145 FERC ¶ 61,247
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 No. ER13-432-000

ORDER CONDITIONALLY ACCEPTING AMENDMENTS, AS MODIFIED, TO THE ENTERGY SYSTEM AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 18, 2013)

1. On November 20, 2012, pursuant to section 205 of the Federal Power Act (FPA),[1] Entergy Services, Inc. (Entergy), as agent for and on behalf of the Entergy Operating Companies,[2] filed amendments to the Entergy System Agreement (System Agreement). In this order, we accept the amendments, as modified, subject to a further compliance filing and subject to the outcome of Docket No. ER14-73-000, and suspend them for a nominal period, to become effective December 19, 2013, as requested, subject to refund. We also establish hearing and settlement judge procedures regarding the allocation of proceeds from a settlement between Entergy Arkansas and Union Pacific Corporation (Union Pacific Settlement).

[1] 16 U.S.C. § 824d (2006).

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

I. Background

2. The System Agreement is an agreement among Entergy Services, Inc. and the six Operating Company subsidiaries of Entergy Corporation that has provided the contractual basis for planning and operating the Operating Companies' generation and bulk transmission facilities on a coordinated, single-system basis since 1951. The System Agreement is a Commission-approved tariff that currently requires that the Operating Companies' generation and transmission facilities be operated as a single, integrated system. The System Agreement allocates among the participating Operating Companies the benefits and costs of coordinated operation of those Operating Companies' generation and bulk transmission facilities. The current System Agreement is appended by seven service schedules that provide the basis of compensation for the use of the facilities and for the supply of capacity and energy between Operating Companies: Service Schedules MSS-1, MSS-2, MSS-3, MSS-4, MSS-5, MSS-6, and MSS-7.

3. The System Agreement provides in section 1.01 that "any Company may terminate its participation in this Agreement by ninety six (96) months written notice to the other Companies." On December 19, 2005, Entergy Arkansas notified the other Operating Companies of its intent to withdraw from the System Agreement effective December 18, 2013. Entergy Mississippi gave the same notice on November 8, 2007, with its withdrawal to be effective on November 7, 2015.

4. In December 2006, in Docket No. EL07-25-000, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint against Entergy seeking a remedy for the attempted withdrawal of Entergy Arkansas from the System Agreement. The Louisiana Commission sought a Commission order instituting a proceeding to determine whether, and on what terms, Entergy Arkansas might withdraw from the System Agreement. The Commission denied the relief requested in the complaint:[3]

> While the System Agreement is silent as to the rights and obligations of a departing member, and thus arguably could be interpreted as imposing no obligations on a departing member and providing no rights to remaining members, the Commission concludes that such a major change to this type of highly integrated system arrangement, which has existed for over 50 years, cannot be viewed in a vacuum if we are to fulfill our obligations under the FPA. The Commission must

[3] *Louisiana Pub. Serv. Comm'n v. Entergy*, 119 FERC ¶ 61,224 (2007) (Withdrawal Complaint Order).

> determine that the System Agreement will remain just and reasonable for remaining members (Entergy Louisiana, Entergy New Orleans, Entergy Mississippi and Entergy Gulf States), and likewise that any new Entergy Arkansas jurisdictional wholesale arrangements will be just and reasonable, as a result of Entergy Arkansas withdrawing from the arrangement. We find no basis to support the Louisiana Commission's request for what in effect would be involuntary continuation of the existing integrated system arrangements, or the virtual equivalent, in perpetuity. However, in light of the history and nature of the existing members' planning and operation of their facilities under the System Agreement, it is possible that it may ultimately be appropriate to require transition measures or other conditions to ensure just and reasonable wholesale rates and services for affected Operating Company members going forward from the effective date of Entergy Arkansas' withdrawal.[4]

5. The Commission, however, concluded that parties might seek to address such issues in the interim and also that it was premature for the Commission to address such issues:

> Presumably, the 96-month notice period provides Operating Companies affected by Entergy Arkansas' departure the opportunity to make reasonable alternative resource arrangements if they believe it appropriate to do so, and for all members to try to address disputes, before the departure of Entergy Arkansas actually occurs. The fact is that we do not at this time know what arrangements may replace the existing ones and there could be other factors present, such as shifts in the cost of one fuel versus another during this period, affecting parties' positions. Thus, it would be premature for us to attempt to address these issues at this time.[5]

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[4] *Id.* P 47.

[5] *Id.* P 48.

The Commission called for such issues to be addressed at the time that Entergy makes a section 205 filing to reflect Entergy Arkansas' withdrawal from the System Agreement.[6]

6. By order dated November 19, 2009, the Commission accepted Entergy Arkansas' and Entergy Mississippi's subsequently filed Notices of Cancellation.[7] The Commission found that the System Agreement allowed Operating Companies to exit upon 96 months' written notice, without any further conditions on withdrawal beyond the 96-month notice requirement.[8] The Commission also found that the System Agreement contains no provisions that require withdrawing Operating Companies to pay an exit fee or to otherwise compensate remaining Operating Companies.[9] Finally, the Commission found that the System Agreement places no continuing obligation on the withdrawing Operating Companies with respect to either the sharing of capacity or the payment of rough production cost equalization payments ordered pursuant to Opinion Nos. 480 and 480-A.[10]

7. In the Withdrawal Order, the Commission noted that Entergy must ensure that any future operating arrangement is just and reasonable, and encouraged Entergy to make an FPA section 205 filing with successor arrangements as soon as possible.[11] In its order on rehearing, the Commission noted that "[t]he withdrawal of one or more members from Entergy would be a significant change to the Entergy system such that the Commission would need to review any successor arrangement to ensure that it is just and reasonable,"[12] and that "[a]ny legitimate concerns regarding the structure of the post-withdrawal Entergy system will be addressed by the Commission when considering

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[6] *Id.* P 50.

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

[8] Withdrawal Order, 129 FERC ¶ 61,143 at P 59.

[9] *Id.* PP 60-61.

[10] *Id.* P 62.

[11] *Id.* P 63.

[12] Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 27 n.27.

Entergy's filing on transition measures."[13] The Commission also stated that two discrete matters involving allocation of costs related to network upgrades used to benefit the Ouachita Generating Station and the allocation of the Union Pacific Settlement would be more appropriately raised in a future proceeding regarding the structure of the post-withdrawal Entergy system.[14] The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed these findings and stated that the Commission "must still review the post-withdrawal arrangements to ensure that they are just, reasonable, and not unduly discriminatory."[15]

8. In April 2011, Entergy and the Midwest Independent Transmission System Operator, Inc. (MISO)[16] announced a proposal for the Operating Companies to join MISO effective December 19, 2013. In December 2011, Entergy and ITC Holdings Corp. (ITC) announced a plan for Entergy to transfer control of its 69-kV or higher transmission assets to new ITC subsidiaries (New ITC Operating Companies) (Entergy-ITC Transaction). On December 13, 2013, Entergy and ITC filed a notice of termination of the Entergy-ITC Transaction. On the same day, ITC and the New ITC Operating Companies filed a motion to withdraw certain filings related to the Entergy-ITC Transaction.[17]

II. Summary of Filing

9. On November 20, 2012, Entergy filed under FPA section 205 a successor arrangement, as the Commission encouraged it to do in the Withdrawal Order. Entergy proposes amendments to the System Agreement to remove all references to Entergy Arkansas (Withdrawal Amendments) and amendments to allocate costs that the Operating Companies will incur in MISO between the remaining Operating Companies

[13] *Id.* P 37.

[14] *Id.*

[15] *Council of the City of New Orleans v. FERC*, 692 F.3d at 177.

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

[17] Notice of Termination of Transaction, Docket No. EC12-145-000 (Dec. 13, 2013); 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).

(MISO Cost Allocation Amendments) (collectively, Amendments). Entergy requests that the Amendments be accepted without suspension or hearing, effective December 19, 2013. It states that prompt approval of the changes will provide certainty to all the Operating Companies and their respective retail regulators and facilitate the entry of the Operating Companies into MISO on December 19, 2013.

10. Prior to filing, Entergy engaged in an Alternative Dispute Resolution (ADR) process at the Commission with retail regulators. Entergy states that ADR participants examined proposed changes to the System Agreement to allocate MISO costs to the Operating Companies following their integration into MISO, and Entergy states that it requested "feedback/input or alternative proposals" from the ADR participants. Other issues, such as the withdrawal of more Operating Companies from the System Agreement and the possibility of other major revisions to the System Agreement, including its termination, were not addressed in the ADR process.

11. Entergy's filing explains that the MISO Cost Allocation Amendments will be used to reassign among the Operating Companies 56 MISO costs and credits that correspond to the implementation of MISO's Day-Ahead and Real-Time Energy and Operating Reserve Markets and Financial Transmission Rights (FTR) Market. The 56 MISO costs and credits correspond to six general areas:

a. energy losses reflected in the marginal loss component of MISO's Locational Marginal Prices (LMPs);
b. ancillary services charges to load that use those services and credits to generation that provides them;
c. uplift charges to load for the service of generation availability and credits to generation units that make themselves available;
d. congestion costs assessed to load and paid to generators that are reflected in MISO's LMPs;
e. joint account energy purchases and sales to satisfy the needs of one or more Operating Companies at MISO LMPs; and
f. MISO administrative costs relating to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff).

12. The first five sets of MISO Cost Allocation Amendments are reflected in amendments to Service Schedules MSS-3 and MSS-5 of the System Agreement, which governs, *inter alia*, energy exchange transactions among the Operating Companies. The final set of Amendments addressing MISO administrative charges is allocated through the addition of a new Service Schedule MSS-8. Several additional minor Amendments are made to other service schedules in the System Agreement. The proposed Amendments are described in greater detail below.

13. As described further below, Entergy made additional commitments in an answer with respect to sharing information with retail regulators and making future filings with the Commission. These commitments include: providing the retail regulators of the Operating Companies copies of the Entergy Intra-System Bill every six months that show the allocation of the MISO charges and credits to all of the Operating Companies participating in the System Agreement; making a filing with the Commission under section 205 of the FPA regarding Entergy Texas' notice of cancellation to terminate participation in the System Agreement; and at least six months prior to the end of a two-year transition period, submitting an additional filing under section 205 of the FPA that addresses the allocation of MISO charges and credits among the Operating Companies. Entergy's answer also modified certain aspects of its proposed MISO Cost Allocation Amendments.

III. Notice of Filing and Responsive Pleadings

14. Notice of Entergy's filing was published in the *Federal Register*, 77 Fed. Reg. 71,406 (2012), with interventions and protests due on or before January 22, 2013.

15. Notices of intervention were filed by the Council of the City of New Orleans (New Orleans Council), the Arkansas Public Service Commission (Arkansas Commission), the Public Utility Commission of Texas (Texas Commission), the Louisiana Commission, and the Mississippi Public Service Commission (Mississippi Commission). Timely motions to intervene were filed by the Arkansas Electric Cooperative Corporation, Calpine Corporation, East Texas Cooperatives,[18] ITC, and NRG Companies. The Mississippi Delta Energy Agency, Clarksdale Public Utilities and Public Service Commission of Yazoo City (jointly), PJM Interconnection L.L.C. (PJM), and the Louisiana Energy Users Group filed motions to intervene out-of-time.

16. The Entergy Retail Regulators, whose members include the Texas Commission, the Louisiana Commission, and the New Orleans Council, filed initial comments. The Louisiana Commission and the New Orleans Council filed separate protests. The Texas Commission filed a protest, request for hearing, and motion to consolidate this docket with Docket No. ER12-2693-000 on January 22, 2013, as corrected on January 28, 2013. The Mississippi Commission filed comments.

17. The Arkansas Commission filed a reply in opposition to the initial comments of the Entergy Retail Regulators, and the Entergy Retail Regulators filed an answer thereto. Separately, the Arkansas Commission filed an answer to other protests, and the New

[18] East Texas Cooperatives are: East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

Orleans Council filed a response on February 21, 2013. The Mississippi Commission filed an answer to the New Orleans Council's answer. The New Orleans Council also filed, on February 6, 2013, a response to comments, protest and request for hearing.

18. On March 12, 2013, Entergy filed an answer to protests and comments; the Louisiana Commission and the New Orleans Council subsequently filed answers to Entergy's answer; and the Arkansas Commission filed an answer to the Louisiana Commission's answer. On March 22, 2012, the Texas Commission filed a motion to consolidate this docket with Docket No. ER13-948-000, and a further protest. On April 8, 2013, the Arkansas Commission filed an answer to certain protests in this and five other dockets. On April 23, 2013, the New Orleans Council filed a motion to lodge the United States Solicitor General's Brief for Respondent in Opposition filed with the United States Supreme Court in Case No. 12-852, explaining why the Louisiana Commission's petition for a writ of certiorari of the D.C. Circuit's denial of its appeal of the Withdrawal Order should be denied.

