

145 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Entergy Mississippi, Inc.

Docket Nos. ER13-769-000

Entergy Louisiana, LLC

ER13-770-000

ORDER ACCEPTING AND SUSPENDING REIMBURSEMENT AGREEMENTS
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 17, 2013)

1. On January 16, 2013, pursuant to section 205 of the Federal Power Act,¹ Part 35 of the Commission's regulations,² and the Commission's directive in an order issued on January 19, 2012 in Docket No. EL11-63-000,³ Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Louisiana, LLC (Entergy Louisiana), and Entergy Mississippi, Inc. (Entergy Mississippi), filed two Reimbursement Agreements (Reimbursement Agreements) between Entergy Arkansas and Entergy Mississippi, and Entergy Arkansas and Entergy Louisiana, respectively.⁴ As discussed below, the Commission accepts the Reimbursement Agreements for filing, suspends them for a nominal period, to become effective December 18, 2013, as requested, subject to refund, and establishes hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Pt. 35 (2013).

³ See *Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 138 FERC ¶ 61,029 (2012) (Order on Complaint).

⁴ Entergy filed the Reimbursement Agreement between Entergy Arkansas and Entergy Mississippi in Docket No. ER13-769-000 and the Reimbursement Agreement between Entergy Arkansas and Entergy Louisiana in Docket No. ER13-770-000. These filings are referred to herein as the Entergy Filings.

I. Background

2. The Operating Companies⁵ plan, construct, and operate their generation and bulk transmission facilities as a single, integrated electric system pursuant to the Entergy System Agreement (System Agreement).⁶ The System Agreement is a Commission-accepted rate schedule that governs the integrated generation and bulk transmission planning and operations of the Operating Companies and allocates costs and benefits among them. Entergy states that the System Agreement requires Entergy to conduct long-term generation resource planning on a “single-system” basis, i.e., resources are planned and acquired based on benefits for the system as a whole instead of just one Operating Company.⁷ Under the System Agreement, the Operating Committee⁸ allocates the costs and benefits of new generation resources on the Entergy system by assigning new generation resources to individual Operating Companies on a rotating basis.⁹ The individual Operating Company assumes the responsibility for financing and bearing the costs of new generation plants assigned to it.¹⁰

3. On December 19, 2005, pursuant to section 1.01 of the System Agreement, Entergy Arkansas notified the other Operating Companies that it would withdraw from

⁵ The Entergy Operating Companies are Entergy Arkansas; Entergy Louisiana; Entergy Mississippi; Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana); Entergy New Orleans, Inc.; and Entergy Texas, Inc.

⁶ See *Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305, at 61,646, *reh'g denied*, 32 FERC ¶ 61,346 (1985), *aff'd sub nom. Mississippi Industries v. FERC*, 808 F.2d 1525 (D.C. Cir. 1987), *rev'd and remanded*, 822 F.2d 1104 (D.C. Cir. 1987), *order on remand sub nom. System Energy Resources, Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987), *reh'g denied*, Opinion No. 292-A, 42 FERC ¶ 61,091 (1988).

⁷ Entergy Filings at 2 (citing *Arkansas Electric Energy Consumers, Inc. v. Entergy Corp.*, 126 FERC ¶ 61,051, at P 37 (2009) (*AEEC v. Entergy Corp.*)).

⁸ The Operating Committee is the entity that administers the System Agreement. It consists of a representative of Entergy Corporation and of each of the Operating Companies. See Entergy System Agreement, Article V.

⁹ *Louisiana Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282, at P 7 & n.9 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part, Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

¹⁰ Entergy Filings at 2.

the System Agreement in 96 months, or earlier, as authorized by the Commission.¹¹ After submitting its notice of withdrawal from the System Agreement, Entergy Arkansas obtained authorization from the Arkansas Public Service Commission (Arkansas Commission) to acquire the Ouachita Generating Station (Ouachita Plant). The Ouachita Plant is a three-unit, natural-gas-fired generating facility located in Sterlington, Louisiana, which is inside the area in which Entergy Louisiana provides retail electric service. Entergy states that, as part of its overall single-system planning process, Entergy Arkansas acquired all three units after determining that the Ouachita Plant was the most economic and beneficial means to meet its long-term, load-following capacity needs, as well as its post-withdrawal needs.¹²

