

145 FERC ¶ 61,246
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 Services, Inc.
Midcontinent Independent System
Operator, Inc.

Docket No. ER14-98-000

ORDER ACCEPTING
REVENUE ALLOCATION AGREEMENT

(Issued December 18, 2013)

1. On October 15, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (FERC or Commission),² the Midcontinent Independent System Operator, Inc. (MISO) and Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), and Entergy New Orleans, Inc. (Entergy New Orleans) (together, the Entergy Louisiana Companies), submitted for filing a Joint Pricing Zone Revenue Allocation Agreement between the Entergy Louisiana Companies (Louisiana Revenue Allocation Agreement).³

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Part 35 (2013).

³ Entergy Services explains that MISO is not a party to the Louisiana Revenue Allocation Agreement, but is filing the agreement jointly with Entergy Services as the tariff administrator. Entergy Services notes that because the agreement is between only the Entergy Louisiana Companies, MISO does not have any obligations under the Louisiana Revenue Allocation Agreement and is not responsible for administering the agreement. Joint Pricing Zone Revenue Allocation Agreement, Transmittal Letter at n.1, Docket No. ER14-98-000 (Oct. 15, 2013) (Louisiana Revenue Allocation Agreement Filing). The Louisiana Revenue Allocation Agreement is designated as Rate Schedule 38.

Entergy Services states that the Louisiana Revenue Allocation Agreement provides for the allocation of revenues that MISO will distribute to the Louisiana joint transmission pricing zone (Louisiana Transmission Pricing Zone) following the integration of the Entergy Louisiana Companies into MISO. Entergy Services requests an effective date for the Louisiana Revenue Allocation Agreement of December 19, 2013, the target date for the integration of the Entergy Louisiana Companies into MISO. As discussed in further detail below, we accept the Louisiana Revenue Allocation Agreement for filing subject to the outcome of the proceedings in Docket Nos. ER13-432-000 and ER14-73-000, effective December 19, 2013.

I. The Louisiana Revenue Allocation Agreement

2. Entergy Services explains that the Entergy Louisiana Companies and the other Entergy Operating Companies – Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Mississippi, Inc. (Entergy Mississippi), and Entergy Texas, Inc. (Entergy Texas) – are currently in the process of integrating into MISO. According to Entergy Services, following their integration into MISO, the revenue requirements for the transmission facilities of the Entergy Louisiana Companies will be included in the Louisiana Transmission Pricing Zone. Entergy Services states that, pursuant to the MISO Transmission Owners Agreement, when there is more than one transmission owner in a transmission pricing zone, the transmission owners in the zone must appoint a single transmission owner to receive the revenues allocated to the transmission pricing zone and to further distribute those revenues among the owners.⁴ The Louisiana Revenue Allocation Agreement identifies Entergy Louisiana as the host transmission owner that will receive the revenues from MISO for the Louisiana Transmission Pricing Zone and establishes the allocation mechanism for those revenues among the transmission owners in that zone.⁵

⁴ *Id.* at 2 (citing MISO Transmission Owners Agreement, Appendix C, section III.A.8).

⁵ Entergy Services notes that Cleco Power, LLC (Cleco) will also be a transmission owner in the Louisiana Transmission Pricing Zone, but that Cleco will enter into a separate agreement with Entergy Louisiana, the host transmission owner for the Louisiana Transmission Pricing Zone, to establish the allocation of revenues to Cleco. Entergy Services represents that the Cleco-Entergy Louisiana agreement will be filed with the Commission under FPA section 205. *Id.* The agreement was filed with the Commission in Docket No. ER14-273-000.