19. As noted above, some protestors suggest that this proceeding should be consolidated with other Entergy matters involving the Entergy-ITC Transaction or Entergy's integration into MISO. The Texas Commission requests that this proceeding be consolidated with Docket No. ER12-2693-000, which concerns Entergy's filing to cancel Service Schedule MSS-2 (Transmission Equalization) upon closing of the Entergy-ITC Transaction.[19] It states that it is inappropriate for Entergy to seek to have the proposed termination of Service Schedule MSS-2 considered independently of the extensive amendments to the System Agreement in Docket No. ER13-432-000 given interplay among the System Agreement schedules and common issues.[20] The Texas Commission contends that presentation of proposed Amendments to the System Agreement in isolation of the many other arrangements now pending in other dockets or yet to be proposed improperly calls upon the Commission to view the System Agreement in isolation.[21] The Louisiana Commission contends that it is improper for the Commission to consider the issue of the Ouachita Generating Station in other proceedings, Docket Nos. ER13-769-000 and ER13-770-000, when the Commission earlier said they would be considered in this proceeding.[22]

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[19] Texas Commission Protest at 3.

[20] *Id.*

[21] *Id.* at 25.

[22] Louisiana Commission Protest at 26.

20. The Arkansas Commission on April 8, 2013, filed an answer to, *inter alia*, the Texas Commission's March 22, 2013 motion to consolidate and protest opposing consolidation because, it contends, the proceedings do not involve common issues of law and fact, the parties' interests are likely different in each of the proceedings, and consolidation would not promote administrative efficiency and would unduly burden parties with interest in only discrete issues in different proceedings.[23]

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 notices of intervention and 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 Mississippi Delta Energy Agency, Clarksdale Public Utilities and Public Service Commission of Yazoo City, PJM Interconnection L.L.C., and the Louisiana Energy Users Group given their interest 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 all parties' answers and the New Orleans Council's motion to lodge because they have provided information that has assisted us in our decision-making process.

24. We deny requests to consolidate this proceeding with others before the Commission. On June 20, 2013, the Commission issued an order in Docket No. ER12-2693-000 accepting Entergy's tariff revisions to delete Service Schedule MSS-2 and to make certain conforming changes to the System Agreement to remove references to transmission operations in the System Agreement upon closing of the Entergy-ITC Transaction.[24] Accordingly, we find the requests to consolidate the instant proceeding and that proceeding to be moot.

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[23] Arkansas Commission April 8, 2013 Answer at 4-5.

[24] *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,259 (2013).

25. The Commission recently issued an order setting for hearing and settlement judge procedures Entergy's filings in Docket Nos. ER13-769-000 and ER13-770-000, which address a reallocation of transmission upgrade costs associated with the Ouachita Generating Station from Entergy Louisiana and Entergy Mississippi to Entergy Arkansas.[25] The Commission on June 20, 2013 also issued an order in Docket Nos. ER13-948-000, ER13-782-000, and ER12-2681-000 accepting certain tariff provisions related to the Entergy-ITC Transaction and setting other issues for hearing and establishing settlement judge procedures.[26] 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 administrative efficiency.[27] We do not believe consolidating the instant proceeding with the proceedings in Docket Nos. ER13-769-000 and ER13-770-000 and Docket Nos. ER13-948-000, ER13-782-000, and ER12-2681-000 would achieve greater administrative efficiency because the issues being set for hearing in each proceeding do not present common issues of law and fact.

B. Substantive Matters

26. We first address protests to Entergy's filing arguing that Entergy's revisions are too narrow in scope, and that the Commission should order a hearing to address the potential for wider revisions to the System Agreement. We generally reject these protests,[28] but find that the record is insufficient to make a determination on the Union

[25] *Entergy Mississippi, LLC and Entergy Louisiana, LLC*, 145 FERC ¶ 61,217 (2013).

[26] *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013).

[27] *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).

[28] Despite generally declining to set these issues for hearing, we note that to the extent protestors wish to challenge the continuing appropriateness of the System Agreement, or its components, in light of changed circumstances relating to Entergy's operations or operating environment, they may do so in an FPA section 206 complaint.

Pacific Settlement issue, and so set that matter for hearing and settlement judge procedures.

27. Second, we address the specific Amendments to the System Agreement that Entergy proposes to reflect the exit of Entergy Arkansas from the System Agreement and the entry of Entergy into MISO, including the additional commitments made by Entergy in its answer. As discussed further below, we find that Entergy's proposed Withdrawal Amendments and MISO Cost Allocation Amendments, as modified in certain respects, are just and reasonable, and we accept them for filing effective December 19, 2013, as requested. We require a compliance filing to provide more details regarding certain aspects of the MISO Cost Allocation Amendments and to provide the Amendments in accordance with eTariff requirements.

28. Additionally, we accept Entergy's commitment to make further filings in the future regarding the allocation of MISO charges and credits among the Operating Companies.

29. Finally, we address other related issues.

1. Requests to Broaden Scope of the Proceeding and for Hearing

a) Protests

(1) Generally

30. The parties disagree as to whether Entergy must demonstrate only that its Amendments to the System Agreement are just and reasonable or whether changed circumstances such as Entergy's integration into MISO, the withdrawal of Operating Companies from the System Agreement, and the Entergy-ITC Transaction require a much wider de novo examination of the System Agreement in light of such developments and a showing by Entergy that the System Agreement as a whole remains just and reasonable. Some protestors contend that the Commission and the D.C. Circuit stated or implied that there would be an ample scope to the Commission's examination of Entergy's successor arrangements to determine whether the System Agreement remained just and reasonable. The Entergy Retail Regulators state that Entergy bears the burden to prove that the post-withdrawal arrangement and System Agreement are just and reasonable under FPA section 205.[29] The Louisiana Commission contends that various

[29] Entergy Retail Regulators December 19, 2012 Answer to the Arkansas Commission December 6, 2012 Reply at 2.

Commission orders have recognized the need for a "thorough investigation and examination of Entergy's revision of the System Agreement to provide for the departure of Entergy Arkansas."[30] The Louisiana Commission states that the D.C. Circuit, in affirming the decision to permit two Operating Companies to withdraw without continuing obligations under the System Agreement, reaffirmed the Commission's obligation to examine thoroughly new arrangements to ensure that they are just and reasonable.[31] The Entergy Retail Regulators, the Louisiana Commission, and the New Orleans Council state that Entergy's filing is too limited in scope.[32]

31. The nature of the expanded scope of scrutiny sought by the protestors varies. The Louisiana Commission describes integration into MISO as a fundamental change in the operation of the Entergy System that requires an overhaul in the terms of the System Agreement – not just the addition of billing provisions to ensure that MISO charges are assessed to ultimate ratepayers.[33] It contends that Entergy fails to address outdated provisions in the System Agreement that no longer correspond to operational realities, such as inaccurate listing of parties, outdated fuel plans, and a lack of Regional Transmission Organizations (RTOs).[34] It contends that the Commission should require that Entergy file a System Agreement that addresses the planning and operation of the System in the MISO environment, including how Entergy will nominate and bid resources into the MISO market, whether the FTRs of some Operating Companies may be sacrificed for the greater good of the System, a statement that Entergy may not act to enrich Entergy affiliates at the expense of consumers, whether the System can require Operating Companies to incur counterflow costs for the benefit of other Operating

[30] Louisiana Commission Protest at 2 (citing *Louisiana Public Service Comm'n v. Entergy Corp*., 119 FERC ¶ 61,224 (2007); *Entergy Services, Inc*., 129 FERC ¶ 61,143, at P 63 (2009)). *See also* New Orleans Council Protest at 6.

[31] Louisiana Commission Protest at 2 (citing *Council of the City of New Orleans v. FERC*, 692 F.3d at 177).

[32] Entergy Retail Regulators Initial Comments at 1; Louisiana Commission Protest at 1-3; New Orleans Council Protest at 2.

[33] Louisiana Commission Protest at 1-2.

[34] *Id.* at 1-3, 19

Companies, and similar issues,[35] and then hold a hearing on the reasonableness of Entergy's approach.

32. The New Orleans Council states that Entergy's filing is too limited in scope, does not address issues that are crucial to ratepayers, and that Entergy has failed to demonstrate that its filing is a just and reasonable successor to the agreement that preceded Entergy Arkansas' withdrawal from the System Agreement.[36]

33. The Texas Commission asserts that Entergy is attempting to significantly patchwork a System Agreement that neither fits, nor is any longer needed, in the context of a centralized market structure such as MISO.[37] It contends that the System Agreement is obsolete and should be transitioned out.[38] The Texas Commission contends that the burden should be upon Entergy to demonstrate it is just and reasonable for the System Agreement to continue upon Entergy's integration into MISO and claims that Entergy's filing has failed to do so.[39] The Texas Commission contends that the extensive Amendments that Entergy has filed are evidence that the System Agreement does not work in the MISO context.[40]

34. The Entergy Retail Regulators and the Mississippi Commission contend that Entergy's filing introduces many complexities but fails to sufficiently address them and that such issues cannot adequately be resolved absent a hearing.[41] The protestors state that the ADR process was inadequate and that Entergy declined to expand the scope of the ADR process to include issues of interest to them.[42] The Louisiana Commission

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[35] *Id.* at 5, 19.

[36] New Orleans Council Protest at 1.

[37] Texas Commission Protest at 10.

[38] *Id.* at 6, 10.

[39] *Id.* at 8-9, 12.

[40] *Id.* at 13.

[41] Entergy Retail Regulators Initial Comments at 1, 5-8; Mississippi Commission Comments at 2.

[42] Entergy Retail Regulators Initial Comments at 1-2; Louisiana Commission Protest at 5; Texas Commission at 4-5; New Orleans Council Protest at 10.

claims that Entergy declined to discuss the continued viability of the System Agreement, its Service Schedules, hold harmless provisions, responsibility for costs stranded by the withdrawal of Entergy Arkansas, and other issues raised by the Entergy Retail Regulators.[43]

35. The New Orleans Council asserts that the Solicitor General's brief reinforces the position expressed by the New Orleans Council and other parties that this proceeding is the appropriate forum for the Commission to fulfill its commitment to carefully review the justness and reasonableness of post-withdrawal arrangements.[44]

36. In its answer, Entergy disagrees that its filing is too narrow in scope. It states that the Commission and the courts do not permit the just and reasonable standard to compel a utility to justify unchanged elements in a rate filing, nor did the Commission so obligate Entergy in the Withdrawal Order.[45] Entergy argues that the protestors are improperly attempting to convert an examination of Entergy's filing under FPA section 205 to a comprehensive examination of the System Agreement or to an FPA section 206 proceeding, contrary to Commission precedent.[46] It contends that under analogous Natural Gas Act provisions, the just and reasonable standard cannot be used to compel a utility to justify unchanged elements in a rate filing.[47] It states that the Texas Commission's suggestion that it should be required to show that the MISO Tariff would not be just and reasonable as applied to the Operating Companies on their own, without the overlay of the System Agreement, misconstrues the burden of proof under section 205 of the FPA and fails to meet the Commission's standards for when an evidentiary hearing

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[43] Louisiana Commission Protest at 12; Entergy Retail Regulators Initial Comments at 2.

[44] New Orleans Council April 23, 2013 Motion to Lodge at 1.

[45] Entergy Answer at 24-25 (citing *Pub. Serv. Comm'n. of New York v. FERC*, 642 F.2d 1335, 1345 (D.C. Cir. 1984) ("we cannot accept the proposition that because a company files for higher rates, it bears the burden of proof on those portions of its filing that represent no departure from the status quo."); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 513-14 (D.C. Cir. 1985); *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,261, at PP 37, 48 (2012)).

[46] *Id.* at 25 (citing *Southern Co. Servs., Inc.*, 116 FERC ¶ 61,070, at P 26 (2006)).

[47] *Id.* (citing *Pub. Serv. Comm'n of New York v. FERC*, 642 F.3d 1334, 1345 (D.C. Cir. 1984); *ANR Pipeline Co., v. FERC*, 771 F.2d 507, 513-14 (D.C. Cir. 1985)).

is required.[48] Entergy also states that the Commission has rejected contentions that an applicant's rate proposal must demonstrate it is the best proposal and, rather, the Commission will reject alternative rate proposals, including cost allocation methodologies, put forth by intervenors where the utility's proposal has been shown to be just and reasonable.[49]

37. Entergy agrees with protestors that the scope of the ADR process remained focused on amendments necessary to integrate into MISO, but states that this was done to maximize the chances for consensus on those changes.[50]

38. The Texas Commission contends that Entergy in its answer erroneously claims it does not have to justify unchanged elements in its rate filing, whereas the Commission ruled differently in the Withdrawal Order, wherein it stated that Entergy must ensure that "any future operating arrangement" is just and reasonable.[51]

(2) Departure of Entergy Arkansas and Entergy Mississippi

39. Protestors contend that the deletion of references to Entergy Arkansas is insufficient to address deeper cost allocation issues raised by pending and possible Operating Company withdrawals from the System Agreement. The Entergy Retail Regulators raise several issues that they contend should be addressed in the proceeding. These include: (1) costs stranded as the result of Entergy Arkansas' withdrawal, whether they are the responsibility of ratepayers, and if so, which ratepayers, and who pays them; (2) implications for the continuation of System Agreement Service Schedules that MISO membership would present; (3) responsibility for costs of transitioning from a six-company system to a four-company system; (4) cost allocation responsibility for transmission costs required to deliver generation output to the Operating Companies not remaining in the System Agreement (e.g., Entergy Arkansas); and (5) other issues

[48] *Id.* at 27.

