

145 FERC ¶ 61,241
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.

Docket Nos. ER13-1556-000
ER13-1556-001

ORDER ACCEPTING REVISED SERVICE AGREEMENTS

(Issued December 18, 2013)

1. On May 24, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ as supplemented on June 13, 2013 and amended on October 22, 2013, Entergy Services, Inc. (Entergy Services) filed revisions to four forms of service agreement under which Entergy Services provides planning, operational support, administrative, and general support services to the Entergy Operating Companies (Operating Companies).² In this order, we will accept the proposed forms of service agreement, subject to a compliance filing, to be effective December 19, 2013, as requested.

I. Background

2. Entergy Services is a centralized service company that provides planning, operational support, general support, and administrative services to its associate companies, including the Operating Companies. Entergy Services provides these services to the Operating Companies under service agreements that conform with the

¹ 16 U.S.C. § 824d (2012).

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

form of service agreement on file with the Commission as Entergy Services' Rate Schedule No. 435.³

3. Rate Schedule No. 435 provides: (1) planning assistance and advice with respect to the sale and purchase of power; (2) the operation of a system operating center for the control of bulk power supplies and load dispatching; and (3) administrative and general support services in areas including management and strategy, finance and budgets, taxes, human resources, law and regulation, information technology, communications, and insurance. It also provides the uniform methodologies through which Entergy Services allocates direct, indirect, and overhead costs for the services provided to the Operating Companies.

4. Entergy Services and the Operating Companies are parties to the Entergy System Agreement (System Agreement) under which the Operating Companies have planned, constructed, and operated their generation and bulk transmission systems as a single, integrated system. Entergy Arkansas and Entergy Mississippi will each withdraw from the System Agreement effective December 18, 2013 and November 7, 2015, respectively, as accepted by the Commission.⁴ In April 2011, Entergy announced its intention to join the Midwest Independent Transmission System Operator, Inc. (MISO) as a Transmission Owner effective December 19, 2013, subject to receiving the necessary regulatory approvals.⁵

II. Entergy Services' Filings

5. Entergy Services states in its May 24 filing that Entergy Arkansas will engage in certain planning and operational support functions independently of the other Operating Companies after it exits the System Agreement, as directed by the Arkansas Public

³ See *Entergy Servs., Inc.*, 117 FERC ¶ 61,288 (2006) (Rate Schedule No. 435 Order).

⁴ See *Entergy Servs., Inc.*, 129 FERC ¶ 61,143 (2009) (System Agreement Withdrawal Order), *reh'g denied*, 134 FERC ¶ 61,075 (2011), *aff'd sub. nom Council of the City of New Orleans v. FERC*, 692 F.3d 172, 175 (D.C. Cir. 2012), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FERC* (U.S. May 13, 2013) (No. 12-852).

⁵ Effective April 26, 2013 MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

Service Commission (Arkansas Commission).⁶ Specifically, Entergy Arkansas will engage in its own generation planning, operations, dispatch, purchased power procurement, and operations independently of the other Operating Companies. Nevertheless, Entergy Arkansas will continue to purchase a wide variety of other services from Entergy Services, including administrative and general support services. Entergy Services states that it must revise the form of service agreement under Rate Schedule No. 435 because of these operational changes. It proposes Rate Schedule Nos. 435-A, 435-B, and 435-C, described below, to replace Rate Schedule No. 435.

6. On October 22, 2013, Entergy Services filed an amendment and supplement to its prior filings to reflect new commitments to the Arkansas Commission. Entergy Services explains that Entergy Arkansas committed in a proceeding before the Arkansas Commission on October 8, 2013 to undertake certain transmission planning and reliability functions independently of the other Operating Companies.⁷ Therefore, Entergy Services revises Rate Schedule No. 435-A and adds Rate Schedule No. 435-D. Entergy Services states that Rate Schedule Nos. 435-A, 435-B, 435-C, and 435-D provide for its continued provision of generation planning, operational, administrative, and support services to the Operating Companies on a centralized basis, pursuant to terms and conditions that are fully consistent with those of Rate Schedule No. 435.⁸ For this reason, Entergy Services states that the schedules are just and reasonable, and the Commission should accept them for filing.

⁶ Transmittal Letter at 2 (citing *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc., Regarding its Continued Membership in the Current Entergy System Agreement, or Any Successor Agreement Thereto, and Regarding the Future Operation and Control of its Transmission Assets*, Docket No. 10-011-U (Arkansas Commission Oct. 28, 2011)).

⁷ Amendment at 2 (citing *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc., Regarding its Continued Membership in the Current Entergy System Agreement, or Any Successor Agreement Thereto, and Regarding the Future Operations and Control of its Transmission Assets*, Docket No. 10-011-U (Arkansas Commission October 8, 2013)).

⁸ Entergy Services Transmittal Letter at 5, Docket No. ER13-1556-001 (Oct. 22, 2013).

A. Proposed Rate Schedules**1. Rate Schedule No. 435-A**

7. Rate Schedule No. 435-A is the form rate schedule under which Entergy Services will provide administrative and general support services to all the Operating Companies and certain other associate companies. These services include management and strategy, finance and budget, taxes, human resources, law and regulation, information technology, communications, and insurance services. Furthermore, Entergy Services will provide other such services as each operating company may request. Entergy Services states that Rate Schedule No. 435-A is consistent in all material respects with Rate Schedule No. 435 except that it excludes the provision of generation planning and operational support services, which will be provided under Rate Schedules Nos. 435-B and 435-C. Entergy Services states that Rate Schedule No. 435-A allows it to continue providing general and administrative services in a centralized manner, which is efficient, cost effective, and avoids disruption to the services provided to the Operating Companies.

8. Rate Schedule No. 435-A also provides for the provision and allocation of the associated costs of the ongoing legal and regulatory proceedings involving the System Agreement. Entergy Services states that under the terms of Rate Schedule No. 435-A, Entergy Arkansas will not participate in or bear any costs associated with any proceedings associated with the System Agreement that are commenced after Entergy Arkansas exits the System Agreement on December 18, 2013.

9. In the October 22, 2013 amendment, Entergy Services proposes changes to Rate Schedule No. 435-A to expressly provide that Entergy Arkansas will not take services under Rate Schedule No. 435-A in connection with transmission planning and bulk electric system reliability. It states that the language assures the Arkansas Commission that Entergy Arkansas will honor its commitment to undertake transmission planning and reliability functions independently from the other Operating Companies.

2. Rate Schedule No. 435-B

10. Entergy Services proposes to provide generation planning and operational support services to the non-Entergy Arkansas Operating Companies under forms of service agreement that conform to Rate Schedule No. 435-B. Entergy Services states that Rate Schedule No. 435-B is consistent with Rate Schedule No. 435's provisions for generation planning and operational support services. It states that it will provide the following services under Rate Schedule No. 435-B: (1) operation of an operations center for the control of bulk power supply and load dispatching among the non-Entergy Arkansas Operating Companies; (2) planning assistance and advice with respect to system sales of power under the interconnection agreements among the Operating Companies and acting on behalf of the Operating Companies in dealing with other electric utilities with relation

to the sale, purchase, or exchange of bulk power and electricity; and (3) other such services as each Operating Company may request.