3. Entergy Services states that revenues for the Louisiana Transmission Pricing Zone under Schedules 7, 8, and 9 of MISO's Open Access Transmission Energy and Operating Reserves Market Tariffs (MISO Tariff)⁶ will be remitted by MISO to Entergy Louisiana, and that Entergy Louisiana, as the Designee for the Louisiana Transmission Pricing Zone, will then allocate those revenues among Entergy Gulf States Louisiana, Entergy New Orleans and itself in accordance with the Louisiana Revenue Allocation Agreement.⁷

4. According to Entergy Services, transmission revenues collected under Entergy Services' Open Access Transmission Tariff (Entergy OATT) are currently allocated among the Entergy Operating Companies based on Responsibility Ratios, as defined under the Entergy System Agreement.⁸ The Louisiana Revenue Allocation Agreement also provides for an allocation of revenues based on Responsibility Ratios. Specifically, under the Louisiana Revenue Allocation Agreement, a party's Responsibility Ratio is equal to the ratio of that party's Load Responsibility in a month to the total Load Responsibility of the Entergy Louisiana Companies in that month. A party's Load Responsibility is the average of its 12 month hourly loads, consistent with the Entergy System's monthly peak hourly load.⁹

5. Entergy Services states that the Louisiana Revenue Allocation Agreement establishes an allocation of revenues that is similar to the allocation that would apply under the Entergy OATT if the Entergy Operating Companies were not integrating into MISO. Entergy Services notes that establishing a revenue allocation that tracks the way revenues are allocated today is consistent with the MISO Transmission Owners Agreement, which states that an "intra-Zonal revenue distribution methodology shall, to

⁶ Schedule 7 of the MISO Tariff addresses Long-Term and Short-Term Firm Point-to-Point Transmission Service; Schedule 8 addresses Non-Firm Point-to-Point Transmission Service; Schedule 9 addresses Network Integration Transmission Service.

⁷ Louisiana Revenue Allocation Agreement Filing at 2 (citing Louisiana Revenue Allocation Agreement, section 2.2).

⁸ *Id.* (citing Entergy OATT, sections 25.2, 34.4).

⁹ *Id.* (citing Louisiana Revenue Allocation Agreement, sections 3.1-3.3).

the greatest extent possible, minimize cost shifts so that the Owners shall continue to receive the revenues they would have received absent the formation of MISO.’”¹⁰

6. Entergy Services also notes that under the MISO Tariff, certain transmission customers that are also transmission owners are exempt from the obligation to pay MISO rates under Schedules 1 and 9 of the MISO Tariff¹¹ for transmission service used to serve bundled load.¹² The Entergy Louisiana Companies each agree that this exemption, referred to as the bundled load exemption, should be available to each party under the Louisiana Revenue Allocation Agreement so long as (1) Service Schedule MSS-2 of the Entergy System Agreement is in effect and provides for an equalization of transmission costs between those three companies or (2) alternative just and reasonable arrangements to allocate transmission investment among those parties are in effect. The Louisiana Revenue Allocation Agreement specifies the parties’ agreement on this issue. Entergy Services states that if the bundled load exemption were not to apply to the Entergy Louisiana Companies, a “fundamental reallocation of costs among those parties likely would occur.”¹³ In that event, the Entergy Louisiana Companies have agreed to negotiate in good faith to amend the Louisiana Revenue Allocation Agreement as necessary to provide for a continuing just and reasonable allocation of revenues.

7. Finally, Entergy Services requests an effective date of December 19, 2013 for the Louisiana Revenue Allocation Agreement, and requests, to the extent necessary, waiver of any and all other requirements under Part 35 of the Commission’s regulations and any other applicable rules to permit the agreement to go into effect on that date.

¹⁰ *Id.* at 3 (quoting Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc., A Delaware Non-Stock Corporation (MISO Transmission Owners Agreement), Appendix C, section III.A.8).

¹¹ Schedule 1 of the MISO Tariff addresses Scheduling, System Control and Dispatch Service.

¹² Louisiana Revenue Allocation Agreement Filing, Transmittal Letter at 3 (citing MISO Tariff, section 37.3(a)).

¹³ *Id.*

II. Notice of Filing and Responsive Pleadings

8. Notice of the Louisiana Revenue Allocation Agreement Filing was published in the *Federal Register*, 78 Fed. Reg. 63,175 (2013), with interventions and protests due on or before November 6, 2013.