[49] *Id.* at 28 (citing *American Electric Power Service Corp.*, Opinion No. 311, 44 FERC ¶ 61,206, at 61,749, *reh'g denied*, Opinion No. 311-A, 45 FERC ¶ 61,408 (1988), *reh'g denied*, Opinion No. 311-B, 46 FERC ¶ 61,382 (1989); *ISO New England*, 128 FERC ¶ 61,023, at P 31 (2009)).

[50] *Id.* at 10.

[51] Texas Commission March 29, 2013 Answer at 10 (citing Entergy Answer at 24-25).

identified by the Entergy Retail Regulators but not addressed by Entergy in either Entergy's filing or the ADR process, including matters relating to Entergy Texas' commitment (to the Texas Commission) to seek early withdrawal from the System Agreement.

40. Protestors contend that Entergy's filing fails to address the impact of Entergy Mississippi's pending withdrawal from the System Agreement and Entergy Texas' intent to withdraw from the System Agreement on an accelerated basis.[52] The Louisiana Commission states that Entergy's filing does not address the withdrawal of Entergy Arkansas and Entergy Mississippi at all, except to remove Entergy Arkansas as a signatory to the Agreement, and thus fails to comply with the Commission's directives.[53]

41. Some protestors contend that Entergy's proposal fails to address the related issue of alleged stranded costs caused by the departure of Operating Companies.[54] The Louisiana Commission contends that the departure of Entergy Arkansas and Entergy Mississippi from the System Agreement will leave stranded a portion of costs incurred to plan and operate the resources of six Operating Companies. It contends that Entergy made the choice that caused or permitted those Operating Companies to withdraw because Entergy wholly owns its subsidiaries and directs their actions. It contends that the remaining Operating Companies should not be responsible for the unduly discriminatory consequences of Entergy's choices and that the withdrawal of Entergy Mississippi, Entergy Arkansas, and possibly Entergy Texas from the System Agreement may eliminate any valid purpose for maintaining the System Agreement.[55]

42. The Louisiana Commission contends that the Commission needs to determine the proper allocation of costs incurred by the System that will be stranded by the departure of Entergy Arkansas, Entergy Mississippi, and other Operating Companies. The Louisiana Commission contends that while the Commission orders relating to Operating Company withdrawals and the System Agreement excluded certain matters from further scrutiny, they did not address whether a withdrawing Operating Company would share responsibility for costs caused by its departure. It contends that a need to allocate

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[52] Louisiana Commission Protest at 1; New Orleans Council Protest at 6; Texas Commission Protest at 12.

[53] Louisiana Commission Protest at 1.

[54] *Id.* at 3, 6, 18-19; *see also* Texas Commission Protest at 23; New Orleans Commission at 6.

[55] Louisiana Commission Protest at 18.

stranded costs exists independent of the cost allocation terms of the System Agreement, which allocate costs that have not been stranded. It contends that under principles of cost causation, Operating Companies for which costs were incurred must bear responsibility for the costs and that allocating the costs to other Operating Companies, which already bear the costs incurred for them, would be unduly discriminatory.[56]

43. The Louisiana Commission contends that there is no question that costs will be stranded by the departures of Entergy Arkansas and Entergy Mississippi. It states that to conduct operations independently, these Operating Companies will have to duplicate administrative, planning, and operational organizations that were put together to serve the needs of six Operating Companies. The Louisiana Commission states that it is unreasonable for a minority of Operating Companies to bear responsibility for the costs incurred for six and that, rather, Entergy shareholders should bear the costs of departing Operating Companies.[57] It states that the cost allocations to Entergy Arkansas and Entergy Mississippi for the System Operations Center, as an example, will become stranded and that the Commission needs to determine which Operating Company bears responsibility for these stranded costs and suggests that stockholders should bear responsibility for these allocations.[58] As another example, the Louisiana Commission contends that Entergy's filing does not deal with the issue of the correct allocation of transmission upgrade costs incurred by Entergy Louisiana, LLC for the Ouachita Generating Station nor the proper treatment of the Union Pacific Settlement proceeds in Arkansas.[59]

44. In its answer, Entergy asserts that the Louisiana Commission's and New Orleans Council's assertions that the Commission should consider whether Entergy Arkansas and Entergy Mississippi must compensate the other Operating Companies for "stranded costs" are beyond the scope of this proceeding and represent a collateral attack on prior Commission orders and the D.C. Circuit decision barring imposition of exit fees and payments upon Operating Companies withdrawing from the System Agreement.[60] Entergy states that the Louisiana Commission also fails to demonstrate that any such

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[56] *Id.* at 19.

[57] Louisiana Commission Protest at 19; *see also* New Orleans Council Protest at 6.

[58] Louisiana Commission Protest at 8-9.

[59] *Id.* at 8.

[60] Entergy Answer at 47.

stranded costs actually exist or otherwise proffer any credible evidence in support of its claim and therefore fails to support a basis for a hearing.

45. Entergy states that the only "stranded cost" that the Louisiana Commission raises has to do with the fact that withdrawing Operating Companies will have the same operational and planning functions performed separately. It states that while the Louisiana Commission claims this structure will be duplicative and different from the existing structure for all six of the Operating Companies and therefore will result in "stranded costs," there are no such stranded costs.

46. Entergy states that the operational and planning functions for Entergy Arkansas and Entergy Mississippi will be performed by either Entergy Arkansas and Entergy Mississippi employees (with the costs being borne directly by Entergy Arkansas and Entergy Mississippi ratepayers), or Entergy Services, Inc. employees (with the costs billed to Energy Arkansas and Entergy Mississippi) through the service agreements with Entergy Services, Inc. Entergy states that the methods for allocating service company costs among the Operating Companies has been previously filed with, and accepted by, the Commission.[61]

47. The Mississippi Commission and Arkansas Commission contend that many of the Entergy Retail Regulator protests are beyond the scope of the proceeding and represent collateral attacks upon earlier Commission orders.[62] The Arkansas Commission states that this matter is a section 205 proceeding whereas protestors are attempting to convert it to a section 206 complaint proceeding, contrary to Commission case law.[63]

48. The Mississippi Commission contends that Entergy Retail Regulators' attempts to include stranded costs caused by Operating Companies departing the System Agreement are excluded by the earlier orders, whereas the Commission did indicate that issues left for the then-anticipated, now-present Entergy filing would include whether the transmission equalization formula will continue to provide a reasonable allocation of transmission costs among those Operating Companies to which it will continue to

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[61] *Id.* at 48.

[62] Mississippi Commission Comments at 3; Arkansas Commission December 6, 2012 Reply at 3-4.

[63] Arkansas Commission December 6, 2012 Reply at 4 (citing *Southern Company Services, Inc.*, 116 FERC ¶ 61,070, at P 26 (2006); *ISO New England, Inc.*, 128 FERC ¶ 61,023, at P 31 (2009)).

apply.[64] The Arkansas Commission replies to the Entergy Retail Regulators and asserts that they improperly raise the issue of "stranded costs," costs from transitioning from six system companies to four, and cost allocation responsibility for transmission costs required to deliver generation output to the Operating Companies not remaining in the System Agreement, because these categories of costs fall into the category of costs that the Commission has barred as improper post-withdrawal exit fees.[65]

49. In response to the Arkansas Commission's Reply, the Entergy Retail Regulators state that the Arkansas Commission's statement of what matters may be heard in this proceeding ignores that the Commission has held specifically that "any legitimate concerns regarding the structure of the post-withdrawal Entergy System will be addressed by the Commission when considering Entergy's filing on transition measures."[66]

50. In its February 6, 2013 answer, the New Orleans Council states that all commenters save the Arkansas Commission believe Entergy's filing must be set for hearing,[67] that the Commission promised a broad inquiry into the reasonableness of post-withdrawal arrangements, and that a broad inquiry is not a collateral attack of past Commission orders but in conformity with them.[68] It states that careful Commission scrutiny of the amendments is also required because the System Agreement is a long-term affiliate transaction - not an arms-length transaction negotiated among independent parties.[69]

51. In its February 6, 2013 answer to protests, the Arkansas Commission reiterates its opposition to the protestors' stranded cost arguments. It states that the only place in the Commission's regulations under the FPA where the Commission considers "stranded costs" recovery rights is pursuant to section 35.26 (Recovery of Stranded Costs by Public Utilities and Transmitting Utilities), 18 C.F.R. § 35.26 (2012), and states that this

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[64] Mississippi Commission Comments at 3-4.

[65] Arkansas Commission December 6, 2012 Reply at 1-2.

[66] Entergy Retail Regulators December 19, 2012 Answer to the Arkansas Commission December 6, 2012 Reply at 2 (citing Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 37).

[67] New Orleans Commission February 6, 2013 Answer at 1-2.

[68] *Id.* at 3-4.

[69] *Id.* at 5.

provision is inapplicable to Entergy Arkansas' departure from the System Agreement.[70] It reiterates such arguments are improper collateral attacks on past Commission orders and an impermissible attempt to expand the scope of a section 205 proceeding.[71]

52. In its February 21, 2013 response to the Arkansas Commission's answer, the New Orleans Council states that it seeks a hearing to understand the rights Entergy New Orleans and its ratepayers will have following Entergy Arkansas' withdrawal from the System Agreement, such as clarification as to whether Entergy New Orleans will have the right in the future to purchase energy at cost from Entergy Arkansas' generators constructed during Entergy Arkansas' membership in the System Agreement.[72]

53. In its March 8, 2013 response to the New Orleans Council, the Mississippi Commission contends that the Commission's orders are already clear that post-withdrawal Operating Companies will have no right to purchase energy at cost from Entergy Arkansas' generators constructed during Entergy Arkansas' membership in the System Agreement, given the Commission's finding of "no continuing obligations" to generation resources in the Withdrawal Order and Withdrawal Rehearing Order.[73] The Mississippi Commission states that the New Orleans Council essentially asks whether withdrawn Operating Companies should be compelled to make future, and involuntary, cost-based sales to system Operating Companies, which the Mississippi Commission states is outside the scope of Entergy's section 205 filing.[74]

54. The Arkansas Commission answers that the Commission should reject the Louisiana Commission's attempt to include in this proceeding issues that, by the Louisiana Commission's own admission, deal with Entergy Arkansas' and Entergy Mississippi's withdrawal from the System Agreement.

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[70] Arkansas Commission February 6, 2013 Answer to Protestors at 3-4.

[71] *Id.* at 4-5.

[72] New Orleans Council February 21, 2013 Response at 1-2.

[73] Mississippi Commission Answer at 1-2.

[74] *Id.* at 3-4.

(3) Ouachita Network Upgrade Costs and Union Pacific Settlement

55. The Ouachita Generating Station is a three-unit, 789 MW, natural gas-fired generating facility located near Sterlington, Louisiana in Entergy Louisiana's service territory. On September 30, 2008, Entergy Arkansas purchased 100 percent of the Ouachita Plant and, on November 30, 2009, sold one unit of the Ouachita Plant to Entergy Gulf States Louisiana. The Louisiana Commission approved Entergy Gulf States Louisiana's purchase of its one-third share in the facility on a life-of-plant basis.

56. On November 17, 2007, Entergy's Independent Coordinator of Transmission (ICT) released a Facilities Study estimating that it would cost approximately $70 million for required transmission upgrades to qualify the Ouachita Plant as a network resource for the Operating Companies. The identified transmission upgrades are located in Entergy Louisiana's and Entergy Mississippi's service areas. Entergy Corporation assigned the construction duties for the upgrades to Entergy Louisiana and Entergy Mississippi, and the two Operating Companies assumed the related costs. In the Withdrawal Order proceeding and in a subsequent complaint proceeding, the Louisiana Commission argued 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 has sought and received approval to withdraw from the System Agreement.[75]

57. The Union Pacific Settlement, reached in 2008, resolved a lawsuit between Entergy Arkansas and Union Pacific Corporation (Union Pacific) regarding under-deliveries of coal by Union Pacific to two power plants in Arkansas between May 2005 and June 2006.[76] The plants are operated by Entergy Arkansas, which owns a little over a third of the plants' output; the rest is owned by a consortium that includes Entergy Mississippi, Arkansas Electric Cooperative Corporation and Arkansas municipalities.[77] Entergy Louisiana and Entergy New Orleans purchased a portion of the plants' output from Entergy Arkansas under a Commission-accepted life-of-unit cost-based power purchase agreement.[78] In the Withdrawal Order proceeding, the Louisiana Commission

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[75] *See Louisiana Pub. Serv. Comm'n v. Entergy*, 138 FERC ¶ 61,029, at PP 3, 4, 10 (2012).

