome of the hearing and settlement judge procedures established above for the Notice Filing.¹⁶² The Louisiana Commission objects to Entergy Texas’ Withdrawal Filing because of its reliance on the 60-month notice of cancellation period proposed in the Notice Filing. Similarly, the New Orleans Council protests the use of the proposed 60-month notice of cancellation period by Entergy Texas, Entergy Louisiana, and Entergy Gulf States Louisiana in the Withdrawal Filings. The Commission has ruled that parties to the Entergy System Agreement may exit the System

¹⁶¹ *Id.* at 5.

¹⁶² Entergy Texas’ Notice of Cancellation in Docket No. ER14-128 is effective October 18, 2018, as requested, subject to the outcome of the Notice Filing. Entergy Louisiana’s and Entergy Gulf States Louisiana’s Notices of Cancellation in Docket Nos. ER14-1328 and ER14-1329, respectively, are effective February 14, 2019, as requested, subject to the outcome of the Notice Filing. We find good cause to grant Entergy Texas’, Entergy Louisiana’s and Entergy Gulf States Louisiana’s request for waiver of the 120-day notice requirement in 18 C.F.R. §§ 35.3(a)(1) and 35.15(a).

Agreement upon fulfilling the notice requirement under section 1.01 of the System Agreement, without further conditions on withdrawal.¹⁶³ Entergy Texas, Entergy Louisiana and Entergy Gulf States Louisiana have submitted notices to withdraw from the System Agreement with an effective date of 60 months from the date of filing or an effective date that is consistent with the Commission's ruling in the Notice Filing proceedings. In the Notice Filing proceedings, Entergy has filed an amendment to section 1.01 of the System Agreement to revise the notice period for an Operating Company to withdraw from the System Agreement from 96 months to 60 months. On this basis, we find that, like Entergy Arkansas and Entergy Mississippi, Entergy Texas, Entergy Louisiana, and Entergy Gulf States Louisiana have given proper notice of withdrawal under the System Agreement, and thus are permitted to leave the Entergy System following the notice period as established in the hearing and settlement judge procedures in the Notice Filing proceedings.

121. The New Orleans Council requests that the ELL/EGSL Notices of Cancellation be consolidated with the pending proceedings addressing the Notice Filing and the Entergy Texas Withdrawal Filing and collectively set for evidentiary hearing . We disagree. Based upon Commission precedent, we see no reason why the Withdrawal Filings should not be accepted at this time, subject to the outcome of the Notice Filing proceeding. As discussed above, Entergy has filed an amendment to section 1.01 of the System Agreement to revise the notice period for an Operating Company to withdraw from the System Agreement from 96 months to 60 months. As we find above, Entergy's Notice Filing raises issues of material fact that cannot be resolved based on the record before us and we are establishing hearing and settlement judge procedures as to the Notice Filing. Accordingly, the issue of the appropriate length of the term for notice of withdrawal from the System Agreement will be addressed in the hearing and settlement procedures concerning the Notice Filing. Besides the appropriate notice period, the Withdrawal Filings do not raise any issues of material fact that would require an evidentiary hearing nor are there any other issues with respect to the justness and reasonableness of the Withdrawal Filings. Thus we conditionally accept them here, subject to the outcome of the hearing and settlement judge procedures established above for the Notice Filing.

122. Further, we agree with the New Orleans Council that Entergy is obligated to present a just and reasonable succession arrangement subsequent to the exit of Entergy Texas, Entergy Louisiana and Entergy Gulf States Louisiana. However, the details of that arrangement are not at issue in these dockets. Consistent with the EAI/EMI

¹⁶³ EAI/EMI Withdrawal Order, 129 FERC ¶ 61,143 at P 59 (“[t]he System Agreement contains no restrictions on Operating Companies’ ability to withdraw, nor does it place any further conditions on withdrawal beyond the 96 month notice requirement.”).

Withdrawal Order, we find here that Entergy will have to file under section 205 of the FPA to reflect the arrangements to be in place after Entergy Texas, Entergy Louisiana, and Entergy Gulf States Louisiana withdraw from the System Agreement and any interested party will be able to comment on the successor arrangements at the time they are filed with the Commission.¹⁶⁴

The Commission orders:

(A) Entergy's proposed amendments to the System Agreement in Docket Nos. ER14-75, ER14-76, ER14-77, ER14-78, ER14-79, and ER14-80 are hereby accepted for filing and suspended for a nominal period, to become effective October 12, 2013, as requested, subject to refund, as discussed in the body of this order.

(B) Entergy Texas' Notice of Cancellation in Docket No. ER14-128 is hereby conditionally accepted for filing, to become effective October 18, 2018, or on such date as established by the Commission upon its review of the Notice Filing, as requested, as discussed in the body of this order.

(C) Entergy Louisiana's Notice of Cancellation in Docket No. ER14-1328 and Entergy Gulf States Louisiana's Notice of Cancellation in Docket No. ER14-1329 are hereby conditionally accepted for filing, to become effective February 14, 2019, or on such date as established by the Commission upon its review of the Notice Filing, as requested, as discussed in the body of this order.

(D) Docket Nos. ER14-75, ER14-76, ER14-77, ER14-78, ER14-79, and ER14-80 are hereby consolidated, as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the Notice Filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

¹⁶⁴ *Id.* P 67.

and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(G) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.