11. Entergy Services states that the descriptions of these services are materially consistent with the description of generation planning and operational services provided under Rate Schedule No. 435. It states that Rate Schedule No. 435-B allows it to continue providing generation planning and operational support to the non-Entergy Arkansas Operating Companies in a centralized manner, which is efficient, cost-effective, and avoids disruption to the services provided.

3. Rate Schedule No. 435-C

12. Entergy Services states that Entergy Arkansas will provide its own generation planning and operations functions after it exits the System Agreement. Entergy Services will provide services to Entergy Arkansas in support of its planning, operations and dispatch, purchased power procurement, and operations activities under Rate Schedule No. 435-C. Rate Schedule No. 435-C is a unique agreement between Entergy Arkansas and Entergy Services. Under the agreement Entergy Services will provide the following support services: (1) forecasting and technical support for integrated resource planning; (2) technical support for Entergy Arkansas' transmission service agreements; (3) Local Balancing Authority, meter data management, and meter data quality services; (4) arranging for non-nuclear fuel supplies; (5) technical support for generation resource procurement; (6) real-time operations for Entergy Arkansas' generation fleet and operating plans; (7) buying and selling capacity on behalf of Entergy Arkansas; (8) representing Entergy Arkansas in industry and stakeholder committees; (9) regulatory, compliance, and litigation support services in connection with services provided under the System Agreement; and (10) other and different services as Entergy Arkansas may request in support of its generation planning, operational support, dispatch, and purchased power procurement activities. Entergy Services states that Rate Schedule No. 435-C allows Entergy Services to continue to provide Entergy Arkansas with cost-effective support for the activities undertaken by Entergy Arkansas' staff.

4. Rate Schedule No. 435-D

13. Entergy Services proposes Rate Schedule No. 435-D to provide a service agreement under which Entergy Services may provide services to Entergy Arkansas in support of Entergy Arkansas' transmission planning and reliability obligations. It states that Rate Schedule No. 435-D is modeled on Rate Schedule No. 435-C. Under Rate Schedule No. 435-D, Entergy Arkansas may obtain the following services: (1) technical and engineering support for Entergy Arkansas' transmission planning functions or other transmission-related requirements, as required by applicable tariff and business planning requirements; (2) technical and engineering support to support Entergy Arkansas' performance of transmission planning responsibilities as required by North American Electric Reliability Corporation (NERC); (3) acting as agent for Entergy Arkansas with

respect to its obligations as a Transmission Planner or analogous role pursuant to NERC requirements; (4) representation in industry groups and technical committees in connection with transmission planning; (5) maintenance of computer systems, analysis tools, applications, documents, data, and other records necessary to perform the engineering assessments and analysis according to established requirements; (6) regulatory, compliance, and litigation support services; and (7) such other and different services as Entergy Arkansas may request in support of its transmission planning and reliability activities. Entergy Services states that Rate Schedule No. 435-D will allow it to provide Entergy Arkansas with cost-effective transmission planning and reliability support systems.

B. Cost Recovery

14. Entergy Services states that it will continue to provide services at an “at cost” basis to the Operating Companies under all four rate schedules. It commits that it will not mark up the costs it incurs under any of the schedules and will only recover its costs of providing services. Entergy Services asserts that the Commission presumes that “at cost” pricing of non-power goods and services provided by traditional service companies to associated public utilities is just and reasonable.⁹

15. Entergy Services states that it will recover its costs under Rate Schedule Nos. 435-A and 435-B from the Operating Companies using uniform cost allocation methodologies consistent with those accepted by the Commission in Rate Schedule No. 435. These costs will include all costs directly attributable to services provided and an appropriate portion of the overhead costs incurred in providing the services. Entergy Services commits that it will not recover duplicative costs from any Operating Company taking services under more than one service agreement.

16. Entergy Services states it will recover costs for the services provided under Rate Schedule Nos. 435-C and 435-D on a direct billing basis. Under direct billing Entergy Services will account for and bill to Entergy Arkansas all expenses that are directly attributable to the services Entergy Services will provide Entergy Arkansas under Rate Schedule Nos. 435-C and 435-D. Entergy Services will also account for and bill to Entergy Arkansas an appropriate portion of the cost of overheads incurred in providing

⁹ Transmittal Letter at 9 (citing *Repeal of the Public Utilities Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at PP 14, 169 (2005), *order on reh’g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, at P 38, *order on reh’g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh’g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007)).

such services. Entergy Services states that the cost allocation methodologies allow it to recover costs from the Operating Companies in proportion to the services provided to them.

17. In its October 22, 2013 amendment, Entergy Services states that it proposes minor, non-material refinements to the cost allocation methodologies proposed in Rate Schedule Nos. 435-A and 435-B that will help facilitate the proper allocation of costs among the Operating Companies following their integration into MISO. First, Entergy Services proposes to revise the definition of the “Responsibility Ratio” to clarify how Entergy Services will calculate the ratio and use it to allocate costs. Second, Entergy Services proposes to add a new methodology based on the “Peak Load Ratio” for cost allocation purposes. Third, it proposes to add a new cost allocation methodology based on “Property, Plant and Equipment.” It states that these mechanisms allow it to fairly and appropriately allocate costs among the Operating Companies and that they are consistent with the methodologies approved by the Commission in Rate Schedule No. 435.

C. Effective Date

18. Entergy Services requests an effective date of December 19, 2013 so that it may continue to provide centralized services to the Operating Companies pursuant to the service agreements without disruption following Entergy Arkansas’ withdrawal from the System Agreement.

III. Notice of Filing and Responsive Pleadings

19. Notice of Entergy Services’ May 24, 2013 filing was published in the *Federal Register*, 78 Fed. Reg. 34,364 (2013), with interventions and protests due on or before June 14, 2013. Notice of Entergy Services’ June 13, 2013 supplemental filing was published in the *Federal Register*, 78 Fed. Reg. 40,470 (2013), with interventions and protests due on or before July 5, 2013. The Council of the City of New Orleans (New Orleans) filed a notice of intervention and a protest. The Arkansas Commission and the Mississippi Public Service Commission (Mississippi Commission) filed motions to intervene out of time. The Louisiana Public Service Commission (Louisiana Commission) filed a motion to intervene out of time and protest. Entergy Services, the Arkansas Commission, and New Orleans filed answers.

20. Notice of Entergy Services’ October 22, 2013 amendment to the filing was published in the *Federal Register*, 78 Fed. Reg. 65,364 (2013), with interventions and protests due on or before November 12, 2013. The Louisiana Commission and New Orleans filed protests. The Arkansas Commission filed comments. The Arkansas Commission and Entergy Services filed answers.

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the late-filed motions to intervene of the Arkansas Commission, the Louisiana Commission, and the Mississippi Commission given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers of the Arkansas Commission, Entergy Services, the Louisiana Commission, and New Orleans because they have provided information that assisted us in our decision-making process.

B. Undue Discrimination

1. Protests

24. New Orleans states that Rate Schedule Nos. 435-B and 435-C are unduly discriminatory and preferential because they differ from each other in material ways, which Entergy Services does not justify.¹⁰ First, it asserts that Rate Schedule No. 435-B section II requires Entergy New Orleans to take and pay for unspecified services, which allows for the recovery of costs that New Orleans cannot predict or verify, and that Rate Schedule No. 435-C contains no comparable provision.¹¹ Second, New Orleans states that Rate Schedule No. 435-C contains no section comparable to Rate Schedule No. 435-B section V, which allows Entergy Services to unilaterally modify the services it

¹⁰ New Orleans June 13 Protest at 7.