[76] *Id.* P 5.

[77] Entergy Answer at 4.

[78] *Id.*

expressed concerns as to whether, given that the settlement was between Entergy Arkansas and Union Pacific, other Operating Companies would continue to receive an allocation of the proceeds from that settlement after Entergy Arkansas departed from the System Agreement.

58. In the Withdrawal Rehearing Order, the Commission specifically noted that the Louisiana Commission should raise its concerns with the post-withdrawal allocation of the Ouachita Generating Station transmission upgrade costs and the benefits of the Union Pacific Settlement in a future proceeding regarding the structure of the post-withdrawal Entergy system.[79] In September 2011, the Louisiana Commission filed a complaint in Docket No. EL11-63-000 seeking a remedy for these two matters. In the Commission's subsequent order, it again found these issues to be prematurely raised with respect to Entergy and Entergy Arkansas' post-withdrawal obligations and directed the Louisiana Commission to raise any such concerns in the future proceeding regarding the structure of the post-withdrawal Entergy system.[80]

59. Entergy's original filing in this proceeding noted that the Ouachita network upgrade costs were a component of the Operating Companies' successor arrangements. Entergy later filed for Commission acceptance, in Docket Nos. ER13-769-000 and ER13-770-000, of two Entergy agreements between Entergy Arkansas and two other Operating Companies, Entergy Louisiana and Entergy Mississippi, to reallocate network upgrade costs paid by the two Operating Companies to Entergy Arkansas in proportion to Entergy Arkansas' two-thirds ownership in the Ouachita Generating Station. In its protest to Entergy's answer, the Louisiana Commission objects to the Ouachita network upgrades costs matter being resolved outside of this proceeding, as contrary to the Commission's commitment in the Withdrawal Order proceeding to review this issue in this proceeding.[81] As discussed below, in a recently issued order the Commission set that matter for hearing and settlement judge procedures.[82]

60. Entergy does not address the Union Pacific Settlement in its original filing in this proceeding. In its protest, the Louisiana Commission attaches as Attachment D its

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[79] Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 37 n.54.

[80] *Louisiana Pub. Serv. Comm. v. Entergy Servs., Inc.*, 138 FERC ¶ 61,029, at P 53 (2012).

[81] Louisiana Commission Answer at 4, 13.

[82] *See Entergy Mississippi, LLC and Entergy Louisiana, LLC*, 145 FERC ¶ 61,217 (2013).

complaint filed in Docket No. EL11-63-000 regarding the Ouachita and Union Pacific issues. In its attached complaint, the Louisiana Commission contends that failing to recognize the post-2012 benefits flowing from the settlement between Entergy Arkansas and Union Pacific of a contractual dispute over the delivery of coal supplies in the "rough equalization" calculation in Service Schedule MSS-3 of the Entergy System Agreement, or another remedy, is unjust, unreasonable and unduly discriminatory.[83] It states that the Settlement Agreement was executed in April 2008 and relates to inadequate coal deliveries in 2005 and 2006 that increased the production costs of all of the Operating Companies. It contends that because of the Entergy Arkansas withdrawal from the System Agreement, a large portion of the settlement benefits will flow only to Entergy Arkansas ratepayers, although all the Operating Companies incurred the damages. It requests that the Commission should now set these issues for hearing.[84]

61. In its answer, Entergy states that any issues regarding the allocation of transmission upgrade costs for the Ouachita Generating Station should be addressed in Docket Nos. ER13-769-000 and ER13-770-000. It notes that the Louisiana Commission, which requested that this issue be addressed in this proceeding, has already filed a protest in those dockets.

62. With respect to the Union Pacific Settlement, Entergy states that the Louisiana Commission has not attempted to provide any justification for a hearing on the Union Pacific matter beyond simply attaching its prior complaint to the protest it filed in this docket. Entergy requests that the Commission reject the Louisiana Commission's claims based upon its earlier finding that the System Agreement does not include any provision for prospective transfers of benefits from Entergy Arkansas to other Operating Companies following Entergy Arkansas' withdrawal from the System Agreement.[85] Entergy states that future rail transportation costs should be treated no differently than any other production cost components after Entergy Arkansas withdraws from the System Agreement in December 2013. Entergy argues that the Louisiana Commission's arguments on the Union Pacific Settlement have no basis because once Entergy Arkansas withdraws from the System Agreement, there will not be any Commission-jurisdictional service applicable to use as a mechanism to transfer Entergy Arkansas' portion of the Union Pacific Settlement benefits to other Operating Companies.[86]

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[83] Louisiana Commission Protest, Exh. D at 2-3.

[84] Louisiana Commission Answer at 26.

[85] Entergy Answer at 46.

[86] *Id.*

63. In its answer to Entergy's answer, the Louisiana Commission states that a pending Union Pacific Settlement issue in Docket No. ER08-1056 was settled by referring it to the Entergy System Withdrawal proceeding, in a settlement approved by the Commission.[87] The Louisiana Commission states that no basis exists to overrule the settlement by now refusing to hear the issue. It states that the Union Pacific Settlement issue involves whether bandwidth rates were just and reasonable in 2007 and other years when Entergy Arkansas was in the System Agreement, not afterward and states that, therefore, a holding regarding post-withdrawal obligations cannot be a basis to dispose of that issue.[88]

(4) Entergy's Integration into MISO

64. Protestors contend that the System Agreement, or components thereof, will be duplicative once the Operating Companies enter MISO, as, they contend, MISO offers analogous or superior mechanisms.

65. The Texas Commission contends that there is no function that the System Agreement provides that the Operating Companies will not already enjoy through their participation in MISO.[89] It asserts that some of the System Agreement's provisions may actually conflict with MISO market signals and deprive individual Operating Companies and their ratepayers of organized market transparency and efficiencies, particularly given that the Operating Companies will now enter MISO as individual market participants.[90] The Louisiana Commission contends that it is unclear how Entergy will operate in MISO and Entergy should be required to explain planning and operations of the System in the MISO environment. It states that Entergy fails to provide rules for the operation of the System in MISO or another RTO environment.[91] The Louisiana Commission states that the System Agreement says that Entergy will operate the System for the mutual benefit of all the Companies, even though Entergy proposes that MISO will now operate its System.[92] The Louisiana Commission contends that the Commission should determine

[87] Louisiana Commission at 13 (citing *Entergy Services, Inc.*, 128 FERC ¶ 61,181 (2009)).

[88] *Id.*

[89] Texas Commission Protest at 20-21.

[90] *Id.* at 22.

[91] Louisiana Commission Protest at 15.

[92] *Id.* at 3 (citing System Agreement, section 3.01).

whether the retention of provisions that conflict with the purpose and function of MISO can be just and reasonable once Entergy becomes part of MISO.[93]

66. Given that the Operating Companies will receive separate bills from MISO, the Louisiana Commission questions the need for revisions that would reallocate MISO costs under the System Agreement.[94] The Louisiana Commission contends that for Entergy to combine the bills and redistribute the costs in a manner different from the MISO allocations would appear inconsistent with joining the RTO in the first place.[95]

67. Some protestors contend that various System Agreement service schedules are inconsistent with MISO operations. The Texas Commission states that while Service Schedule MSS-1 requires equalization of reserves among Operating Companies, the MISO structure sets required levels of reserves and provides a market from which each Operating Company can acquire any needed reserves. Without a System Agreement, it contends, each Operating Company will be free to meet its reserve requirements in the manner it sees fit and best for that Operating Company and its ratepayers, whereas they will be limited under the System Agreement.[96]

68. The Louisiana Commission also contends that in MISO, Entergy will be required to plan for resource adequacy in Load Resource Zones, which it states likely will be zones within the Entergy System, with the criteria for selecting Load Resource Zones including transmission constraints, state lines, and natural geographic boundaries. It states that these criteria, superimposed on Entergy by MISO, may require Entergy to plan resource adequacy for individual Operating Companies or for load zones that consist of portions of the Operating Companies. The Louisiana Commission states that Entergy

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[93] *Id.* at 21.

[94] Louisiana Commission Protest at 21-22; *see also* Entergy Transmittal at 7 n.14. In its original filing, Entergy states that if the participating Operating Companies ultimately are individual market participants, Entergy understands that MISO will send a weekly consolidated obligations report to Entergy and that Entergy Arkansas will be a separate market participant in MISO and receive its own MISO settlement statement. In its answer, Entergy states that MISO's settlement process will instead invoice Operating Companies as individual market participants and that that would produce a different allocation of costs than would occur through the System Agreement. Entergy Answer at 42.

[95] Louisiana Commission Protest at 22.

[96] Texas Commission Protest at 16-17.

does not address how this change will affect planning or propose any change in Service Schedule MSS-1, which allocates the costs of planning reserves on an Entergy System basis.[97]

69. The New Orleans Council states that Service Schedule MSS-2 should be abolished upon Entergy's entry into MISO, given it will duplicate and conflict with MISO's regulation of transmission.[98] It states that Entergy has made conflicting statements regarding what degree of control Entergy will maintain over its transmission assets if the Entergy-ITC Transaction is not consummated. It states that retention of control, and Service Schedule MSS-2, would conflict with MISO's roles. The Texas Commission states that Entergy's plan to eliminate Service Schedule MSS-2 upon consummation of the Entergy-ITC Transaction "belies any claim that the other schedules must also be maintained."[99]

70. The Louisiana Commission contends that Entergy's filing fails to address conflicts between the goals and pricing incentives of an RTO and the principles and pricing provisions in Service Schedule MSS-3's energy exchange provisions. It states that by proposing to retain Service Schedule MSS-3's basic form, Entergy proposes to maintain an arrangement that will reverse fundamental incentives in RTO pricing.[100] It states that Entergy should be required to establish why Service Schedule MSS-3's energy allocation provisions will be just and reasonable after Entergy enters MISO.[101] The Louisiana Commission also claims that since MISO will take over the Entergy dispatch and make it part of a much larger regional dispatch, involving the resources of all participating regional entities and a bid-based LMP structure, energy exchange pricing under Service Schedule MSS-3 will be redundant.

71. The Louisiana Commission also contends that Entergy inappropriately proposes to continue its operation of its Service Schedule MSS-3 energy exchange under the principle that energy generated within or delivered to the System is "deemed delivered" to the designated recipient Operating Company, regardless of transmission constraints, such that if a transmission constraint prevents the physical flow of energy to an Operating

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[97] Louisiana Commission Protest at 15.

[98] New Orleans Council Protest at 9.

[99] Texas Commission Protest at 18.

[100] Louisiana Commission Protest at 21.

[101] *Id.* at 8.

Company, Entergy nevertheless assumes for cost allocations that the electricity reaches the recipient.[102] The Louisiana Commission contends that this conflicts with a primary objective of an RTO by reversing the pricing signals built into the Commission's LMP system. The Louisiana Commission states that if a transmission constraint causes the LMP in an RTO to be higher on the constrained side of a transmission bottleneck, the pricing signal is supposed to provide an incentive for load on the constrained side to make appropriate investments in new transmission. But the energy exchange often reallocates the high costs to other Operating Companies, eliminating this price signal.[103]

72. Unlike other System Agreement Service Schedules, which allocate costs related to historical, long-term investment decisions, the Louisiana Commission states that Service Schedule MSS-3's energy exchange provisions allocate costs for a real-time least cost energy exchange that will be entirely replaced by the MISO energy exchange. It contends that Entergy offers no basis to establish a need for a redundant energy exchange that will reverse the pricing signals provided by a newer and better dispatch protocol and that while there may be historical reasons justifying Entergy's proposed approach, they are not evident in the filing. The Louisiana Commission states that the Commission should conduct a hearing to consider whether to continue, modify, or remove Service Schedule MSS-3's energy exchange.

73. The Texas Commission states that some Operating Companies have benefitted little from single system optimization. The Texas Commission contends that continuation of Service Schedule MSS-5, which distributes proceeds from joint Operating Company sales of energy off-system, in a post-MISO-integration world would deprive each Operating Company of the opportunity to engage in its own market transactions. Rather, under the System Agreement, Entergy Services would make "joint account" purchases and sales for the Entergy System, and then allocate joint account sales revenue to the Operating Companies based on their responsibility ratios. The Texas Commission contends that there is no need for this function if each Operating Company were to join and participate in MISO as a market participant in its own right.