9. Notices of intervention were filed by the Council of the City of New Orleans (Council of New Orleans) and the Louisiana Public Service Commission (Louisiana Commission).

10. The NRG Companies filed a motion to intervene.¹⁴

11. The Louisiana Commission filed comments. The Council of New Orleans filed a protest, request for hearing, and motion to consolidate.

12. On November 20, 2013, Entergy Services filed an answer on behalf of the Entergy Louisiana Companies.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ the notices of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to these proceedings.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁶ prohibit an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Entergy Services' answer filed in this proceeding because it has provided information that assisted us in our decision-making process.

¹⁴ For purposes of this proceeding, the NRG Companies are Louisiana Generating LLC; NRG Power Marketing LLC; GenOn Energy Management, LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; NRG Sterlington Power LLC; Cottonwood Energy Company LP; and NRG Wholesale Generation LP.

¹⁵ 18 C.F.R. § 385.214 (2013).

¹⁶ 18 C.F.R. § 385.213(a)(2) (2013).

B. Substantive Matters**1. Comments and Protests**

15. The Louisiana Commission supports the appointment of Entergy Louisiana as the Designee for the Louisiana Transmission Pricing Zone and the proposed allocation of revenues based on Responsibility Ratios.¹⁷ In addition, the Louisiana Commission supports the agreement between the parties to the Louisiana Revenue Allocation Agreement that the bundled load exemption should be available to each party under the agreement so long as the conditions described above are met. Finally, the Louisiana Commission states that it supports the requirement that if the bundled load exception were not to apply, the parties to the agreement agree to negotiate in good faith to amend the Louisiana Revenue Allocation Agreement as necessary to provide for a continuing just and reasonable allocation of revenues.

16. The Council of New Orleans protests the Louisiana Revenue Allocation Agreement to the extent that it is based upon the premise of a Louisiana Transmission Pricing Zone that incorporates the Entergy Louisiana Companies. The Council of New Orleans also protests the Louisiana Revenue Allocation Agreement to the extent that it relies on the defined terms “Responsibility Ratio” and “Load Responsibility” that are currently the subject of other ongoing contested proceedings before the Commission and requests that the Louisiana Revenue Allocation Agreement be set for hearing.

17. The Council of New Orleans argues that, as it demonstrated in Docket No. ER12-2681-000, *et al.*,¹⁸ forcing Entergy New Orleans into a Louisiana-wide

¹⁷ Comments on Behalf of the Louisiana Public Service Commission at 1, Docket No. ER14-98-000 (Nov. 5, 2013) (Louisiana Commission Comments).

¹⁸ In Docket Nos. ER12-2681-000, ER13-948-000, and ER13-782-000 (consolidated), the Commission addressed several filings related to the integration of the Entergy Operating Companies into MISO. We refer to these consolidated proceedings as the Entergy-ITC Rates Proceeding. In Docket Nos. EC12-145-000 and EL12-107-000 (not consolidated), the Commission addressed several filings related to a transaction pursuant to which the Entergy Operating Companies’ assets would be merged with certain subsidiaries of ITC Holdings, Inc. (ITC) (New ITC Operating Companies). We refer to those proceedings as the Entergy-ITC Merger Proceeding. In the Entergy-ITC Rates Proceeding, the Commission addressed and approved, among other things, a proposal to establish four transmission pricing zones: one for Entergy Arkansas; one for Entergy Texas; one for Entergy Mississippi; and one for the combined footprints of the

(continued...)