¹¹ *Id.* at 8 (quoting Rate Schedule No. 435-B section II (“Client Company further agrees to take from Entergy Services such other services, whether or not described in Exhibit I and whether or not now contemplated, as Client Company may from time to time request from Entergy Services.”)).

provides.¹² Third, New Orleans asserts that Rate Schedule No. 435-C section III gives Entergy Arkansas, and presumably the Arkansas Commission, the right to review the rate schedule every year and obligates Entergy Services to make any required changes.¹³ New Orleans states that the other Operating Companies and state commissions do not have the same right to review and asserts that the differences result in unduly discriminatory rate schedules because Entergy Arkansas and the Arkansas Commission have greater control over the services that Entergy Arkansas receives from Entergy Services.¹⁴ New Orleans states that the Commission should condition its acceptance of the rate schedules on modifications to eliminate the undue discrimination identified in the rate schedules.¹⁵

2. Answers and Responses to the Amended Filing

25. The Arkansas Commission argues that the proposed rate schedules are necessary to reflect Entergy Arkansas' exit from the System Agreement. It states that the Commission and the courts have determined that there are no conditions on Entergy Arkansas' withdrawal from the System Agreement and that there are no requirements for continued coordinated planning.¹⁶ The Arkansas Commission states that it conditioned Entergy Arkansas' withdrawal from the System Agreement as follows: "[Entergy Arkansas] shall negotiate individual cost-based contracts with Entergy Services or any other Entergy services company, separately from the other [Operating Companies] and with no cost allocation with other [Operating Companies]."¹⁷ Therefore, it asserts that

¹² *Id.* (quoting Rate Schedule No. 435-B section V ("Entergy Services may amend or supplement Exhibit I and Exhibit II, including the Exhibit II Supplement, from time to time.")).

¹³ *Id.* (citing Rate Schedule No. 435-C section III, which states "On an annual basis, [Entergy Arkansas] shall review with Entergy Services this agreement to determine if modifications to this Service Agreement are needed prior to the upcoming year. . . . If modifications are determined to be needed, then Entergy Services shall cooperate in making such modifications.").

¹⁴ *Id.* at 8-9.

¹⁵ *Id.* at 10-11.

¹⁶ Arkansas Commission July 1 Answer at 3.

¹⁷ *Id.* (quoting Arkansas Commission, Docket No. 10-011-U, Order Nos. 68 and 72, Condition No. 1(a)).

the Commission should accept the proposed rate schedules as reasonable accommodations of Entergy Arkansas' withdrawal from the System Agreement and the Arkansas Commission's conditions thereof.¹⁸

26. The Arkansas Commission asserts that the rate schedules are not unduly discriminatory because Entergy Arkansas will no longer be similarly situated to the other Operating Companies.¹⁹ It states that unlike the other Operating Companies, Entergy Arkansas will operate as a separate entity after it exits the System Agreement; as such, there is a significant difference between the Operating Companies' current relationship and their operation after Entergy Arkansas withdraws.

27. New Orleans asserts that the Arkansas Commission does not offer a relevant distinction for treating Entergy Arkansas differently than the other Operating Companies.²⁰ It states that Entergy Arkansas will continue to be similarly situated because all the Operating Companies have joined MISO and will receive the same services from Entergy Services.²¹ New Orleans states that the Commission has determined that discrimination is undue when there is a difference in rates or services among similarly-situated companies that is not justified by some legitimate factor.²² It states that the provisions it identified in its protest are unduly preferential to Entergy Arkansas and the Arkansas Commission and discriminatory to the other Operating Companies and their retail regulators.²³ New Orleans states that Entergy Services offers no rationale for the contractual protections provided to Entergy Arkansas and that the Commission should grant the relief it requested in its protest.²⁴

¹⁸ *Id.*

¹⁹ *Id.* at 4.

²⁰ New Orleans July 17 Answer at 2.

²¹ *See id.*

²² *Id.* at 3 (citing *Cal. Indep. System Operator Corp.*, 119 FERC ¶ 61,061, at P 69 (2007); *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 115 (2003); *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,541 (1985)).

²³ *Id.*

²⁴ *See id.* at 4-5.

28. Entergy Services states that the differences between the rate schedules are necessary to accommodate the Arkansas Commission's mandate that Entergy Arkansas engage in independent planning.²⁵ It explains that the rate schedules differ because the Operating Companies face different conditions after Entergy Arkansas exits the System Agreement and that Entergy Arkansas will no longer be similarly situated after its exit.²⁶

29. Entergy Services also asserts that New Orleans' objection to Rate Schedule No. 435-B section II is unfounded. It states that the section allows the Operating Companies other than Entergy Arkansas to request services that Rate Schedule No. 435-B does not identify and that Rate Schedule No. 435-C contains the same language for Entergy Arkansas, as does Rate Schedule No. 435.²⁷ Entergy Services adds that the flexibility provided is appropriate so that the rate schedules can adapt to unforeseen events and changes in circumstances.

30. Entergy Services states that it is unsure of the basis of New Orleans' objection to Rate Schedule No. 435-B section V. It notes that because the service agreements will be rate schedules on file with the Commission, any amendment made pursuant to that section will have to be filed with the Commission and New Orleans or any other interested party may intervene and comment on any proposed changes.²⁸

31. Entergy Services states that Rate Schedule No. 435-C section III provides Entergy Arkansas with an annual right to review to comply with the Arkansas Commission's conditions.²⁹ Entergy Services states that the provision is necessary because it will aid Entergy Arkansas in demonstrating its compliance with its independence mandate. Entergy Services states that the absence of similar clauses in Rate Schedule Nos. 435-A and 435-B does not preclude the other Operating Companies from reviewing the agreements at their request.³⁰ Entergy Services also contends that Entergy Arkansas and the Arkansas Commission do not have greater control over the services Entergy Arkansas

²⁵ See Entergy Services August 12 Answer at 15-16.

²⁶ *Id.* at 18.

²⁷ *Id.* at 18-19 (citing Rate Schedule No. 435-C section I; Rate Schedule No. 435 section I).

²⁸ *Id.* at 20.