4. On February 2, 2009, Entergy submitted for filing, pursuant to section 35.15 of the Commission's regulations,¹³ Notices of Cancellation of Entergy Arkansas and Entergy Mississippi to terminate their participation in the System Agreement. The Commission accepted the Notices of Cancellation on November 19, 2009.¹⁴

A. Allocation of Transmission Upgrade Costs for the Ouachita Plant

5. Entergy states that its "System Planning and Operations organization" submitted a long-term network transmission service request from the Ouachita Plant on behalf of all of the Operating Companies.¹⁵ Entergy states that the Independent Coordinator of Transmission (ICT)¹⁶ released a Facilities Study estimating that the required transmission upgrades to qualify the Ouachita Plant as a network resource for the Operating

¹¹ Section 1.01 of the System Agreement states, in pertinent part: "[A]ny company may terminate its participation in the Agreement by ninety-six (96) months written notice to the other Companies hereto."

¹² Entergy Filings at 2.

¹³ 18 C.F.R. § 35.15.

¹⁴ *Entergy Servs., Inc.*, 129 FERC ¶ 61,143, at P 58 (2009) (Withdrawal Order), *reh'g denied*, 134 FERC ¶ 61,075 (Withdrawal Rehearing Order), *affirmed sub nom. Council of the City of New Orleans v. FERC, City of New Orleans, et al. v. FERC*, 692 F.3d 172 (D.C. Cir. 2012) (*City of New Orleans*).

¹⁵ Entergy Filings at 3; *see also* Order on Complaint, 138 FERC ¶ 61,029 at P 4.

¹⁶ *See* Entergy March 15, 2013 Answer at n.11 (defining the ICT as "an independent entity that, among other things, grants or denies requests for transmission service, calculates available flowgate capability for the Entergy Transmission System, administers the Entergy Open Access Same-Time Information System, and develops the ICT Base Plan for purposes of cost allocation for transmission upgrades.").

Companies would cost approximately \$70 million.¹⁷ The required transmission upgrades are primarily located in Entergy Louisiana's and Entergy Mississippi's service areas.

6. Entergy states that the cost responsibility for these upgrades was determined using Attachment T to the Entergy Open Access Transmission Tariff (Entergy OATT) and the System Agreement. Attachment T to the Entergy OATT requires that the costs of transmission upgrades that are required to designate a new network resource be recovered directly from the requesting network customer.¹⁸ Entergy states that transmission upgrades required to designate a new network resource are considered supplemental transmission upgrades under Attachment T and are funded by the Operating Companies on behalf of their native load.¹⁹ According to Entergy, supplemental transmission upgrade costs are eligible for recovery generally through bundled retail rates and are not recovered through the rates charged to wholesale customers under the Entergy OATT.²⁰

7. Entergy further states that the System Agreement addresses the allocation of transmission upgrade costs between the Operating Companies.²¹ According to Entergy, the Ouachita Plant was acquired as part of Entergy's overall system planning with the intent that energy from the plant be an Entergy system resource.²² Entergy claims that provisions in the System Agreement required Entergy Louisiana and Entergy Mississippi to incur the cost of constructing the supplemental transmission upgrades in Louisiana and Mississippi, respectively (Ouachita transmission upgrades).²³

¹⁷ Entergy Filings at 3; Order on Complaint, 138 FERC ¶ 61,029 at P 4.

¹⁸ Entergy Filings at 3 (citing *Entergy Servs., Inc.*, 110 FERC ¶ 61,295, at PP 40-43, 68, *clarified*, 111 FERC ¶ 61,222, at PP 7-8, 14-15 (2005), *reh'g denied*, 116 FERC ¶ 61,269, at PP 5-6, 29-36, 42, 49 (2006)).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* (citing *AEEC v. Entergy Corp.*, 126 FERC ¶ 61,051 at P 46).