transmission pricing zone is unjust and unreasonable. The Council of New Orleans observes that no other retail regulator is being forced to submit to the will of another retail regulatory authority, as its jurisdictional authority is being subordinated to that of the Louisiana Commission. The Council of New Orleans asserts that under a Louisiana-wide transmission pricing zone, there is a much stronger likelihood that the Entergy New Orleans ratepayers under its jurisdiction will be required to bear significant costs related to transmission projects authorized by the Louisiana Commission for Entergy Gulf States Louisiana and Entergy Louisiana, regardless of whether the projects provide any benefits to New Orleans ratepayers. The Council of New Orleans claims that aggregating the Entergy Louisiana Companies' transmission assets into a Louisiana-wide transmission pricing zone will require Entergy New Orleans ratepayers to pay a load ratio share of Entergy Louisiana's and Entergy Gulf States Louisiana's current and future transmission facilities, regardless of voltage level. The Council of New Orleans notes that this subsidization of costs would go beyond even what the Entergy System Agreement currently requires. The Council of New Orleans claims that it has also demonstrated, in both the Entergy-ITC Rates and the Entergy-ITC Merger Proceedings, that requiring Entergy New Orleans to be a part of a Louisiana-wide transmission pricing zone is also inconsistent with Commission precedent and with MISO's practices.

18. The Council of New Orleans also argues that to the extent the Louisiana Revenue Allocation Agreement relies on defined terms that are currently the subject of ongoing, contested proceedings before the Commission, Entergy Services has failed to meet its

Entergy Louisiana Companies. *See ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Entergy-ITC Rates Order). In the Entergy-ITC Rates Proceeding, the Commission accepted the proposed Entergy Transmission Pricing Zones and ruled on the rates for both the New ITC Operating Companies, in event of the merger, and the Entergy Operating Companies, upon joining MISO. The Entergy Transmission Pricing Zones and the formula rate templates for the Entergy Operating Companies will go into effect on December 19, 2013, and the formula rate templates for the New ITC Operating Companies would have gone into effect upon closing of the transaction. We note that on December 13, 2013, the New ITC Operating Companies filed a motion to withdraw the filings in Docket Nos. ER12-2681-00 and ER13-782-000. Motion to Withdraw Filings of ITC Holdings Corp., ITC Arkansas LLC, ITC Texas LLC, ITC Louisiana LLC and ITC Mississippi, LLC, Docket Nos. ER12-2681-000 and ER13-782-000 (consolidated) (Dec. 13, 2013). Further, Entergy Services and ITC filed a notice of termination of the proposed transaction on the same day. Notice of Termination of Transaction, Docket No. EC12-145-000 (Dec. 13, 2013).

burden under FPA section 205 to demonstrate that the agreement is just and reasonable. The Council of New Orleans states that the agreement does just that, by relying on defined terms that have not yet been approved by the Commission and that are the subject of ongoing, contested proceedings in Docket Nos. ER13-432 and ER14-73.¹⁹ According to the Council of New Orleans, the primary allocation mechanism under the Louisiana Revenue Allocation Agreement relies on those unapproved terms. The Council of New Orleans concludes that, because the Louisiana Revenue Allocation Agreement relies on those unapproved terms, which relate to contested material issues of fact in other ongoing proceedings, the agreement should be set for hearing to permit a factual investigation.

2. Entergy Services' Answer to the Council of New Orleans

19. In its answer, Entergy Services responds to both of the issues raised by the Council of New Orleans. First, Entergy Services argues that the Council of New Orleans' arguments regarding the Louisiana Transmission Pricing Zone are beyond the scope of this proceeding and a collateral attack on the Entergy-ITC Rates Order. Entergy Services states that the Council of New Orleans has noted that it has sought rehearing of that order and that the Council of New Orleans' arguments will be addressed on rehearing.²⁰

20. Second, Entergy Services agrees with the Council of New Orleans that the definitions of Responsibility Ratio and Load Responsibility in the Louisiana Revenue Allocation Agreement should be consistent with the definitions of those terms that are ultimately approved in Docket Nos. ER13-432-000 and ER14-73-000. Accordingly, Entergy Services recommends that the Commission accept the Louisiana Revenue Allocation Agreement subject to the outcome of those proceedings. Further, the Entergy Louisiana Companies "agree to make a compliance filing in this docket to either (1) notify the Commission that no changes to the [Louisiana Revenue Allocation Agreement] are required or (b) to amend the Louisiana Revenue Allocation Agreement consistent

¹⁹ According to the Council of New Orleans, Entergy filed amendments to the definitions of Responsibility Ratio and Load Responsibility as used in the Entergy System Agreement in Docket No. ER13-432, and proposed amendments to those yet-to-be-approved revisions in Docket No. ER14-73. Protest, Request for Rehearing and Motion to Consolidate of the Council of the City of New Orleans at 8, Docket No. ER14-98-000 (Nov. 5, 2013) (Council of New Orleans Protest).