74. The Texas Commission contends that the need for and functions of the Entergy System Operations Center, governed by Service Schedule MSS-6, will be reduced, if not

[102] *Id.*

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

eliminated, if the Operating Companies enter MISO because many operational functions would then be performed by MISO.[104]

75. The Louisiana Commission states that the System Agreement is silent on whether Entergy, once integrated into MISO, is supposed to maximize the economic interests of the System as a whole, those of individual Operating Companies, those of Operating Companies that have contracts with Entergy affiliates, or on some other basis while acting as a market participant in MISO. It states, further, that if an Operating Company's interests are subsumed to those of the System as a whole, Entergy makes no proposal in its proposed Amendments that would reallocate the costs associated with the sacrifice.[105] The Louisiana Commission contends that vesting discretion in Entergy also facilitates conduct that favors some Entergy affiliates at the expense of other Operating Companies.[106]

76. In its answer, Entergy states that it is incorrect to say that the functions of the System Agreement are redundant to those of MISO. Entergy states that there are numerous aspects of coordinated electric operations that cannot be obtained from MISO (or any RTO) but are provided under the System Agreement. Entergy states that MISO does not own, construct, site, or plan generating facilities; does not own, construct, finance, or maintain transmission facilities; does not make bilateral purchases of energy or capacity; and while MISO may ultimately approve outages, it will not coordinate generation outages among the Operating Companies' resources to minimize costs.[107] Entergy also states that there are valid reasons for Entergy to optimize operations in MISO under the System Agreement for the benefit of the system as a whole rather than for each individual Operating Company.

77. Entergy states that the New Orleans Council's and the Louisiana Commission's requests that Service Schedule MSS-2 and the energy exchange provisions of Service Schedule MSS-3 be cancelled are outside the scope of this proceeding.[108] Entergy reiterates, however, that prior to making the section 205 filing that addresses the allocation of MISO charges and credits during its proposed transition period, Entergy will

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[104] Texas Commission Protest at 20.

[105] Louisiana Commission Protest at 16.

[106] *Id.* at 17.

[107] Entergy Answer at 27.

[108] *Id.* at 36.

work with the retail regulators to respond to such questions and discuss more fundamental changes to the System Agreement. Entergy states that to the extent it believes it would be appropriate to make more fundamental changes to the System Agreement, including termination of the System Agreement, it will propose such modifications in that filing.[109]

78. With respect to the New Orleans Council's contention that Service Schedule MSS-2 should be cancelled upon Entergy's integration into MISO, regardless of whether the Entergy-ITC Transaction is completed, Entergy states that if the Entergy-ITC Transaction is not completed, then the rationale for retention of this service schedule will remain. It states that if the Entergy-ITC Transaction is not completed, the Operating Companies will still own, operate, and invest in the transmission system, while MISO will have operational control for certain functions and that, therefore, the cost sharing rationale of Service Schedule MSS-2 would still apply.[110]

79. With respect to the Louisiana Commission's call for the elimination of the Service Schedule MSS-3 energy exchange provision, Entergy states that the Louisiana Commission misunderstands how the Operating Companies' generating units will be dispatched in MISO when it argues that participation in MISO's energy markets is inconsistent with the System Agreement provisions that provide for the Operating Companies' generating units to be centrally dispatched.[111] Rather, Entergy states that, pursuant to section 4.08 of the System Agreement, Entergy System dispatch is: (1) under the general direction of the Entergy Operating Committee; (2) carried out by Entergy; and (3) requires the generating facilities to be dispatched for the common good of the System Agreement Companies' entire load. Entergy states that it does not seek to modify this provision because the Entergy System dispatch will continue for the Operating Companies after their entry into MISO, with physical control of the Operating Companies' generating units, as well as contractual control over power purchase agreements, retained by Entergy's System Planning and Operations organization.[112]

80. Entergy states that the System Planning and Operations organization will make those resources available to MISO for a coordinated commitment and dispatch within the

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[109] *Id.* at 37. Entergy made a variety of commitments in its answer, which are described further below in the section entitled Transition Period Proposal.

[110] *Id.* at 38.

[111] *Id.* at 39 (citing Louisiana Commission Protest at 21).

[112] *Id.*

larger MISO-wide footprint, which is effectuated by the price signals issued by MISO in order to take advantage of the economic benefits of participating in a Day 2 Market. It states that Entergy will continue to maintain a dispatch center that operates around the clock and is staffed with dispatchers and analysts who are responsible for monitoring real-time conditions on the System; evaluating dispatch instructions from MISO and adjusting them when necessary by modifying dispatch in response to real-time price information provided by MISO; substituting generating units for those previously offered to MISO when appropriate; and responding to changes in unit status that occur periodically, such as when a unit trips or when real-time changes occur in fuel availability.

81. Entergy states that while it does not dispute the fact that MISO will conduct several security-constrained unit commitment and energy dispatch analyses and analyses covering different time horizons (such as next day or next hour), it does not follow, however, that MISO will conduct the only dispatch analysis, or that any single MISO security-constrained energy dispatch run will reflect the actual dispatch that occurs for the Entergy Operating Companies' resources.[113] Entergy states that it will continue to perform independent analyses and, ultimately, will remain responsible for the dispatch decisions for the Entergy System units. Entergy states that even if the Operating Companies end up following a dispatch set by MISO, that does not answer the question whether their units are being dispatched for the collective benefit of those Operating Companies, which is the essence of "System" dispatch. Entergy states that the generating units of the Operating Companies will be dispatched in MISO for the collective benefit of those Operating Companies and, thus, the dispatch provisions of the System Agreement are entirely consistent with this operating environment.[114]

82. Entergy states that the Operating Companies will also still determine, on a System-wide basis, the manner in which their generation resources will be offered into MISO's Day 2 markets, those resources will still be dispatched on an economic basis, and in any given hour the generating output of some Operating Companies will be greater than their individual load, and the generating output of other Operating Companies will be less than their load. Entergy states that by retaining the energy exchange provisions of Service Schedule MSS-3, the costs and benefits from transactions in the Day-Ahead market that result from these imbalances will be allocated among the System Agreement Operating Companies based on those provisions. Entergy states that the practical effect is that all of the Operating Companies will share in the costs and benefits of these

[113] *Id.*

[114] *Id.* at 40.

transactions as a System, rather than as individual stand-alone participants in the market.[115] Entergy states that continuing the cost-sharing provisions of Service Schedule MSS-3 is consistent with the principle of single-system planning that will govern the Operating Companies' future operating arrangements upon integration into MISO.[116]

83. Entergy states that the Louisiana Commission's contention that the energy exchange provisions of Service Schedule MSS-3 are inconsistent with the purpose of pricing signals in an LMP-based market should be rejected because congestion pricing from MISO's Day 2 market will send pricing signals to the Entergy System as a whole. Entergy states that given that it is the Entergy System (not the individual Operating Company) that makes decisions regarding transmission investment and new generation additions, the fact that Service Schedule MSS-3 allocates energy costs among the Operating Companies in a manner differently than the MISO billing process will not undermine the System's incentive to react to those signals.

84. Entergy states that the proposed Amendments will not distort LMP pricing signals or otherwise undermine the benefits of joining MISO. Entergy states that because decisions regarding new generation resources and expansion of the transmission system are made by the Entergy System as a whole, the fact that the System Agreement reallocates charges and credits from MISO among individual Operating Companies does not distort or undermine the price signals sent by an LMP market to the Entergy System. It states that the Entergy System will continue to make these decisions and the price signals sent by the LMP market will create the proper incentives for optimizing costs for the Entergy System as a whole.[117]

85. Entergy contests as outside the scope of the proceeding the Louisiana Commission's contention that the Operating Companies' new operating environment requires a new and broader System Agreement, including comprehensive rules for governing Entergy Services' and the Operating Companies' conduct in MISO. It states that the Commission has previously rejected the Louisiana Commission's suggestion that the affiliate-nature of the System Agreement means that the Operating Companies do not have the incentive or ability to protect themselves.[118] It also rejects assertions alleging

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[115] *Id.*

[116] *Id.* at 41.

[117] *Id.* at 30.

[118] *Id.* at 43 (citing Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 33 (rejecting argument that affiliate-nature of System Agreement requires special scrutiny of notice provision)).

the potential for unjust enrichment given that the proposed Amendments to the System Agreement do not involve any tariff revisions other than those necessary for entry into MISO and to reflect the withdrawal of Entergy Arkansas, which Entergy states is a zero-sum process from an Entergy System perspective.[119]

86. Entergy rejects protestor assertions that its proposal is unclear with respect to the treatment of individual Operating Companies versus the Entergy System within MISO. Entergy states that one element of the Operating Companies' future operating arrangements is to join MISO and to maintain existing practices regarding single-system planning and other integrated operations. It states that the System Agreement's Operating Committee[120] will continue to evaluate new generation additions from a single-system perspective, to ensure adequate reserves are available for those Operating Companies, and to coordinate arrangements for bilateral sales and purchases of energy and capacity. It states that the Commission has previously recognized that affiliated operating companies are free to adopt cost sharing arrangements, including equalization, provided such proposals meet the "just and reasonable" standard of section 205 of the FPA.[121] It states that because the Operating Companies under the System Agreement plan to integrate into MISO while continuing to conduct single-system planning and other integrated operations, relying on the current System Agreement (and its cost allocation provisions) as the starting point for revisions necessary to integrate into MISO is entirely just and reasonable.

87. In its answer, the Louisiana Commission asserts that Entergy's statements in its answer are unclear and conflicting, stating that "Entergy concedes that MISO will dispatch its generating units, but claims at the same time that Entergy will dispatch these units."[122] It also states that Entergy cannot limit its dispatch to units that it controls, or maintain its dispatch methods and priorities, and simultaneously gain the benefits of MISO membership.[123] The Louisiana Commission contends that Entergy's assurance that it will react to price signals as a "System as a whole" shows the "delusional nature"

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[119] *Id.* at 43.

[120] The Operating Committee administers the System Agreement. *See* System Agreement, § 5.01.

[121] Entergy Answer at 26 (citing *American Electric Power Service Corp.*, Opinion No. 311-A, 45 FERC ¶ 61,408, at 61,238 (1988)).

[122] Louisiana Commission Answer at 3, 7.

[123] *Id.* at 9.

of the Entergy proposal, as the only price signal that can be communicated to Entergy as a System would relate to the interfaces between MISO and Entergy, while serious and uneconomic transmission constraints within Entergy would not be addressed as the result of MISO price signals.[124] The Louisiana Commission disagrees with Entergy's assertion that Service Schedule MSS-3's energy exchange provisions are necessary in the MISO context.

(5) Requests for Hearing

88. The Entergy Retail Regulators and the Mississippi Commission contend that Entergy's filing introduces many complexities but fails to sufficiently address them and that such issues cannot adequately be resolved absent a hearing.[125]

89. The protestors state that the ADR process was inadequate and that Entergy declined to expand the scope of the ADR process to include issues of interest to them.[126] The Louisiana Commission claims that Entergy declined to discuss the continued viability of the System Agreement, its Service Schedules, hold harmless provisions, responsibility for costs stranded by the withdrawal of Entergy Arkansas, and other issues raised by the Entergy Retail Regulators.[127]

90. The Entergy Retail Regulators and the Louisiana Commission state that the ADR process was no substitute for a complete investigation and hearing and that a hearing is necessary because Entergy restricted the scope of its pre-filing process to only those changes that Entergy considered appropriate: technical changes to the System Agreement to apportion MISO charges and payments among the Operating Companies that remain in the System Agreement.[128] The Entergy Retail Regulators, the New Orleans Council, and

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[124] *Id.* at 10.

[125] Entergy Retail Regulators Initial Comments at 1, 5-8; Mississippi Commission Comments at 2.

[126] Entergy Retail Regulators Initial Comments at 1-2; Louisiana Commission Protest at 5; Texas Commission at 4-5; New Orleans Council Protest at 10.

[127] Louisiana Commission Protest at 12; Entergy Retail Regulators Initial Comments at 2.

[128] Louisiana Commission Protest at 12; Entergy Retail Regulators Initial Comments at 2.

the Mississippi Commission argue that an evidentiary hearing, with adequate discovery procedures, is therefore required.[129]

91. In its answer, Entergy requests that the Commission allow its proposed Amendments to go into effect as of December 19, 2103, without a hearing. As concerns its evidentiary showing and the need for a hearing, Entergy agrees with protestors that the scope of the ADR process remained focused on amendments necessary to integrate into MISO, but states that this was done to maximize the chances for consensus on those changes.[130] With respect to matters it believes are within the scope of this proceeding, it contends that setting this matter for hearing now would complicate its integration into MISO and yield litigation before relevant facts are available. As noted in greater detail above in the context of a variety of individual issues for which protestors sought a hearing, Entergy states that there is no reason to set this matter for hearing now.