²³ Entergy Filings at 3-4. Entergy states that, under the System Agreement, the Operating Companies will make investments in transmission facilities located in their respective areas for the collective benefit of all the Operating Companies, including investments in transmission facilities that are necessary to make a resource owned by a different Operating Company deliverable. *Id.* at 3 (citing *AEEC v. Entergy Corp.*, 126 FERC ¶ 61,051 at PP 45-46). According to Entergy, in the case of the Ouachita Plant, the provisions of the System Agreement resulted in Entergy Louisiana and Entergy Mississippi incurring the cost of constructing supplemental transmission upgrades located in Louisiana and Mississippi, respectively. *Id.* at 4.

B. Louisiana Commission Complaint

8. On September 14, 2011, the Louisiana Commission filed a complaint alleging that it is unjust, unreasonable and unduly discriminatory to allocate to Entergy Louisiana the transmission upgrade costs incurred to permit Entergy Arkansas to receive electricity from the Ouachita Plant because Entergy Arkansas sought and received approval to withdraw from the System Agreement.²⁴ The Louisiana Commission argued that the allocation of costs violates the System Agreement, Attachment T to the Entergy OATT, and the Commission's prohibitions against affiliate abuse and cross-subsidization.²⁵

9. In the Order on Complaint, the Commission denied the Louisiana Commission's assertion that the current allocation of the Ouachita Plant transmission upgrades cost was unjust, unreasonable or unduly discriminatory.²⁶ The Commission reiterated its previous finding that the System Agreement remains in effect until the Commission accepts a replacement agreement.²⁷ Therefore, the Commission found that, prior to Entergy Arkansas' withdrawal, the allocation of the Ouachita transmission upgrade costs should follow the requirements of the System Agreement.²⁸ The Commission directed the Louisiana Commission to raise any concerns with the post-withdrawal allocation of the Ouachita transmission upgrade costs in a future proceeding regarding the structure of the post-withdrawal Entergy system.²⁹

II. Summary of the Entergy Filings

10. On January 16, 2013, Entergy filed the Reimbursement Agreements addressing the post-withdrawal allocation of Ouachita transmission upgrade costs. Entergy states that, effective December 18, 2013, the portion of the Ouachita Plant capacity that is currently owned by Entergy Arkansas will not continue to be a system resource under the System Agreement. Entergy states that, therefore, as of that date, the cost allocation provisions of the System Agreement will no longer apply to Entergy Arkansas. Entergy explains that, following its withdrawal from the System Agreement, Entergy Arkansas will retain sole entitlement to two-thirds of the Ouachita Plant capacity and, absent the

²⁴ See Order on Complaint, 138 FERC ¶ 61,029 at P 10.

²⁵ See *id.* PP 10-13; Entergy Filings at 4.

²⁶ Order on Complaint, 138 FERC ¶ 61,029 at P 44.

²⁷ *Id.* (citing *AEEC v. Entergy Corp.*, 126 FERC ¶ 61,051 at P 38).

²⁸ *Id.*

²⁹ *Id.* P 43 (citing Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at n.54).

Reimbursement Agreements, would pay a transmission rate that does not include costs from the Ouachita transmission upgrades.³⁰

11. In the Reimbursement Agreements, Entergy proposes allocating the remaining capital costs³¹ associated with the Ouachita transmission upgrades between Entergy Arkansas and the other Operating Companies based on Entergy Arkansas' entitlement to the Ouachita Plant. Entergy explains that, under this approach, two-thirds of the remaining capital costs will be allocated to Entergy Arkansas following its withdrawal from the System Agreement. Entergy states that the other one-third of the remaining capital costs will be allocated among the Operating Companies that remain in the System Agreement pursuant to the System Agreement's terms. Entergy proposes allocating any rights to financial payments associated with the Ouachita transmission upgrades between Entergy Arkansas, Entergy Louisiana and Entergy Mississippi on the same two-thirds/one-third basis.³²

12. Entergy states that this proposed allocation of the Ouachita transmission upgrade costs is just and reasonable because it: (1) better aligns cost responsibility with the purpose of the acquisition and the fact that the acquisition was planned after Entergy Arkansas gave its notice to terminate its participation in the System Agreement;³³ (2) is consistent with the cost causation principle that the allocation of costs be commensurate with benefits;³⁴ and (3) is consistent with Entergy Arkansas' status as a separate network customer and the Commission-accepted cost allocation methodology of Attachment T.³⁵ Entergy emphasizes that the proposed allocation of Ouachita transmission upgrade costs

³⁰ Entergy Filings at 4-5.