²⁹ *Id.*

³⁰ *Id.* at 21.

receives. It asserts that Entergy Arkansas could elect to take no services but that would not require Entergy Services to amend Rate Schedule No. 435-B to obtain cost recovery from the other Operating Companies.³¹ Furthermore, Entergy Services states that it must file any amendments to the rate schedules with the Commission so its right to review Rate Schedule No. 435-B is not unilateral.³²

32. New Orleans answers that revealing the Arkansas Commission as the source of the annual review provision in Rate Schedule No. 435-C does not address its concern that the provision is unduly preferential to Entergy Arkansas and the Arkansas Commission.³³ It states that allowing the non-Entergy Arkansas Operating Companies to review their agreements is not the same as the contractual right provided to Entergy Arkansas. Therefore, it states that Entergy Services “should revise Rate Schedule 435-C to provide the same rights to the non-Arkansas [Operating Companies] and their retail regulators.”³⁴ New Orleans also protests Entergy Services’ amended filing, stating that Entergy Services did not address any of the concerns New Orleans raised in its protest or answer. Therefore, New Orleans reiterates its arguments that the proposed rate schedules are unduly discriminatory.³⁵

33. The Arkansas Commission states in its comment on Entergy Services’ Amendment that Rate Schedule Nos. 435-A, 435-C, and 435-D are consistent with its independence requirements for Entergy Arkansas regarding planning of generation and transmission, as well as reliability assurance, effective upon its separation from the Entergy System Agreement.³⁶ The Arkansas Commission also reiterates in its November 25 Answer that Entergy Arkansas will not be similarly situated to the other Operating Companies after its withdrawal from the System Agreement because it will operate as a separate company and will no longer continue joint operations and planning with the other Operating Companies.³⁷

³¹ *Id.*

³² *Id.*

³³ New Orleans August 27, 2013 Answer at 3.

³⁴ *Id.*

³⁵ New Orleans November 12 Protest at 1, 4.

³⁶ *See* Arkansas Commission November 12 Comment at 1-2.

³⁷ Arkansas Commission November 25 Answer at 4.

3. Commission Determination

34. New Orleans contends that the rate schedules give Entergy Arkansas greater control over the terms and services it receives than the other Operating Companies, which is unduly discriminatory. In New Orleans' view the proposed rate schedules are discriminatory because they differ in material ways that favor Entergy Arkansas.

35. The Commission has determined that discrimination is undue when there is a difference in rates or services among similarly-situated customers that is not justified by some legitimate factor.³⁸ But we agree with Entergy Services and with the Arkansas Commission that, with respect to the services covered by the rate schedules as a result of the differing local mandate and independent operations, Entergy Arkansas will no longer be similarly situated to the other Operating Companies after it departs the System Agreement. Entergy Arkansas will provide its own generation planning, operations and dispatch, purchased power procurement, operations activities, transmission planning and reliability obligations once it is no longer a party to the System Agreement. By contrast the other Operating Companies will continue to plan, construct, and operate their generation and bulk transmission systems as a single, integrated system under the System Agreement.

36. The different provisions of Rate Schedule Nos. 435-A through 435-D accommodate the Arkansas Commission's mandate that Entergy Arkansas engage in independent transmission and generation planning, and the differing review and revision provisions in Rate Schedule Nos. 435-A, 435-B, 435-C, and 435-D accommodate Entergy Arkansas' exit from the System Agreement. We note that any revisions to the rate schedules, whether proposed by Entergy Arkansas under Rate Schedule Nos. 435-C or 435-D or Entergy Services under Rate Schedule Nos. 435-A or 435-B, must be filed with the Commission.

37. New Orleans also contends that Rate Schedule No. 435-B requires Entergy New Orleans to take unspecified services and that there is no equivalent provision in Rate Schedule No. 435-C. New Orleans is incorrect. The Operating Companies receive the same treatment with respect to unspecified services. The relevant clause of Rate Schedule No. 435-B section II states "Client Company further agrees to take from Entergy Services such other services, whether or not described in Exhibit I and whether or not contemplated, as Client Company may from time to time request from Entergy Services." Although Rate Schedule No. 435-C section II does not contain exactly the same language, section I provides that "Entergy Services will also provide [Entergy Arkansas] such services not described in Exhibit I as [Entergy Arkansas] may request and

³⁸ *E.g., Southwest Power Pool, Inc.*, 137 FERC ¶ 61,075, at P 52 (2011).

Entergy Services is competent to perform.”³⁹ Furthermore, Exhibit I of that rate schedule contains substantially similar terms in the list of services provided to Entergy Arkansas.⁴⁰ Additionally, Rate Schedule No. 435 provides similar terms.⁴¹

C. Costs

1. Protests

38. New Orleans states that certain provisions of the rate schedules result in improper cost shifting from Entergy Arkansas to Entergy New Orleans. It explains that Entergy Services did not submit any near-term cost projections comparing recent cost allocations to projected 2014 cost allocations under the new provisions. It asserts that without a meaningful cost comparison the Commission should set the docket for hearing and settlement to provide for discovery.⁴² New Orleans also states that the Rate Schedules should provide specific contractual language to guarantee that Entergy Services will not mark up costs and will only seek to recover its own costs for providing the services.⁴³ Furthermore, New Orleans asserts that Entergy Services does not explain if its costs will increase under the proposed rate schedules as a result of Entergy Arkansas leaving the System Agreement. For example, it asserts that costs could increase because the non-Entergy Arkansas Operating Companies will be allocated a larger percentage of costs associated with Entergy Services personnel under the proposed rate schedules. It states that the rate schedules are not just and reasonable unless Entergy Services shows that the

³⁹ Rate Schedule No. 435-C section I.

⁴⁰ It lists among the services that Entergy Services will provide to Entergy Arkansas “Performing such other and different services as [Entergy Arkansas] may request in support of its generation planning, operational support, dispatch, and purchased power procurement activities.” Rate Schedule No. 435-C, Exhibit I section 10.

⁴¹ *See* Rate Schedule No. 435 section II (“Client Company agrees to take from [Entergy] Services such of the services described in Exhibit I as are required from time to time by the Client Company. Client Company further agrees to take from [Entergy] Services such other general or special services, whether or not described in Exhibit I and whether or not now contemplated, as Client Company may from time to time require and [Entergy] Services shall conclude it is competent to perform.”).

⁴² New Orleans June 14 Protest at 4-5.

⁴³ *Id.* at 5.

proposed cost allocation between the Operating Companies will not result in greater costs for the same services received under Rate Schedule No. 435.⁴⁴

39. New Orleans also asserts that any costs to Entergy Services related to Entergy Arkansas' exit from the System Agreement should not be allocated to the non-Entergy Arkansas Operating Companies under Rate Schedule Nos. 435-A and 435-B.⁴⁵ It also states that Entergy Arkansas should continue to share in the cost allocation for legal services arising from its decision to exit the System Agreement. New Orleans states that under Rate Schedule 435-A, Entergy Arkansas will not participate in Entergy Services' coordinated provision of legal and consulting services to the Operating Companies, "nor bear any resulting costs" for proceedings related to the System Agreement that commence after December 18, 2013.⁴⁶ New Orleans requests clarification as to how Entergy Services defines "proceeding," or a statement that Entergy Arkansas will not be allocated costs associated with System Agreement-related proceedings.⁴⁷ New Orleans identifies specific Commission dockets that it says are related to the System Agreement, and it argues that if a party to one of those proceedings files an appeal after December 18, 2013, that appeal should not be considered a new proceeding; rather, Entergy Arkansas should share in the cost responsibility. It states that fairness dictates that all the Operating Companies should share the costs of any appeal of a proceeding related to the System Agreement started before Entergy Arkansas' exit.⁴⁸

40. New Orleans also asserts that the rate schedules lack precision and contain ambiguous terms that make it impossible to determine if the cost allocations are just and reasonable.⁴⁹ For example, it states that Rate Schedule 435-C Exhibit II provides that Entergy Services will account for and bill to Entergy Arkansas "an appropriate portion of overhead costs" and will record an "appropriate portion" of those costs.⁵⁰ New Orleans states that the lack of explanation of "appropriate" gives too much flexibility for Entergy

⁴⁴ *See id.*

⁴⁵ *Id.* at 6.