92. It states that the Texas Commission's suggestion that it should be required to show that the MISO Tariff would not be just and reasonable as applied to the Operating Companies on their own, without the overlay of the System Agreement, misconstrues the burden of proof under section 205 of the FPA and fails to meet the Commission's standards for when an evidentiary hearing is required.[131]

93. Entergy states that it does not believe that a litigated hearing in this proceeding is a workable approach to achieving the goal of reaching an agreement by which Entergy Texas may exit the System Agreement prior to the end of the mandatory 96-month notice period, nor would it further the overarching goal of timely integration into MISO, nor is it otherwise justified under Commission precedent.[132]

(6) State Authority

94. The Louisiana Commission claims that, in the absence of Commission-approved rules to govern Entergy's behavior, it would be unjust and unreasonable to adopt a tariff that preempts state authority to review Entergy's conduct for prudence and for self-dealing. The Louisiana Commission states that the Commission should, instead, declare

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[129] Entergy Retail Regulators Initial Comments at 5; Mississippi Commission Comments at 6; New Orleans Council Protest at 2.

[130] Entergy Answer at 10.

[131] *Id.* at 27.

[132] *Id.* at 31.

its findings non-preemptive or require Entergy to propose rules to govern its behavior.[133] The Louisiana Commission also claims that the System Agreement now contains no provisions governing how Entergy must make determinations related to operations in MISO. The Louisiana Commission contends that vesting too much discretion in Entergy in this area will facilitate conduct that favors Entergy affiliates at the expense of other companies.[134] The Louisiana Commission suggests that the Commission should make clear that state authority to examine holding company choices as to how to allocate affiliate costs remains undisturbed for Entergy's selection of methods for allocating affiliate costs.

95. The Texas Commission urges that the Commission act to retain the authority of the Entergy Regional State Committee (ERSC). It states that in its settlement before the Texas Commission, Entergy agreed to maintain the authority of the ERSC for at least five years, but is silent on this subject in its filing; the Texas Commission states that the authority of the ERSC must be maintained.[135]

96. In its answer, Entergy states that the ERSC issue is outside the scope of this proceeding.

(7) Withdrawal of Entergy Texas

97. The Texas Commission asserts that a matter that should be addressed in this proceeding in any hearing is the current 96-month notice required under the System Agreement for an Operating Company to withdraw from it. The Texas Commission contends that given changed circumstances on the Entergy System, the 96-month notice provision is no longer just and reasonable.[136] It notes that MISO itself requires only one-year's advance notice for a participating Transmission Owner to withdraw from MISO. The Texas Commission contends that the many changes to the System Agreement proposed by Entergy render it a new agreement[137] and that the Commission therefore should afford each Operating Company at least a one-time, "open season" option to opt out of the System Agreement in conjunction with the Operating Companies' anticipated

[133] Louisiana Commission Protest at 4, 7, 14.

[134] *Id.* at 17.

[135] Texas Commission Protest at 31.

[136] *Id.* at 26-27.

[137] *Id.*

entry into MISO.[138] The Texas Commission states that it recognizes a transition period is necessary for Operating Companies to exit from the System Agreement and adds that it is commissioning a study to examine appropriate transition mechanisms.[139]

98. In its answer, Entergy states that termination of Entergy Texas' participation in the System Agreement is outside the scope of this proceeding but that this, along with the appropriate notice period, will be addressed in Entergy Texas' upcoming notice of cancellation.[140] Entergy states that it does not believe that a litigated hearing in this proceeding is a workable approach to achieving the goal of reaching an agreement by which Entergy Texas may exit the System Agreement prior to the end of the mandatory 96-month notice period, nor would it further the overarching goal of timely integration into MISO, nor is it otherwise justified under Commission precedent.[141]

99. Entergy states that it believes that the process established in a Texas Commission Settlement[142] – not a litigated hearing in this docket – appropriately addresses this issue at present. It states that its plan to make a separate filing addressing Entergy Texas' notice of cancellation and responding to the Texas Commission's request for a shortened notice period, and to continue collective discussions with retail regulators regarding related issues represents a better approach for addressing the Texas Commission's concerns regarding Entergy Texas' participation in the System Agreement post-MISO integration and the appropriate notice period for withdrawals from the System Agreement.[143]

100. Entergy states that by separating the early termination issues from the question of whether the specific allocations of MISO charges and credits proposed in this docket are just and reasonable, Entergy's proposal will provide the regulatory certainty required for timely integration into MISO. Entergy also states that this phased approach is consistent

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

[139] *Id.*

[140] Entergy Answer at 31.

[141] *Id.*

[142] Amended Stipulation and Settlement Agreement, Texas Commission Docket No. 40346, August 8, 2012 (Texas Commission Settlement).

[143] Entergy Answer at 33-34.

with the Texas Commission's recognition that a transition period will have to take place before Entergy Texas can operate on its own outside the System Agreement.

101. In its answer to Entergy's answer, the Texas Commission contends that the Commission should require evaluation of all terms and provisions of the System Agreement in this proceeding, rather than allowing consideration of Entergy Texas' withdrawal from the System Agreement in a separate filing, as proposed by Entergy.[144] It contends that the System Agreement's 96-month notice period is not just and reasonable given changed circumstances. The Texas Commission also disagrees with Entergy's assertion in its answer that there may be a better likelihood of reaching an agreement to Entergy Texas' exit from the System Agreement if the issue is deferred.[145] The Texas Commission contends that a finding that the System Agreement is unjust and unreasonable would address this issue and that if there is a lack of information on the System Agreement's justness and reasonableness this should be addressed now by setting this matter for hearing.[146]

102. On October 11, 2013, in Docket Nos. ER14-75-000 through ER14-80-000, as later corrected in Docket Nos. ER14-75-001 through ER14-80-001 (October 11 Filing), Entergy filed a proposed revision to section 1.01 of the System Agreement to change the notice provision for Operating Company withdrawals from 96 months to 60 months. On October 18, 2013, Entergy Texas notified the other Operating Companies of its intent to withdraw from the System Agreement after 60 months' prior notice, consistent with the effective date of the October 11 Filing, and filed a notice of cancellation with the Commission in Docket No. ER14-128-000. The Commission has not yet acted upon these filings.

b) Determination

103. We deny the requests for a hearing to reopen the System Agreement for a wider review. As discussed below, we find that Entergy's proposed Amendments, as modified, are just and reasonable. Based on this determination, we find that the System Agreement itself remains just and reasonable following the departure of Entergy Arkansas, and upon the pending integration of Entergy into MISO. Protestors make three main arguments to support their requests for hearing: first, that the Commission and the D.C. Circuit committed to a broader review of the System Agreement at the time Entergy filed its

[144] Texas Commission March 29, 2013 Answer at 7.

[145] *Id.* at 10.

[146] *Id.*

amendments to reflect Entergy Arkansas' departure; second, that the departure of Entergy Arkansas and Entergy Mississippi create circumstances including stranded costs that justify further alterations to the System Agreement; and third, that Entergy's entry into MISO and the Entergy-ITC Transaction, and the possible departure of Entergy Texas from the System Agreement, require a broader evaluation of the continued existence of the System Agreement. We address each argument in turn.

104. First, with respect to the Commission's prior rulings and the D.C. Circuit's ruling in *Council of the City of New Orleans v. FERC*, we agree that Entergy has a requirement to show that its proposed Amendments are just and reasonable. Entergy has met that burden, as discussed below. Entergy, however, is not required to reopen for discussion every element of the System Agreement, which the Commission has already determined to be just and reasonable.[147] There is no provision in the System Agreement that requires dissolution of the agreement or extensive revision upon the exit of one or more members. As we have stated before, the only requirement in the System Agreement related to the exit of a member is a 96-month notice provision. While the exit of a member is a "significant change to the Entergy system," as the Commission has stated previously, it does not void the System Agreement.[148] The System Agreement remains in place for the benefit of its members, and we do not see a reason to overturn that agreement at this time.

105. The Commission has historically treated the System Agreement as a contract and interpreted its provisions such that the "benefits and burdens specific to each Operating Company have to be balanced with what is appropriate for the system as a whole."[149] In general, the Commission has interpreted the System Agreement to retain the benefits of this document for its parties even when terms are ambiguous.[150] It has only required

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[147] *See Middle South Energy, Inc.*, Opinion No. 234, 31 FERC ¶ 61,305, *reh'g denied*, Opinion No. 234-A, 32 FERC ¶ 61,425 (1985), *aff'd, Mississippi Industries v. FERC*, 808 F.2d 1525 (D.C. Cir. 1987), *vacated and rev'd in part and remanded*, 822 F.2d 1104 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 985 (1987), *order on remand, System Energy Resources, Inc.*, Opinion No. 292, 41 FERC ¶ 61,238 (1987) (System Energy Resources), *reh'g denied*, Opinion No. 292-A, 42 FERC ¶ 61,091 (1988), *aff'd sub nom. City of New Orleans v. FERC*, 875 F. 2d 903 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990).

[148] Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 27 n.27.

[149] *See Louisiana Public Service Commission v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282, at P 106 (2005).

[150] *See, e.g., Louisiana Public Service Commission v. Entergy*, Opinion No. 521,

(continued…)

changes to the System Agreement at the behest of third parties in limited circumstances, such as, for example, when it found that rough production cost equalization had been disrupted on the system[151] and when it directed that cost overruns at the Grand Gulf Nuclear Facility be reallocated among the Operating Companies.[152]

106. While protestors raise concerns about outdated provisions in the System Agreement as a flaw, the System Agreement's core cost allocation provisions in the service schedules continue to function, as do transmission and generation planning and other functions under the System Agreement. As noted below, these provisions are neutral in character and allocate costs and benefits among Operating Companies based upon objective considerations reflecting the coordinated planning and operations of the System. As noted, they strike a balance between the needs of individual Operating Companies and the system as a whole.

107. We disagree with protestors' assertions that some Commission statements in the Withdrawal Complaint Order, the Withdrawal Order, and the Withdrawal Rehearing Order committed the Commission to a more extensive or probing inquiry into Entergy's successor arrangements. In its decision on the appeal of the latter two orders, the D.C. Circuit noted that such statements do not bind the Commission or commit it to a particular course of action:

> The fact that FERC put the Operating Companies on notice that it *might* impose additional conditions on withdrawal does not mean it *must* do so now. Certainly an agency may leave open the possibility of future action without binding itself to choose a particular path before it determines the circumstances are right to do so. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) ("Once an agency has considered the relevant factors, it must

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139 FERC ¶ 61,240 (2012) (finding provisions governing off-system sales of energy by individual Operating Companies to third parties to be ambiguous but interpreting them to allow individual Operating Companies to make such sales for their own account as well as for all the Operating Companies).

[151] *See Louisiana Public Service Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005), *order on reh'g*, Opinion No. 480-A, 113 FERC ¶ 61,282, *aff'd in part and remanded in part sub nom. Louisiana Public Service Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008).

[152] Opinion No. 234, 31 FERC ¶ 61,305.

> define goals for its action that fall somewhere within the range of reasonable choices. We review that choice, like all agency decisions to which we owe deference, on the grounds that the agency itself has advanced.").[153]

108. Protestors have not shown that the exit of Entergy Arkansas from the System Agreement merits a broader review of the System Agreement. The System Agreement itself anticipated that members could choose to leave upon adequate notice; had parties wished to dissolve or reopen the System Agreement upon such exit they could have included such a term in their agreement. We see no reason to write in such a provision into the System Agreement at this time.

109. Second, protestors argue that the exit of Entergy Arkansas will create additional issues that Entergy has not addressed in its filing. Many of the allegations protestors raise seem to be attempts to impose additional exit requirements upon Entergy Arkansas (and Entergy Mississippi) that do not exist in the System Agreement. Operating Companies retain ownership of their generation and there is no ongoing obligation to provide such resources to the Entergy System upon their departure from it. We also find that cost reallocations that occur by operation of the System Agreement's terms, and resulting from the withdrawal of an Operating Company, are a foreseeable consequence of such withdrawals; as such, they do not trigger a need to revisit cost allocations under the System Agreement. However, certain discrete issues relating to an individual Operating Company's departure from the System Agreement may require further actions to ensure just and reasonable post-withdrawal arrangements among the Operating Companies.[154]

110. Third, protestors argue that Entergy's integration into MISO, and the proposed transfer of Entergy's transmission assets to ITC, and the possible withdrawal of Entergy Texas from the System Agreement, provide sufficient justification for reopening the

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[153] *Council of the City of New Orleans v. FERC*, 692 F.3d at 176 (emphasis in original).