³¹ Remaining capital costs are the net balance of any plant costs that were previously depreciated prior to Entergy Arkansas' withdrawal from the System Agreement. Entergy states that the remaining capital costs will be based on the final plant balances at the time of Entergy Arkansas' withdrawal from the System Agreement and will be updated annually in accordance with the OATT annual rate update. *Id.* at 6-7.

³² *Id.* at 5.

³³ *Id.*

³⁴ *Id.* at 5-6 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323, at P 504 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132; *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012) (citing *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470, at 476-77 (2009))).

³⁵ *Id.* at 6.

is based on Attachment T and aligns with the Commission's transmission cost allocation policies.³⁶

13. Specifically, Entergy asserts that Entergy Arkansas will reimburse Entergy Louisiana and Entergy Mississippi by making a monthly payment to each entity. Entergy states that the monthly payment will be based on Entergy Louisiana's and Entergy Mississippi's annual fixed-charge rate, which is derived from the cost inputs to the Entergy OATT annual rate update filing, or a comparable superseding tariff's rate update. Entergy claims that the rate will be reset in the annual rate update using whatever wholesale rate is in place after Entergy Arkansas withdraws from the System Agreement.³⁷

14. Entergy further states that, as noted in the Attachment A to each Reimbursement Agreement, Entergy Louisiana's current plant balance is approximately \$23.5 million and Entergy Mississippi's current plant balance is approximately \$7.5 million. Entergy states that, although these balances are expected to change before Entergy Arkansas withdraws from the System Agreement, Attachment A provides the calculation of the revenue requirement by using specific examples of how Entergy Arkansas' monthly payments will be calculated.³⁸ Entergy explains that each Attachment A is provided for illustrative purposes only and once Entergy Arkansas departs from the System Agreement, these numbers will be updated with actual numbers sourced from the most recent OATT update at that time.³⁹ Entergy states that the final plant balances at the time of Entergy Arkansas' withdrawal from the System Agreement are currently unknown.⁴⁰ Entergy commits to making a timely amendment to the Reimbursement Agreements prior to Entergy Arkansas' withdrawal in December 2013 to update certain components of the rate methodology, including the final plant balances.⁴¹

III. Notice of Filing and Responsive Pleadings

15. Notice of the Entergy Filings was published in the *Federal Register*, 78 Fed. Reg. 5436 (2013), with interventions and protests due on or before February 28, 2013.⁴² The

³⁶ *Id.*

³⁷ *Id.* at 6-7.

³⁸ *Id.*

³⁹ Pursuant to Schedule 7 and Attachment H to the Entergy OATT, the annual OATT update is submitted on or about May 1 each year to become effective June 1.

⁴⁰ Entergy Filings at 5.

⁴¹ *Id.* at 6-7.

⁴² Notice of Extension of Time, Docket Nos. ER13-769-000 and ER13-770-000 (Feb. 19, 2013).

Arkansas Commission, the Louisiana Commission and the Mississippi Public Service Commission (Mississippi Commission) filed notices of intervention. The Louisiana Commission filed a protest and comments. Entergy and the Arkansas Commission filed answers, and the Louisiana Commission responded.