⁴⁶ *Id.*

⁴⁷ *See id.* at 7.

⁴⁸ *See id.* at 6-7.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.*

Services and its affiliates to decide when and how to allocate costs between the Operating Companies.⁵¹

41. New Orleans therefore asks that the Commission condition acceptance of the proposed rate schedules on: (1) a showing by Entergy Services that costs will not increase under Rate Schedules Nos. 435-A and 435-B for the non-Entergy Arkansas Operating Companies; (2) a showing by Entergy Services that the non-Entergy Arkansas Operating Companies will not be allocated a larger percentage of costs associated with Entergy Services' personnel and resource base; and (3) clarification that Entergy Arkansas will continue to share costs related to legal and consulting services for any proceeding related to the System Agreement that arise out of currently-ongoing proceedings or that include Entergy Arkansas, the Arkansas Commission or any other Arkansas-affiliated entity as an active participant.⁵²

42. The Louisiana Commission states that the proposed rate schedules may increase costs for both Entergy Gulf States Louisiana and Entergy Louisiana because there will be fewer Operating Companies to allocate fixed costs between and the separate operation of Energy Arkansas and Entergy Mississippi will create new costs.⁵³ The Louisiana Commission also states that the proposal fails to explain how Entergy Services will run its operation center after Entergy Arkansas and Entergy Mississippi exit the System Agreement or allocate associated costs.⁵⁴

43. The Louisiana Commission also states that the filing does not provide a demarcation between the services provided by Entergy Services to Entergy Arkansas and the services Entergy Arkansas will provide itself.⁵⁵ It states the demarcation is necessary to determine cost allocation and that Entergy Services must also identify the steps it took to avoid or eliminate inefficiencies or costs that were a result of the organizational changes.⁵⁶ Similarly, it asserts that Entergy Services must provide more detail on how the proposed rate schedules will impact cost allocation. The Louisiana Commission

⁵¹ *Id.* at 10.

⁵² *Id.* at 10-11.

⁵³ Louisiana Commission July 29 Protest at 4.

⁵⁴ *Id.*

⁵⁵ *Id.* at 4-5.

⁵⁶ *Id.* at 5.

explains that the reorganization should reduce fixed costs, and if Entergy Services does not show a reduction in costs the proposal is not just and reasonable.⁵⁷

44. The Louisiana Commission also states that Entergy Services has provided no assurance that it will not allocate costs to the remaining Operating Companies resulting from ongoing fixed operating costs previously incurred to serve the exiting Operating Companies or costs incurred to facilitate their separate operation.⁵⁸ Furthermore, it asserts that Entergy Services has not provided enough detail to demonstrate that cost allocation between the Operating Companies will be just and reasonable.⁵⁹ Finally, the Louisiana Commission asserts that Entergy Services does not provide a before and after cost comparison or describe any measures Entergy Services took to ensure the other Operating Companies are not harmed by Entergy Arkansas' exit. Therefore, it requests the Commission deny Entergy Arkansas' filing or set the filing for hearing.⁶⁰

2. Answers and Responses to the Amended Filing

45. The Arkansas Commission asserts that Entergy Arkansas will be subject to "the replacement System Agreement" after it exits the current agreement, and that the Commission should reject New Orleans' attempt to create ongoing cost-sharing obligations for Entergy Arkansas.⁶¹

46. Entergy Services states that it has not identified 2014 costs because the extent and actual cost of the services that it provides to the Operating Companies depends on unpredictable variables that change from year to year.⁶² It states that comparing current costs under Rate Schedule No. 435 to future costs under the proposed rate schedules will not provide meaningful information because the costs of the services provided are variable. Entergy Services states that variable costs do not make the rate schedules unjust and unreasonable, just as variable costs did not make Rate Schedule No. 435 unjust and

⁵⁷ *Id.*

⁵⁸ *Id.* at 5-6.

⁵⁹ *See id.* at 6.

⁶⁰ *Id.*

⁶¹ Arkansas Commission July 1 Answer at 4.

⁶² Entergy August 12 Answer at 6.

unreasonable.⁶³ It reiterates that “at cost” pricing is presumed just and reasonable and that the Commission approved the same cost allocation approach for Rate Schedule No. 435.⁶⁴

47. Entergy Services also responds that it does not need to include specific contractual language in each rate schedule to ensure that it will not mark up costs. It states that Rate Schedules Nos. 435-A, 435-B, and 435-C each require the Operating Companies “to pay Entergy Services the cost of such services” and does not allow it to charge marked-up or duplicative costs.⁶⁵ It states that Rate Schedule No. 435 did not have an express prohibition on recovering marked-up or duplicative costs, and it argues that such a prohibition is not required in the proposed rate schedules.

48. Entergy Services explains that it has not materially changed its staffing and resources as a result of Entergy Arkansas’ preparations to engage in generation planning, operations, and dispatch, purchased power procurement, and other independent operations. It states that Entergy Arkansas has made these preparations itself and will appropriately bear the costs.⁶⁶ Entergy Services states that it will continue to provide services using its existing staff.⁶⁷

49. Entergy Services states that the Commission should reject New Orleans’ request to exclude the non-Entergy Arkansas Operating Companies from any allocation of costs incurred by Entergy Services related to Entergy Arkansas’ withdrawal from the System Agreement.⁶⁸ It asserts that doing so would be inconsistent with the System Agreement’s mandate that each Operating Company share Entergy Services’ costs of legal and regulatory proceedings and its provision of services for management, business issues and strategic planning.⁶⁹ Furthermore, Entergy Services states that it “will take a common

⁶³ *Id.* at 7.

⁶⁴ *Id.* at 8, 15.

⁶⁵ *Id.* (quoting Rate Schedule No. 435-A section III; Rate Schedule No. 435-B section III; and Rate Schedule No. 435-C section III).

⁶⁶ *See id.* at 9-10.

⁶⁷ *Id.* at 10.

⁶⁸ *Id.* at 11.

⁶⁹ *Id.* at 12.

sense approach to determining whether a proceeding is a ‘new’ proceeding commenced after December 18, 2013” with regard to cost allocation.⁷⁰ It explains that any appeal from a proceeding would not be “new” as long as the specific issues in the appeals were at issue in the pre-existing proceeding and would therefore allocate the costs to all the Operating Companies, including Entergy Arkansas.⁷¹

50. Entergy Services also states that Rate Schedule Nos. 435-A, 435-B, and 435-C adequately identify the services that it will provide each Operating Company and that the Louisiana Commission fails to establish a need for “demarcation.”⁷² It further states that the Louisiana Commission’s contentions about cost allocation fail to recognize that the cost allocation exhibits for Rate Schedule Nos. 435-A and 435-B are based on Rate Schedule No. 435, which the Commission accepted and has been in place for decades.⁷³ Entergy Services notes it will directly bill Entergy Arkansas for services provided under Rate Schedule No. 435-C and will not allocate those costs to the other Operating Companies.⁷⁴

51. New Orleans states that Entergy Services added an unexplained exemption for Entergy Arkansas of legal and consulting fee responsibility in Docket No. ER13-432 in its answer.⁷⁵ It states that neither the May 24 filing nor the proposed rate schedules exempted the litigation costs arising from that docket, which commenced before the cut-off date for legal expenses in Rate Schedule No. 435-A.⁷⁶ It states that Entergy Services

⁷⁰ *Id.*

⁷¹ *See id.* at 12-13

⁷² *Id.* at 13.