[154] For example, the Commission recently set for hearing and settlement judge procedures agreements between Entergy Arkansas and two other Operating Companies, Entergy Louisiana and Entergy Mississippi, to reallocate network upgrade costs that Entergy Louisiana and Entergy Mississippi paid in proportion to Entergy Arkansas' two-thirds ownership in the Ouachita Generating Station. *Entergy Mississippi, LLC and Entergy Louisiana, LLC*, 145 FERC ¶ 61,217 (2013). In this order, we also set another matter for hearing and settlement judge procedures, the Union Pacific Settlement issue.

merits of the entire System Agreement. We disagree. We find no basis in MISO membership requiring a broader review of the System Agreement at this time. Nothing about Entergy's intent to operate as a power pool within MISO is inherently inconsistent with behavior in an organized market. Other holding company systems have been integrated into MISO, PJM, and Southwest Power Pool, Inc. (SPP).[155] Holding company coordination agreements such as the System Agreement can provide valuable services beyond those provided by the RTO markets, as Entergy notes. We further believe that such arguments are premature until the Operating Companies actually begin to perform in the MISO marketplace. Entergy's commitment in its answer to provide data on MISO cost and credit allocation under the System Agreement at six-month intervals and to make a more detailed filing 18 months or less after integration, which is described further below,[156] will allow protestors and the Commission to monitor developments in this respect. Protestors' concerns with respect to the Entergy-ITC Transaction are moot given that, as noted above, the parties have terminated the transaction.

111. Some protestors raise the issue of a possible conflict between the System Agreement's provisions and MISO operations. We find that while protestors cite conflicting statements by Entergy with respect to control of transmission functions, for example, they have not identified a clear conflict between the System Agreement and the MISO Tariff. We contrast this with another Commission decision involving the interplay of an affiliate agreement between holding company system affiliates and the MISO Tariff, *Alliant Energy Corporate Services, Inc.*,[157] where the Commission ordered Alliant to insert language into its pooling agreement, the System Coordination and Operating Agreement, to resolve possible confusion over the transmission responsibilities of Alliant under the System Coordination and Operating Agreement and the MISO Tariff.

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[155] A variety of RTO members retain pooling and coordination agreements. *See, e.g*., Alliant/IPL/WPL System Coordination and Operating Agreement, Rate Schedule FERC No. 5, revised in Docket No. ER07-881-000 (MISO member); AEP System Integration Agreement, American Electric Power Service Corporation, Rate Schedule FERC No. 20 (PJM and SPP members); NSP-Wisconsin/NSP-Minnesota Interchange Agreement, most recently revised in Docket No. ER11-3234-000, Northern States Power Company, A Minnesota Corporation, FERC Electric Tariff, Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company and Northern States Power Company (Wisconsin) Agreement, 0.0.0 (MISO members).

[156] *See* the discussion below in the section entitled, "Transition Period Proposal."

[157] *Alliant Energy Corporate Services, Inc.*, 120 FERC ¶ 61,176 (2007) (*Alliant*).

112. In the *Alliant* proceeding, MISO intervened to contend that the definition of "Transmission Services Organization" in section 2.52 of the System Coordination and Operating Agreement, and the delegation to the Transmission Services Organization of the responsibility and authority to act as transmission provider in proposed section 4.04, were inconsistent with MISO's role under the MISO Tariff as the sole provider of transmission service over facilities under its functional control.[158] After reviewing applicable provisions of these documents, the Commission expressed concern that certain proposed provisions in the System Coordination and Operating Agreement did not reflect MISO's role as the sole provider of transmission service under the MISO Tariff and required Alliant to modify the System Coordination and Operating Agreement, in consultation with the parties to the revised agreement, to delineate the respective roles and responsibilities of Alliant and MISO.

113. Here, however, our review of the few System Agreement provisions that concern transmission finds no similar content. This is not surprising since most such transmission-related content is included in the Entergy Open Access Transmission Tariff, which will be eliminated upon Entergy's entry into MISO.

114. In addition, we note that the System Agreement and Entergy's Amendments are intended to govern allocations of costs between Operating Companies, and other relationships between the Operating Companies, rather than costs assessed within MISO. Entergy will be responsible for following the MISO Tariff and all applicable market rules. Entergy's behavior and adherence to market rules will be monitored like that of any other market participant by MISO's market monitor.

115. We also disagree with the New Orleans Council's assertion that Service Schedule MSS-2 must be deleted upon Entergy's integration into MISO. As Entergy notes, this service schedule equalizes ownership costs of Operating Company transmission under the System Agreement, and as the Entergy-ITC Transaction will not be completed, such costs will still need to be equalized under the System Agreement's terms.

116. Many of the allegations of conflict between the System Agreement, including its Service Schedules MSS-1, MSS-3, MSS-5, and MSS-6, and future Entergy operations in MISO relate to an alleged conflict between the System Agreement's approach of single system optimization and individual Operating Company rights. We disagree with the Louisiana Commission's assertion that Entergy and the System Agreement are silent regarding whether Entergy, once integrated into MISO, should maximize the economic interests of the System as a whole, those of individual Operating Companies, those of

[158] *Id.* P 4.

Operating Companies that have contracts with Entergy affiliates, or on some other basis while acting as a market participant in MISO. Entergy states that it will continue to employ the System Agreement's single system optimization as it has employed it in the past.[159] We find that this is consistent with the System Agreement's terms and historical operational practice. We also find speculative the Louisiana Commission's arguments that vesting discretion in Entergy facilitates conduct that favors some Entergy affiliates at the expense of other Operating Companies. In sum, we are not convinced at this time that more extensive revisions are needed to the System Agreement, nor that a hearing is required to consider whether they are.

117. We find that the issue of the proposed withdrawal of Entergy Texas is outside the scope of this proceeding, which is intended to reflect revisions to the System Agreement to address the exit of Entergy Arkansas and Entergy's entry into MISO. As noted above, Entergy Texas' proposal to withdraw from the System Agreement, and Entergy's related proposal to change the withdrawal notice provision of the System Agreement, are pending before the Commission.

118. We find that issues related to state authority over Entergy are also outside the scope of this proceeding and that nothing in our disposition of Entergy's filing will interfere with the exercise of state regulatory commission jurisdiction over Entergy**.**

119. With respect to the Ouachita network upgrade cost issue, we note that a recently issued order sets for hearing and settlement judge procedures a filing by Entergy to reallocate network upgrade costs paid by two Operating Companies to Entergy Arkansas in proportion to Entergy Arkansas' two-thirds ownership in the Ouachita Generating Station.[160] We find that proceeding will address concerns raised in the instant proceeding as to the transmission upgrade costs.

120. With respect to the Union Pacific Settlement, the claims raised by the Louisiana Commission 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.

121. Our preliminary analysis indicates that, with respect to the Union Pacific Settlement, Entergy's proposed amendments have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or

[159] Entergy Answer at 23.

[160] *See Entergy Mississippi, LLC and Entergy Louisiana, LLC*, 145 FERC ¶ 61,217 (2013).

otherwise unlawful. Therefore, we will accept Entergy's proposed amendments for filing, suspend them for a nominal period, make them effective December 19, 2013, subject to refund, and set the Union Pacific Settlement issue for hearing and settlement judge procedures.

122. While we are setting the Union Pacific Settlement matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[161] 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.[162] The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of this order 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 commencement of a hearing by assigning the case to a presiding judge.

2. Entergy's Proposed Amendments

123. Entergy's proposed Amendments, as modified in its answer, remove all references to Entergy Arkansas from the System Agreement and add amendments to the System Agreement to allocate costs that the Operating Companies will incur in MISO between the various Operating Companies.

a) Definitions

(1) Entergy's Filing

124. Entergy proposes a number of new definitions in the System Agreement that it states have the same meaning ascribed in the MISO Tariff.[163] It states that this approach

[161] 18 C.F.R. § 385.603 (2012).

[162] 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).

[163] Entergy Services, Inc., Transmittal Letter, Docket No. ER13-432-000, at 6-7 (Nov. 20, 2012).

is designed to ensure consistency between the MISO Tariff and the System Agreement. Among the proposed revisions to definitions are changes to the definitions of Company Load Responsibility (section 2.16) and Responsibility Ratio (section 2.18) to track the MISO settlement process and MISO calculation of load. In the definition of Responsibility Ratio, Entergy proposes to fix each Operating Company's Load Responsibility at the level it was in the month immediately preceding integration into MISO. The fixed level would stay in place for 17 months after integration to allow a full year of MISO settlement statements and data to accumulate before Entergy updates the Responsibility Ratio, which is based on a rolling 12-month period. Entergy explains that MISO settlement statements are completely settled after a 105-day settlement process and that the 17-month period represents a full year (12 months) plus an additional 5 months to account for the settlement process. Entergy states that the revision addresses the need for a one-time change to phase out the current load calculations and to phase in the load calculations consistent with MISO's system. No protests were filed to the proposed definitions.

(2) Commission Determination

125. We accept the proposed changes to the definitions as just and reasonable because they will help ensure consistency between the MISO Tariff and the System Agreement. We note, however, that in Docket No. ER14-73-000 Entergy has proposed further revisions to aspects of the Company Load Responsibility and Responsibility Ratio proposed definitions. Our acceptance in this proceeding of those definitions is subject to the outcome of that proceeding.

b) Deletion of References to Entergy Arkansas

(1) Entergy's Filing

126. The Withdrawal Amendments remove all references to Entergy Arkansas from the System Agreement, to reflect the fact that Entergy Arkansas will no longer be part of the System Agreement as of December 19, 2013.

(2) Summary of Protests

127. Protestors claim that the Withdrawal Amendments are inadequate because the deletions fail to address the implications of Entergy Arkansas' exit (as well as the implications of Entergy Mississippi's impending departure and Entergy Texas' likely departure) from the System Agreement. They note that the departure of one or more Operating Companies from the System Agreement could result in large shifts in costs that were not intended by the drafters of the System Agreement.

128. The Entergy Retail Regulators also contend that the Withdrawal Amendments are inadequate because Service Schedule MSS-6 will continue to allocate System Operations

Center costs among the six Operating Companies, including Entergy Arkansas, after Entergy Arkansas withdraws, while Entergy's only modification to that schedule is to remove Entergy Arkansas as a signatory. Therefore, state the Entergy Retail Regulators, it is unclear if, and if so, how, Entergy Arkansas will be assessed charges from the System Operations Center following its withdrawal from the System Agreement, and whether the remaining Operating Companies will be assessed an unfair share of those costs.

(3) Commission Determination

129. We accept the Withdrawal Amendments as just and reasonable. The System Agreement's provisions are generally neutral in character, not favoring any particular Operating Company. Thus, the removal of references to one or more Operating Companies should not affect the continued reasonableness of the System Agreement's provisions to those Operating Companies that remain. Protestors have not pointed out any impairment to the continued functioning of the System Agreement that would be caused by the Withdrawal Amendments or that would result without further amendments. We address and reject certain protestor assertions relating to the implications of the removal of Entergy Arkansas from the System Agreement, such as alleged cost shifting between Operating Companies that remain in the System Agreement and allegations that Entergy Arkansas' departure results in stranded costs for the remaining Operating Companies in the System Agreement, in the preceding section.

130. We disagree with the Entergy Retail Regulators' concerns that the deletion of Entergy Arkansas from the System Agreement will not address the allocation of costs in Service Schedule MSS-6. Entergy's deletions will remove Entergy Arkansas as a "Company" for purposes of the System Agreement through its deletion in section 2.02, which defines "Company." As Service Schedule MSS-6 allocates costs by "Companies," this will wholly remove Entergy Arkansas from consideration in this service schedule.

131. The Entergy Retail Regulators have not substantiated their assertion that Entergy Arkansas will make use of the System Operations Center following its withdrawal from the System Agreement pursuant to the System Agreement, nor that it should otherwise continue to be allocated System Operations Center costs following its withdrawal from the System Agreement. To the contrary, Entergy in its answer notes that, "The operational and planning functions for [Entergy Arkansas and Entergy Mississippi] will be performed by either [Entergy Arkansas/Entergy Mississippi] employees (with the costs being borne directly by [Entergy Arkansas and Entergy Mississippi] ratepayers), or

[Entergy Services] employees (with the costs billed to [Entergy Arkansas and Entergy Mississippi]) through the service agreements with Entergy Services."[164]

132. Further, in Docket No. ER13-1556-000, as amended in Docket No. ER13-1556-001, Entergy filed three service agreements with the Commission, including one, proposed Rate Schedule 435-C, between Entergy Services and Entergy Arkansas whereby, effective December 19, 2013, Entergy Services will provide Entergy Arkansas services in support of generation planning, operations and dispatch, purchased power procurement and operations activities.[165] In that filing, Entergy notes that unlike the other Operating Companies, Entergy Arkansas has a staff that will be primarily responsible for Entergy Arkansas generation planning and operations functions following Entergy Arkansas' withdrawal from the Entergy System Agreement.[166] On October 22, 2013, Entergy filed another service agreement, Rate Schedule 435-D, between Entergy Services and Entergy Arkansas in support of Entergy Arkansas' transmission planning and reliability obligations. The Commission is accepting the four filings in an order being issued concurrently.[167] To the extent protestors contend that Entergy Arkansas should continue to bear prior costs or expenditures related to the System Operations Center following its withdrawal from the System Agreement because they represent stranded costs, we addressed such assertions in the preceding section concerning the scope of the proceeding.

c) Revisions to Reflect MISO Integration

133. The MISO Cost Allocation Amendments assign 56 costs and credits from MISO operations to individual Operating Companies through the System Agreement's Service Schedule MSS-3 (Energy Exchange), Service Schedule MSS-5 (Distribution of Revenue from Sales made for the Joint Account of All the Companies), and through proposed Service Schedule MSS-8. These costs and credits reflect and facilitate MISO Day-Ahead and Real-Time Energy and Operating Reserve Markets and FTR Markets, including Auction Revenue Rights (ARRs). Additional related amendments are made to other Service Schedules in the System Agreement.