A. The Louisiana Commission's Comments and Protest

16. The Louisiana Commission argues that, although the proposed Reimbursement Agreements appropriately require Entergy Arkansas to bear some of the Ouachita transmission upgrade costs, Entergy fails to provide sufficient support demonstrating that Entergy Arkansas' share is sufficient. The Louisiana Commission claims that Entergy has not sufficiently described precisely which facilities are included in the "Specified Supplemental Transmission Upgrades." The Louisiana Commission asserts that Entergy has not provided the necessary information to determine if all the facilities financed by Entergy Louisiana and Entergy Mississippi to support the designation of the Ouachita Plant are included in the supplemental transmission upgrades under the cost sharing agreements.⁴³

17. The Louisiana Commission questions whether the proposed cost sharing matches the proper level of costs with cost-causation and/or benefits. The Louisiana Commission contends that, although Entergy concedes that the Ouachita transmission upgrade costs were estimated to be \$70 million, only \$31 million of the costs appear in Entergy Louisiana's and Entergy Mississippi's current plant balances. The Louisiana Commission complains that Entergy does not state whether the balances will increase or decrease. The Louisiana Commission also questions whether those balances are too low because all of the upgrades have not been included or completed or whether the costs have been amortized away on some accelerated basis in order to reduce the costs to be shared. The Louisiana Commission argues that cost sharing can only be just and reasonable if the proper level of costs is being shared.⁴⁴

18. The Louisiana Commission argues that Entergy has not shown that all necessary cost categories are shared or the calculations are correct. Specifically, the Louisiana Commission alleges that Entergy does not provide support for the capitalization and cost ratios, does not indicate which state tax rates are used, does not provide a provision for sharing of future costs that may be needed over the life of the upgrades, fails to address post-withdrawal depreciation rates, and makes no provision for sharing operating and maintenance costs or other costs necessary to maintain those assets.⁴⁵

⁴³ Louisiana Commission February 28, 2013 Protest at 1, 5-6 (Louisiana Commission Protest).

⁴⁴ *Id.* at 6-7.

⁴⁵ *Id.*

19. Finally, the Louisiana Commission argues that Entergy has not sufficiently demonstrated that the two-third/one-third cost sharing is an appropriate way to allocate the Ouachita transmission upgrade costs. The Louisiana Commission contends that Entergy has not demonstrated that one-third of the Ouachita transmission upgrade costs, or any portion of the upgrade costs, would have been necessary to designate Entergy Gulf States Louisiana's portion of the Ouachita Plant as a network resource for Entergy Gulf States Louisiana and the Operating Companies remaining in the System Agreement. The Louisiana Commission suggests that all of the costs, or at least some share greater than two-thirds, may have been needed to designate Entergy Arkansas' two-thirds share as a network resource, but some lesser amount would have been needed to make the generator located in Louisiana a network resource in Louisiana, Texas and Mississippi.⁴⁶

20. The Louisiana Commission asserts that all issues pertaining to the Ouachita transmission upgrades should be considered with Docket No. ER13-432-000⁴⁷ as part of a comprehensive overall analysis of the successor System Agreement.⁴⁸ Alternatively, the Louisiana Commission requests that the Commission establish discovery and hearing procedures to examine whether the proposed allocation of the Ouachita transmission upgrade costs assigns the appropriate costs to Entergy Arkansas and matches costs with cost-causation.⁴⁹

B. The Arkansas Commission's Answer

21. The Arkansas Commission argues that the Commission should reject the Louisiana Commission's request to consolidate the instant proceedings with Docket No. ER13-432-000. First, the Arkansas Commission notes that, pursuant to the Commission and D.C. Circuit's holdings that Entergy Arkansas' withdrawal from the System Agreement is without condition, the proceeding in Docket No. ER13-432-000 must not result in any continued obligation on Entergy Arkansas subsequent to its withdrawal from the System Agreement. Second, the Arkansas Commission argues that consolidation is not appropriate because the proceedings are unrelated. Specifically, while the proceeding in Docket No. ER13-432-000 addresses revisions to the System

⁴⁶ *Id.* at 7.

⁴⁷ In Docket No. ER13-432-000, Entergy filed revisions to the System Agreement in order to accommodate the withdrawal of Entergy Arkansas from the System Agreement and amend the System Agreement to allocate certain charges and credits from the Midcontinent Independent System Operator settlement statements to the participating Operating Companies.

⁴⁸ Louisiana Commission Protest at 1, 8-9 (citing *City of New Orleans*, 692 F.3d 172 at 177).

⁴⁹ *Id.* at 1-2, 9.