⁷³ *Id.* at 14.

⁷⁴ *Id.*

⁷⁵ New Orleans August 27 Answer at 5 (quoting Entergy Services August 12 Answer at 5 (“Pursuant to Rate Schedule 435-A, all of the Entergy Operating Companies, including [Entergy Arkansas], will continue to share in Entergy Services’ costs associated with System Agreement litigation, provided that such proceedings are commenced prior to [Entergy Arkansas’] withdrawal on December 18, 2013, and [Entergy Arkansas] was party to the proceeding prior to that date except for any litigation that may occur in Docket No. ER13-432 (proposed changes to Entergy System Agreement in connection with MISO integration).”).

⁷⁶ *Id.* at 5-6.

did not explain why litigation costs from Docket No. ER13-432 are treated differently and therefore the Commission should reject the exemption and treat expenses arising from Docket No. ER13-432 the same way as all other legal expenses under the rate schedules.⁷⁷

52. New Orleans also states that Entergy Services' answer addressed two of New Orleans' concerns. First, Entergy Services' commitment to only recover Entergy Services' costs for providing services, without mark-up or duplication, addresses its concerns that Entergy Services would mark up costs.⁷⁸ Second, New Orleans accepts Entergy Services' commitment to use a "common sense approach to determining whether a proceeding is a 'new' proceeding commenced after December 18, 2013" and to continue to allocate costs to Entergy Arkansas for legal and consulting fees for currently-ongoing proceedings involving the Entergy System Agreement or appeals, commenced after December 18, 2013, related to those proceedings.⁷⁹

53. New Orleans also protests Entergy Services' amended filing, stating that Entergy Services did not address any of the concerns New Orleans raised in its protest or answer. Therefore, it reiterates its arguments that the proposed rate schedules are ambiguous and may result in unwarranted cost shifting.⁸⁰

54. The Louisiana Commission protests Entergy Services' amended filing, stating that the Commission should require Entergy Services to revise its proposal to provide for the direct assignment of costs to each Operating Company. It states that the Commission prefers direct assignment of costs when feasible and that Entergy Services' amended filing demonstrates that it is feasible to directly assign these costs. Therefore, the Louisiana Commission asserts that it is unduly discriminatory to allow for the direct assignment of costs to Entergy Arkansas but not the other Operating Companies.⁸¹ In support of this argument it states that the Commission should require direct assignment of costs under Rate Schedule Nos. 435-A and 435-B because Entergy Mississippi and

⁷⁷ *Id.* at 6.

⁷⁸ *Id.* at 3-4.

⁷⁹ *Id.* at 4-5.

⁸⁰ *See* New Orleans November 12 Protest at 1, 4.

⁸¹ Louisiana Commission November 12 Protest at 2.

Entergy Texas intend to withdraw from the System Agreement and the Commission should approve tariffs that can operate under the System Agreement or if it is cancelled.⁸²

55. The Louisiana Commission also states that it is unjust and unreasonable to grant Entergy Services the ability to determine the “appropriate” amount of overhead costs to allocate to Entergy Arkansas.⁸³ It states that Entergy Services did not adequately describe the methods to constrain its discretion. Furthermore, it states in its protest to Entergy Services’ amended filing that Entergy Services has failed to demonstrate that the proposed service agreements will not harm the customers of Entergy Louisiana and Entergy Gulf States Louisiana through increased costs.⁸⁴ It states that those Operating Companies will remain members of the System Agreement after Entergy Arkansas’ and Entergy Mississippi’s exits and that the amended service agreements do not address the cost allocation problems. It reiterates its cost allocation arguments from its protest and answers to the May filing.⁸⁵

56. The Arkansas Commission argues that New Orleans seeks to create an impermissible ongoing cost-sharing obligation for Entergy Arkansas by requesting that the Commission require Entergy Services to certify that Entergy Arkansas will continue to share Entergy Services’ costs related to legal and consulting service for all ongoing System Agreement proceedings.⁸⁶ It also alleges that New Orleans’ request that the Commission ensure that the operating costs for all the non-Entergy Arkansas Operating Companies do not increase under the proposed rate schedules and that those Operating Companies are not allocated a larger percentage of Entergy Services’ operating costs is an unsupported and unprecedented hold-harmless clause.⁸⁷ Furthermore, the Arkansas Commission states that the attempt to create ongoing cost sharing is an impermissible

⁸² *See id.* at 3.

⁸³ *See id.* at 3-4.

⁸⁴ *Id.* at 4.

⁸⁵ *See id.* at 5-7.

⁸⁶ *See* Arkansas Commission November 25 Answer at 3-5.

⁸⁷ *See id.* at 3.

collateral attack on the System Agreement Withdrawal Order, and that it is barred as a matter of law.⁸⁸

57. Entergy Services answers that its cost allocation methodologies are just and reasonable. Entergy Services states that Rate Schedule Nos. 435-A and 435-B are consistent with the cost allocation methodology of Rate Schedule No. 435. It explains that it directly assigns any cost that is attributable to only one Operating Company to that company under the Rate Schedule No. 435 and that it will continue to do so under Rate Schedule Nos. 435-A and 435-B.⁸⁹ Nevertheless, Entergy Services explains that Rate Schedule Nos. 435-A and 435-B also allocate shared costs, which cannot be directly assigned to an individual Operating Company.⁹⁰ Entergy Services also states that Rate Schedule Nos. 435-C and 435-D are for a limited range of services that will only be provided to Entergy Arkansas, which allows for the direct assignment of those costs.⁹¹ Entergy Services' answer reiterates that the Rate Schedules provide "at cost" pricing for non-power goods and services by a traditional service company to associated public utilities, which the Commission presumes to be just and reasonable.⁹² It states that the differentiation of cost responsibilities under proposed Rate Schedule Nos. 435-A, 435-B, 435-C, and 435-D is not unduly discriminatory and reflects a continuation of the status quo.⁹³ Entergy Services also states that overhead costs will be allocated as provided in Exhibit II of the proposed rate schedules. Entergy states that these overhead costs will follow the charging of all costs, both allocated costs under Rate Schedules 435-A and 435-B and directly assigned costs under Rate Schedules 435-A, 435-B, 435-C, and 435-D.⁹⁴

⁸⁸ *Id.* at 5 (citing *NSTAR Electric Co. v. ISO New England, Inc.*, 120 FERC ¶ 61,261 (2007), *reh'g denied*, 125 FERC ¶ 61,187 (2008)).

⁸⁹ *See* Entergy Services November 27 Answer at 3.

⁹⁰ *See id.* at 3-4.

⁹¹ *Id.* at 4-5.

⁹² *See id.* at 5.

⁹³ *See id.* at 5-6.

⁹⁴ *Id.* at 7-8. Exhibit II of the rate schedules details the cost allocations for overhead expenses. For example, Entergy Services will maintain a separate record of the expenses of each department and then further categorize department expenses into direct and indirect expenses. The overall allocation will include some expenses that are directly

(continued...)