²⁰ Motion for Leave to Answer and Answer of Entergy Services, Inc. at 3, Docket No. ER14-98-000 (Nov. 20, 2013) (Entergy Services Answer).

with orders in those dockets.”²¹ In addition, the Entergy Louisiana Companies agree to “true-up any payments made prior to resolution of those dockets consistent with any changes to the terms Responsibility Ratio and Load Responsibility that are required.”²²

3. Commission Determination

21. The Commission accepts the Louisiana Revenue Allocation Agreement for filing, subject to the outcome of the proceedings in Docket Nos. ER13-432-000 and ER14-73-000, and grants, to the extent necessary, Entergy Services’ request for waiver so that the agreement may be effective December 19, 2013.

22. With respect to the Council of New Orleans’ arguments concerning the Louisiana Transmission Pricing Zone, the Council of New Orleans has filed a number of pleadings setting out its position on those issues in the Entergy-ITC Rates and the Entergy-ITC Merger Proceedings.²³ As the Council of New Orleans observes,²⁴ those issues are pending on rehearing in the Entergy-ITC Rates Proceeding. The Commission will address the Council of New Orleans’ arguments on those issues in that proceeding, rather than in this proceeding.

23. The Council of New Orleans has demonstrated that some of the defined terms included in the Louisiana Revenue Allocation Agreement are currently at issue in Docket Nos. ER13-432-000 and ER14-73-000. Accordingly, the Commission accepts the Louisiana Revenue Allocation Agreement subject to the outcome of those proceedings. In addition, the Commission accepts the commitment offered by the Entergy Louisiana Companies to make, following a Commission order in those dockets, a future compliance filing to either (a) notify the Commission that no changes to the Louisiana Revenue Allocation Agreement are required or (b) to amend the Louisiana Revenue Allocation Agreement consistent with orders in those dockets. The Commission also accepts the Entergy Louisiana Companies’ commitment to true-up any payments made prior to

²¹ *Id.*

²² *Id.*

²³ *See* Council of New Orleans Protest at n.27 (listing various pleadings filed by the Council of New Orleans in the Entergy-ITC Rates and the Entergy-ITC Merger Proceedings contesting the Louisiana Transmission Pricing Zone).

²⁴ *Id.* at 3-4.

resolution of those dockets consistent with any changes to the terms Responsibility Ratio and Load Responsibility that are required. Finally, the Commission declines to set the Louisiana Revenue Allocation Agreement for hearing. The decision whether to conduct a hearing is within our discretion, and an evidentiary hearing is required only when a genuine issue of material fact exists. We find that no genuine issue of material fact exists, and thus an evidentiary hearing is unnecessary.²⁵

The Commission orders:

The Louisiana Revenue Allocation Agreement is accepted for filing, subject to the outcome of the proceedings in Docket Nos. ER13-432-000 and ER14-73-000, to be effective December 19, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁵ See, e.g., *ITC Arkansas LLC*, 143 FERC ¶ 61,123, at P 24 (2013) (citing *Virginia Elec. and Power Co.*, 84 FERC ¶ 61,254 (1998)). We note that the title of the Council of New Orleans' protest indicates that the pleading includes a motion to consolidate. While the Council of New Orleans does not specifically request consolidation of this docket with any other proceeding in the body of the pleading, one could infer that the Council of New Orleans believes that this proceeding should be consolidated with Docket Nos. ER13-432-000 and ER14-73-000. The Commission consolidates matters only if a trial-type hearing is required to solve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency. See, e.g., *Startrans IO, LLC*, 122 FERC ¶ 61,253, at P 25 (2008). Because there are no issues of material fact at issue in this proceeding, a formal hearing is not appropriate, and so we will not consolidate the aforementioned dockets with this proceeding.