Agreement, the instant proceedings address discrete contracts and issues regarding the allocation of network upgrade costs.⁵⁰

C. Entergy's Answer

22. Entergy argues that the Commission should reject the Louisiana Commission's protest and accept the Reimbursement Agreements as filed without suspension, hearing, or settlement judge procedures. Entergy notes that the Reimbursement Agreements make clear that Entergy Arkansas will be responsible for its share of the Ouachita transmission upgrade costs identified in the Facilities Study to designate the Ouachita Plant as a network resource. Entergy states that it provided the current book value for facilities that have been completed and booked to plant-in-service for illustrative purposes and will update those values prior to Entergy Arkansas' withdrawal from the System Agreement. Entergy explains that is appropriate because several inputs to the charges are not known at this time, including the final plant balances upon Entergy Arkansas' withdrawal from the System Agreement. Entergy states that it has committed to make a timely update to adjust the components of the rate methodology that are not final at this time.⁵¹

23. Entergy reiterates that the formula inputs in the Reimbursement Agreements will come from the Entergy OATT annual rate update. Entergy explains that all the inputs to the annual fixed-charge rate will be determined annually and the Reimbursement Agreements are intended to simply track the costs from the OATT proceedings so that the reimbursement paid by Entergy Arkansas to Entergy Louisiana and Entergy Mississippi will exactly track their respective annual transmission costs.⁵² According to Entergy, Entergy Arkansas will reimburse Entergy Louisiana and Entergy Mississippi by making a monthly payment based on Entergy Louisiana's and Entergy Mississippi's annual fixed-charge rate derived from the cost inputs to the Entergy OATT annual rate update.⁵³ Entergy states that using the annual rate update cost inputs will ensure that Entergy Louisiana and Entergy Mississippi receive the then-current revenue requirement for their associated plant investments. Entergy asserts that holding a hearing would be meaningless because the 2013 Entergy OATT annual rate update has not yet been submitted to the Commission.⁵⁴ Next, Entergy asserts that the two-thirds/one-third

⁵⁰ Arkansas Commission March 15, 2013 Answer at 3-4.

⁵¹ Entergy March 15, 2013 Answer at 4-5.

⁵² *Id.* at 6.

⁵³ *Id.*

⁵⁴ *Id.* at 6-7 & n.10 (stating that, pursuant to Schedule 7 and Attachment H to the Entergy OATT, the Entergy OATT annual rate update is submitted on or about May 1 of each year to become effective June 1). On May 31, 2013, Entergy submitted its OATT Annual Rate Update for 2013 in Docket No. ER13-1623-000.

sharing is an appropriate allocation for the Ouachita transmission upgrade costs because it is based on the only facilities study that was performed and required under the Entergy OATT. Therefore, Entergy argues that the Commission should reject the Louisiana Commission's request for additional studies.⁵⁵

24. Finally, Entergy argues that the Reimbursement Agreements should not be considered part of a comprehensive overall analysis of the successor System Agreement in Docket No. ER13-432-000. Entergy claims that the Reimbursement Agreements are bi-lateral arrangements that are just and reasonable on their own and will not benefit from being included in the successor arrangement discussion in Docket No. ER13-432-000 in which Entergy Arkansas does not participate.⁵⁶

D. The Louisiana Commission's Response

25. With respect to its request for consolidation of proceedings, the Louisiana Commission argues that Entergy and the Arkansas Commission fail to acknowledge that the Commission directed the Louisiana Commission to raise concerns with the post-allocation of the Ouachita transmission upgrade costs in a "future proceeding regarding the structure of the post-withdrawal Entergy system."⁵⁷ The Louisiana Commission contends that the Commission should consolidate the dockets because: (1) Entergy can successfully represent the interests of all Operating Companies in Docket No. ER13-432-000 and (2) the Ouachita Plant matter is a successor arrangement that will exist beyond Entergy Arkansas' withdrawal from the System Agreement.⁵⁸

26. The Louisiana Commission asserts that Entergy has offered only a "vague promise" that the Louisiana companies and their ratepayers will receive the proper credits. The Louisiana Commission alleges that Entergy has not provided sufficient information regarding what facilities are required to qualify the Ouachita Plant as a network resource, which assets are currently in service, or which assets are expected to be in service in the future.⁵⁹

27. The Louisiana Commission disagrees that Entergy cannot provide the formula inputs at this time. The Louisiana Commission states that, in Docket No. ER13-948-000, Entergy has made filings with the Commission to replace its OATT annual rate updates with tariffs under MISO's Attachment O tariff. The Louisiana Commission adds that

⁵⁵ Entergy March 15, 2013 Answer at 7-8.