58. Entergy Services states that the Louisiana Commission does not support its assertion that it is not just and reasonable for Entergy Services to directly assign costs to Entergy Arkansas and not the other Operating Companies.⁹⁵ Entergy Services states that it is not feasible to directly assign costs for services that Entergy Services provides to multiple Operating Companies.⁹⁶ It explains that as a shared services company, it uses shared personnel, facilities, equipment, and other resources, none of which are dedicated to a single Operating Company. Entergy Services states that even if it were possible to track and assign the costs of shared resources and services, the effort and cost to do so would be expensive and inefficient and overwhelm any value.⁹⁷

3. Commission Determination

59. We find that the cost allocation methods of Rate Schedule Nos. 435-A, 435-B, 435-C, and 435-D are just and reasonable, as described below. The Commission applies a rebuttable presumption that costs incurred under “at cost” pricing for services provided by a centralized service company to regulated affiliates are reasonable.⁹⁸ However, the Commission will entertain complaints that “at cost” pricing for such services exceeds the market price, but complainants will have the burden of demonstrating that is the case.⁹⁹ Here, Entergy Services proposes to continue to use the “at cost” standard for services provided to associate companies as it did under Rate Schedule No. 435.

60. We find that New Orleans’ and the Louisiana Commission’s concerns about cost allocation, including overhead costs, under the proposed rate schedules are unfounded. When analyzing the services provided by a centralized service company, the Commission’s focus is on the costs allocated to jurisdictional public utilities and whether those costs are fairly allocated among them.¹⁰⁰ The allocation of costs among the

assigned to an Operating Company and other expenses that are shared among various Operating Companies.

⁹⁵ *Id.* at 2.

⁹⁶ *Id.* at 7.

⁹⁷ *Id.*

⁹⁸ See Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 169; Rate Schedule No. 435 Order, 117 FERC ¶ 61,288 at P 24.

⁹⁹ Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 169.

¹⁰⁰ See *id.* P 167.

Operating Companies taking services under proposed Rate Schedule Nos. 435-A and 435-B reflect a continuation of the *status quo* reflected in the existing Rate Schedule No. 435. Under Rate Schedule Nos. 435-A and 435-B, Entergy Services will directly allocate costs for any service provided to an individual Operating Company; it will also allocate the costs of any shared service in a manner consistent with Rate Schedule No. 435. The allocation to Entergy Arkansas of Entergy Services' costs of providing services under proposed Rate Schedule Nos. 435-C and 435-D reflects the *status quo* reflected in the existing Rate Schedule No. 435 and the fact that Entergy Arkansas will be the only customer taking services under Rate Schedules 435-C and 435-D and, therefore, should be the only party responsible for those costs (i.e., it does not share any services with other Operating Companies, so there is no need for provisions for allocating the costs of shared services between Entergy Arkansas and the other Operating Companies).

61. New Orleans and the Louisiana Commission both assert that Entergy Services must make several showings that will demonstrate that future costs to the Operating Companies will not exceed the historical costs under Rate Schedule No. 435. We disagree. As Entergy Services states, "at cost" rates will vary depending on the services provided to the Operating Companies in any given year. Therefore, Entergy Services does not need to provide cost projections or show that costs will remain the same or decrease under the revised forms of services agreement.

62. New Orleans and the Louisiana Commission also raise several concerns related to the allocation of costs related to Entergy Arkansas' exit from the System Agreement. First, New Orleans contends that the Commission should allocate all costs from Entergy Arkansas' exit from the System Agreement to Entergy Arkansas. We reject this contention. Rate Schedule No. 435 provides that all the Operating Companies would share in Entergy Services' costs of legal and regulatory proceedings under the System Agreement. As we have noted in the past, Entergy Arkansas' exit from the System Agreement was foreseeable under the terms of the System Agreement.¹⁰¹ Therefore, it is appropriate for Entergy Services to allocate any shared costs under Rate Schedule No. 435 to Operating Companies that are parties to the System Agreement.

63. Both New Orleans and the Louisiana Commission question in what way Entergy Services has reorganized as a result of Entergy Arkansas' exit from the System Agreement and the effects these changes may have on cost allocation. As Entergy Services notes, it has made no changes to its organization in anticipation of Entergy Arkansas' exit from the System Agreement. Rather, Entergy Arkansas has undergone changes so it can engage in generation planning, operations, and dispatch, purchased power procurement, and operations independently of the other Operating Companies.

¹⁰¹ See System Agreement Withdrawal Order, 129 FERC ¶ 61,143 at PP 61, 64.

Entergy Services will continue to provide services to the other Operating Companies under Rate Schedule Nos. 435-A and 435-B using the same staff and resources it uses under Rate Schedule No. 435. We find that Rate Schedule Nos. 435-A through 435-D adequately identify the services that Entergy Services will provide each Operating Company.

64. New Orleans raises several concerns related to the allocation of costs relating to legal proceedings under the System Agreement. First, we find that, with one exception, Entergy Services' clarifications as to which proceedings will be included in Rate Schedule No. 435-A adequately addresses New Orleans' concerns about the allocation of costs regarding proceedings that are ongoing when Entergy Arkansas exits the System Agreement. However, we find that Entergy Services did not support the exclusion of Docket No. ER13-432 from costs associated with ongoing litigation under Rate Schedule No. 435-A. Entergy Services offered no justification for treating Docket No. ER13-432 differently from other legal expenses arising from ongoing proceedings under the System Agreement. Accordingly, Entergy Services must treat any expenses arising out of Docket No. ER13-432 as it would any other legal or consulting expenses arising from ongoing proceedings under the System Agreement when Entergy Arkansas withdraws from the System Agreement on December 18, 2013.

65. Second, we deny New Orleans' request that we find that Entergy Arkansas must share in any costs related to future litigation regarding the System Agreement in which Entergy Arkansas, the Arkansas Commission or any other Arkansas-affiliated entity is an active participant. As we stated in the past, the System Agreement provisions only apply when an Operating Company is a party to the System Agreement.¹⁰² Therefore, Entergy Services should not allocate future litigation costs arising under the System Agreement, which are not ongoing proceedings, as clarified by Entergy Services, at the time of Entergy Arkansas' exit, to an exiting party.

D. State and Local Regulatory Authority

1. Responsive Filings

66. New Orleans states that Entergy Services did not justify removing a local regulatory approval clause from Rate Schedule Nos. 435-A, 435-B, and 435-C that was included in Rate Schedule No. 435.¹⁰³ Entergy Services argues that there is no need for a

¹⁰² *Id.* P 62.