⁵⁶ *Id.* at 8.

⁵⁷ Louisiana Commission April 1, 2013 Answer at 1-2 (citing Order on Complaint, 138 FERC ¶ 61,029).

⁵⁸ *Id.*

⁵⁹ *Id.* at 3.

Entergy has filed an application in Docket Nos. EC12-145-000, EL12-107-00 and ER12-2681-000 to transfer all of its assets to ITC Holdings Corporation (ITC). The Louisiana Commission argues that, irrespective of the Commission's approval of that filing, Entergy's OATT annual rate update will not occur after this year. The Louisiana Commission contends that, therefore, these inputs will not be available to populate the proposed allocations presented in the Reimbursement Agreements. The Louisiana Commission therefore asserts that, instead, Entergy should provide details regarding how the allocation will occur under MISO tariffs.⁶⁰

28. Finally, the Louisiana Commission contends that Entergy admits that the \$70 million was estimated before the decision was made to sell one-third of the Ouachita Plant to Entergy Gulf States Louisiana and that, therefore, Entergy has conceded that the proposed two-thirds/one-third allocation has not been tested to determine if it is just and reasonable and reflects cost-causation principles. The Louisiana Commission claims that Entergy never analyzed nor demonstrated that it would have cost one-third of \$70 million to make Entergy Gulf States Louisiana's one-third of the unit a network resource or whether it would have cost less. The Louisiana Commission argues that this point is a disputed issue of fact. The Louisiana Commission adds that Entergy has not explained the potential impact of a separate Entergy Arkansas MISO transmission pricing zone on this calculus.⁶¹

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, the notices of intervention of the Arkansas Commission and the Louisiana Commission in Docket Nos. ER13-769-000 and ER13-770-000 serve to make them parties to those proceedings. The notice of intervention of the Mississippi Commission in Docket No. ER13-769-000 serves to make it a party to that proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

31. We will deny the Louisiana Commission's request to consolidate Docket Nos. ER13-769-000 and ER13-770-000 with Docket No. ER13-432-000. The Commission's policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater

⁶⁰ *Id.* at 3-4.

⁶¹ *Id.* at 4-5.

administrative efficiency.⁶² We do not believe consolidating these proceedings would achieve greater administrative efficiency because the issues in each proceeding do not present common issues of law and fact.

B. Commission Determination

32. We find that Entergy's Reimbursement Agreements raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

33. Our preliminary analysis indicates that Entergy's Reimbursement Agreements have 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 proposed Reimbursement Agreements for filing, suspend them for a nominal period, make them effective December 18, 2013, subject to refund, and set them for hearing and settlement judge procedures.

34. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.⁶³ 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.⁶⁴ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

⁶² See *Southern Cal. Edison Co.*, 129 FERC ¶ 61,304, at P 26 (2009), *amended by* 130 FERC ¶ 61,092 (2010); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008), *order on reh'g*, 127 FERC ¶ 61,164 (2009), *order on remand*, 134 FERC ¶ 61,155, *reh'g denied*, 136 FERC ¶ 61,222 (2011); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008).

⁶³ 18 C.F.R. § 385.603.

⁶⁴ 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 (5) 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>).

The Commission orders:

(A) Entergy's proposed Reimbursement Agreements are hereby accepted and suspended for a nominal period, to become effective December 18, 2013, as requested, subject to refund, as discussed in the body of this order.

(B) 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 Federal Power Act, particularly sections 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 Entergy's Reimbursement Agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, 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 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.

(D) Within thirty (30) days of the appointment of the settlement judge, 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.

(E) 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 to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.