¹⁰³ New Orleans June 14 Protest at 10 (stating that Rate Schedule No. 435 contained the following provision that is no longer contained in the schedules: "This agreement shall be subject to the approval of any state commission or other regulatory

(continued...)

provision requiring state and local approval and that any inference that it will fail to comply with state or local law is incorrect. Entergy Services does not contest the authority of state or local regulatory bodies, but it contends that Rate Schedule Nos. 435-A, 435-B and 435-C are subject to the Commission's jurisdiction. Therefore, it omitted the language from the agreements as unnecessary.¹⁰⁴ New Orleans states that the Commission previously approved the clause in Rate Schedule No. 435 and there has been no jurisdictional shift that eliminates the need for local regulatory approval. Therefore, New Orleans states that the Commission should restore the provision because Entergy Services did not offer a reasonable explanation for removing the clause.¹⁰⁵

67. In its protest to Entergy Services' amended filing, the Louisiana Commission states that the Commission should clarify that its acceptance or approval of the cost allocation methods is not preemptive of state jurisdiction. The Louisiana Commission asserts that the effects of the costs that Entergy Services includes in its allocators or of the choice of allocator will not be known until after the cost allocations occur and that retail regulators are better suited to examine the reasonableness of the allocations. Furthermore, it states that service agreements filed with the Securities and Exchange Commission were not preemptive of state jurisdiction.¹⁰⁶ The Louisiana Commission states that if the Commission does not clarify that there is no effect on state jurisdiction, it should conduct a full hearing on Entergy Services' proposals, with discovery and the requirement that the allocators be populated with data from an appropriate test year.¹⁰⁷

68. With regard to the Louisiana Commission's request that the Commission clarify that its acceptance of the service agreements does not preempt state jurisdiction, Entergy Services asserts that the scope of state and local regulatory authority is not at issue in this proceeding and the Commission need not provide the requested clarification.¹⁰⁸

body whose approval is, by law of said state, a legal prerequisite to the execution and delivery or the performance of this agreement.”).

¹⁰⁴ Entergy Services August 12 Answer at 22.

¹⁰⁵ New Orleans August 27 Answer at 7.

¹⁰⁶ Louisiana Commission November 12 Protest at 3.

¹⁰⁷ *Id.* at 4.

¹⁰⁸ Entergy Services November 27 Answer at 8.

2. Commission Determination

69. We will not require Entergy Services to add the local regulatory approval clause that was included in Rate Schedule No. 435 to Rate Schedule Nos. 435-A through 435-D. The inclusion of a review provision does not determine whether New Orleans or any other retail regulator must approve the rate schedules. The absence of such a clause does not preclude review and the clause is not required to make the rate schedules just and reasonable. Therefore, we deny New Orleans' request to restore the clause.

70. With respect to the Louisiana Commission's request for clarification on preemption, we do not find it appropriate to opine on possible preemptive issues. As the Commission stated in the Rate Schedule No. 435 Order, section 1275(b) of the Public Utility Holding Company Act of 2005¹⁰⁹ was intended to vest authority in a federal regulator to help avoid disparate regulatory treatments with respect to service company cost allocations.¹¹⁰ We also recognize that states play a role in reviewing cost allocations when they set retail rates and we cannot address preemption issues in a vacuum. Resolution of the preemption issues involves an analysis of the specific facts and circumstances surrounding a specific conflict. Since there is currently no conflict between the requirements of a state or local regulatory body and the Commission's determination in this proceeding, we do not believe it is appropriate to opine on possible preemption issues. We also decline to conduct a full hearing on the proposals because, as explained above, the proposed rate schedules are "at cost" rates and do not require cost analysis.

E. Request for Clarification

1. Comments

71. The Arkansas Commission requests that the Commission accept Entergy Services' amended filing subject to two clarifying revisions.¹¹¹ First, the Arkansas Commission requests the insertion of the following language in Rate Schedule No. 435-A section I: "For the avoidance of doubt, nothing in this Service Agreement shall relate to the services taken by [Entergy Arkansas] in connection with generation planning and operational support services under [Entergy Services] Rate Schedule 435-C, and references in this Agreement to 'Client Company' shall not include [Entergy Arkansas] in

¹⁰⁹ Energy Policy Act of 2005, Public Law No. 109-58, 119 Stat. 594 (2005).

¹¹⁰ Rate Schedule No. 435 Order, 117 FERC ¶ 61,288 at P 26.

¹¹¹ Arkansas Commission November 12 Comment at 4.

connection with such services.” Second, it requests that “its” be replaced with “EAI’s” in the second sentence of item 2 of Exhibit I of Rate Schedule 435-D, such that it reads: “ESI will act as agent for EAI with respect to *EAI’s* obligation as a Transmission Planner or analogous role pursuant to NERC Requirements;” (emphasis added). The Arkansas Commission states that the clarifications are needed to ensure that no service supplied by Entergy Services under Rate Schedule No. 435-A or related cost allocations shall include the planning services Entergy Services will provide under Rate Schedule Nos. 435-C and 435-D.

2. Answer

72. Entergy Services states that it does not object to the two clarifying revisions proposed by the Arkansas Commission, and that it will adopt the changes in a compliance filing within 30 days of an order accepting the proposed Rate Schedules for filing.¹¹²

3. Commission Determination

73. We find that the two proposed clarifying revisions to Rate Schedule Nos. 435-A and 435-D, as agreed to by Entergy Services, are just and reasonable. We accept Entergy Services’ commitment to file these revisions in a compliance filing within 30 days of this order.

F. Request for Confirmation of Commission and Court of Appeals Holdings

1. Supplemental Filing

74. On June 13, 2013, Entergy Services submitted a supplemental filing requesting that the Commission confirm that prior Commission orders and a related United States Court of Appeals ruling related to cost recovery apply to the Rate Schedules. Entergy Services states that under the System Agreement, each party shares in certain system-wide costs associated with the integrated operation of the system, and that Entergy Arkansas will not so participate after it leaves the System Agreement. Entergy Services states that it committed in testimony filed in a proceeding before the Arkansas Commission to request that the Commission “find [Entergy Arkansas’] use of shared employees does not, standing alone, provide a basis for reallocating production costs among the Operating Companies.”¹¹³ Entergy Services also asks the Commission to

¹¹² Entergy Services November 27 Answer at 9.

¹¹³ Entergy Services Supplemental Filing at 2 (quoting *In the Matter of a Show Cause Order Directed to Entergy Arkansas, Inc., Regarding its Continued Membership in*

confirm that the holdings in the System Agreement Withdrawal Order and the subsequent Court of Appeals decision apply to Entergy Services' recovery of costs under the proposed rate schedules.¹¹⁴

2. Commission Determination

75. We find these requests are outside the scope of this proceeding and therefore deny them. The instant filing concerns four forms of service agreement under which Entergy Services provides planning, operational support, administrative, and general support services to the Operating Companies and not the allocation of production costs under the System Agreement. A determination that the use of shared employees to provide these services will not provide a basis for reallocating production costs is not relevant to the justness and reasonableness of the service agreements proposed here.

The Commission orders:

(A) The Commission accepts Rate Schedule Nos. 435-A, 435-B, 435-C, and 435-D to be effective on December 19, 2013, subject to a compliance filing, as discussed in the body of this order.

(B) Entergy Services is directed to file a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

the Current Entergy System Agreement, or Any Successor Agreement Thereto, and Regarding the Future Operation and Control of its Transmission Assets, Docket No. 10-011-U, Testimony of Hugh T. McDonald at 11-12 (Arkansas Commission August 24, 2012)).

¹¹⁴ *Id.* at 2-3 (quoting *Council of the City of New Orleans v. FERC*, 692 F.3d 172, 176-77 (D.C. Cir. 2012); System Agreement Withdrawal Order, 129 FERC ¶ 61,143 at P 62; System Agreement Withdrawal Rehearing Order, 134 FERC ¶ 61,075).