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[164] Entergy Answer at 48.

[165] Entergy Services, Inc., Transmittal Letter at 7, Docket No. ER13-1556-000 (May 24, 2013).

[166] *Id.*

[167] *Entergy Services, Inc.*, 145 FERC ¶ 61,241 (2013)

(1) Accounting for Losses

(a) Filings

134. Entergy states that the approach used by MISO to account for losses is different than the approach that the Operating Companies use in the System Agreement. Entergy states that under the current System Agreement, losses are included in the measurement of load and there is no separate charge or credit for losses.[168] It notes that MISO, by contrast, explicitly accounts for losses in its calculation of LMPs: A MISO LMP represents the cost, expressed in $/MWh, to supply the next increment of energy at a specific location or "node" on the transmission system in a manner that respects the physical and operational limitations of generation and transmission facilities. Entergy adds that each LMP includes a separately-stated component for the marginal cost of Energy (Marginal Energy Component), the marginal cost of losses (Marginal Loss Component), as well as the marginal cost of congestion (Marginal Congestion Component).

135. Entergy proposes that MISO losses be calculated based on the MISO LMP information – specifically, the Marginal Loss Component – and allocated among the participating Operating Companies. Entergy proposes to add a new section 30.15 to Service Schedule MSS-3 that describes the proposal to calculate and allocate losses, defined by the Marginal Loss Components. Entergy states that section 30.15 proposes that MISO losses will be calculated based on a monthly aggregation of the product of the hourly Marginal Loss Components and hourly MWs for all LMP transactions in the MISO markets as well as Financial Schedules.[169]

136. Entergy proposes that the monthly total losses, net of any marginal loss surplus collected by MISO and rebated to Entergy (as the Market Participant), will be allocated to each participating Operating Company based on the Responsibility Ratio as defined in section 2.18(a) of the System Agreement.[170] The Responsibility Ratio is used in various

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[168] Entergy Transmittal Letter at 8.

[169] The MISO Tariff currently defines Financial Schedules as "a financial arrangement between two Market Participants designating a Source Point, Sink Point and Delivery Point establishing the obligations of the buyer and seller for the payment of cost of congestion and cost of losses." MISO Tariff, Module A, § 1.226 (Financial Schedule), Version: 0.0.0, Effective: 7/28/2010.

[170] As noted below, this allocation methodology was modified by Entergy in its answer.

Service Schedules of the System Agreement in order to allocate costs or benefits among the participating Operating Companies based on peak-load demand. Entergy states that the Commission found the use of a demand-based allocator reasonable in *Kentucky Utilities*.[171]

137. The Mississippi Commission protests Entergy's proposed allocation methodology on the basis that the methodology conflicts with allocation of losses under the MISO Tariff and under the System Agreement. The Mississippi Commission states that, under the System Agreement, energy needed to make up for physically incurred losses is distributed according to cumulative hourly loads, not peak demands, in a manner that reflects hour-by-hour loads and, predominantly, kWh of energy use, rather than kW of demand.[172] The Mississippi Commission also states that MISO's Marginal Loss Component is likewise tied to kWh of energy use, rather than to kW of demand. The Mississippi Commission states that Entergy's proposal to allocate net MISO losses among participating Operating Companies based on the Responsibility Ratio is therefore incorrect because it is not consistent with these approaches and is, rather, a demand-based allocator tied to 12-Coincident Peak monthly peak loads.[173] The Mississippi Commission states that although the Responsibility Ratio is taken from the existing Entergy System Agreement, it is not presently used for the loss allocation purpose now being proposed.

138. The Mississippi Commission also states that the effects of using a demand-based allocator may not be neutral in application among Operating Companies given differences in load factors among Operating Companies that could result in cost shifts between Operating Companies.[174]

139. The Mississippi Commission contends that the nature of energy losses is more consistent with an energy allocator than with a demand allocator.[175] It contends that Entergy erroneously cites *Kentucky Utilities* as supporting use of a demand allocator. The Mississippi Commission argues that decision actually contrasted fixed costs, which should be allocated based on peak demands, with "the energy component, which includes

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[171] Entergy Transmittal Letter at 8 (citing *Kentucky Utilities Company*, 15 FERC ¶ 61,002, at 61,007 (1981) (*Kentucky Utilities*)).

[172] Mississippi Commission Comments at 8.

[173] *Id.* at 9.

[174] *Id.*

[175] *Id.* at 10.

the variable costs used to generate the total energy consumers consume" and which should be allocated based on energy consumed.[176]

140. In its answer, Entergy states that it does not object to the use of an energy-based allocator[177] for the allocation of losses among the Operating Companies. It states that to address the Mississippi Commission's concerns, it will commit to file revisions to the System Agreement to incorporate an energy-based allocator in a compliance filing in this docket.[178]

141. In an answer to Entergy's answer, the Louisiana Commission challenges Entergy's revised proposal on the grounds that it fails to provide notice regarding the change in allocation methodology agreed to in Entergy's answer; that it lacks actual or *pro forma* data, testimony or other evidence by Entergy to support this approach; and that it lacks tariff sheets clearly describing the modified approach.[179] The Louisiana Commission states that the Commission cannot approve a proposal it has never seen, and that if the Commission were to do so, it would not know at the time of Entergy Arkansas' withdrawal whether post-withdrawal successor arrangements are just and reasonable.[180] The Louisiana Commission states Entergy provides no basis for concluding that net marginal losses would be related to overall energy use.[181]

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[176] *Id.* at 11 (citing *Kentucky Utilities*, 15 FERC ¶ 61,002 at n.20).

[177] Entergy Answer at 13. Entergy did not define "energy-based allocator" or otherwise provide tariff sheets that would clarify its meaning, but said that this change to its original filing was responsive to the Mississippi Commission's Comments. The Mississippi Commission defined the current approach of both the System Agreement and MISO's Marginal Loss Component as "tied predominantly to kWh of energy use," which was the allocation methodology it recommended that Entergy employ for allocation of these costs. *See* Mississippi Commission Comments at 8.

[178] Entergy Answer at 18.

[179] Louisiana Commission Answer at 4-6, 15.

[180] *Id.* at 6.

[181] *Id.* at 14.

(b) Determination

142. We conditionally accept Entergy's proposal for allocation of losses to load, subject to Entergy filing revised tariff sheets to use energy as the basis for the allocator instead of peak demand, as it agrees to in its answer. We are accepting the use of an energy allocator to allocate losses, in principle, subject to a compliance filing in which Entergy will be required to provide revised tariff sheets specifying how the energy-based allocator will be calculated, with appropriate support. Generally, we find Entergy's proposed amendments allocating losses to load, as modified, to be reasonable because they are consistent with the manner in which such costs are reflected in the System Agreement and will be incurred in the MISO markets.

143. We find Entergy's original proposal to allocate energy losses through use of a peak-load demand allocator to be unjust and unreasonable. As the Mississippi Commission notes, and Entergy does not refute, the manner in which losses will be incurred in MISO and the manner in which they are currently reflected in the System Agreement support the use of an energy allocator to allocate MISO energy losses. As the Mississippi Commission notes, the incurrence of the marginal loss component of MISO's LMPs are tied to kWh of energy use, rather than to kW of demand.[182] Likewise, energy losses are currently reflected in the energy allocation formula of Service Schedule MSS-3, in which energy costs are allocated based on energy use, rather than a peak load demand allocator.

144. *Kentucky Utilities* is inapplicable here. *Kentucky Utilities* establishes that a peak load demand allocator can be an acceptable cost allocation mechanism in certain circumstances for allocating demand or capacity costs, and the Commission in that decision addressed whether interruptible load should be included in the peak load demand allocator used to allocate transmission capacity costs. As applicable to this matter, the Commission has recognized that it is appropriate to use energy allocators to allocate variable costs in a wide variety of contexts, including within the System Agreement.[183]

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[182] Mississippi Commission Comments at 8. *See* MISO Tariff, Module C, § 39.2.9(b)(ii) (Day Ahead Energy and Operating Reserve Market Process) Version 3.0.0, Effective 4/1/2011; MISO, FERC Electric Tariff, Module C, § 40.2.15 (Real-Time Energy and Operating Reserve Market Process), Version: 2.0.0, Effective: 4/1/2011.

[183] *See, e.g.*, *Midwest Indep. Trans. Sys. Operator Inc.*, 119 FERC ¶ 61,311, at P 104 n.76 ("Since reserve requirements are a function of hourly energy requirements, an energy-based allocation is appropriate and other allocations, such as those based on peak demands or day-ahead financial schedules, would not be appropriate since they do not reflect cost incurrence."), *reh'g denied*, 120 FERC ¶ 61,202 (2007); *Southwestern Public*

(continued…)

We find that given the nature of energy losses, and the manner in which such losses are allocated under the current System Agreement and incurred in the MISO markets, as described above, an energy-based allocator is a just and reasonable manner of allocating such costs.

145. The Louisiana Commission also questions how we could accept an energy-based allocator given a lack of tariff sheets, as well as a lack of data, testimony or other evidentiary support for this approach. As discussed above, we find there is a sufficient basis for our acceptance here of an energy-based allocator in principle. We will direct Entergy to provide revised tariff sheets specifying how the energy-based allocator will be calculated, and support for the same, in a compliance filing. Parties such as the Louisiana Commission will then have an opportunity to comment upon Entergy's proposal.

(2) Ancillary Services

(a) Filings

146. Entergy states that MISO procures Regulation, Spinning, and Supplemental Reserve Capacity in its Day-Ahead and Real-Time Markets based on offers made by its market participants in order to ensure that market participants are able to provide reliable service in accordance with Reliability Standards established by the North American Electric Reliability Corporation, the Commission, and good utility practice. Entergy states that MISO assesses charges and credits related to these ancillary services to load and to the generating units selected by MISO to provide ancillary services.

147. Entergy proposes to allocate the ancillary services charges and credits associated with load separately from the charges and credits associated with generating units. Entergy states that proposed section 30.16 of Service Schedule MSS-3 describes the proposed allocation of Ancillary Services Charges and Credits assessed to load. Specifically, Entergy proposes to sum the hourly Ancillary Services Charges and Credits

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Service Co., Opinion No. 421, 83 FERC ¶ 61,138, at 61,361 n.52 (1998) ("The short-term firm sales, transmission and exchange component should be allocated using the energy allocator for the appropriate rate period."); *Entergy Servs., Inc.*, Opinion No. 514, 137 FERC ¶ 61,029, at P 187 (2011) ("[S]ection 30.13 of Service Schedule MSS-3 requires that 'fixed production cost' be allocated among Operating Companies using demand and that 'variable production cost' be allocated among Operating Companies using an energy allocator. . . ."), *reh'g denied*, Opinion No. 514-A, 142 FERC ¶ 61,013, at PP 53-56 (2013).

assessed to load over each month. In its original filing, Entergy proposes to allocate the resulting amount to each participating Operating Company relating to load based on Responsibility Ratio as defined in section 2.18(a) of the System Agreement. It justifies this on the same basis used for this allocation methodology for losses, that is, based upon the same language of *Kentucky Utilities*. However, as noted above, Entergy altered its proposed methodology in its answer to instead use an energy allocator.

148. Entergy states that section 30.17 of Service Schedule MSS-3 describes the proposed allocation of Ancillary Services Charges and Credits for each generating unit that MISO selects to provide ancillary services. Specifically, Entergy proposes to sum the hourly Ancillary Services Charges and Credits for each such generating unit over each month and to allocate the resulting amount based on the Monthly Unit Fuel Cost Allocation Factors, as defined in proposed section 2.32 of the System Agreement. Entergy states that the proposal is just and reasonable because it allocates net Ancillary Services Charges and Credits associated with a generating unit selected by MISO to provide ancillary services based on the participating Operating Companies that pay for the fuel costs of the unit. Entergy states that it is just and reasonable to credit the generating units that bear the burden of the fuel costs with the ancillary services revenues.

149. The Mississippi Commission states that it objects to the use of demand-based allocators to apportion credits and charges for ancillary services to load for the same reason that it objects to use of that allocator for allocations of losses.[184] The Mississippi Commission states that under the System Agreement, the costs of ancillary services are allocated initially to each Operating Company based on the extent to which its generation is dispatched to provide ancillary services for its own hourly loads, and secondarily to the Operating Companies that are net energy recipients in any given hour. It states that MISO's generally-applicable allocation of payments for operating reserves within a given "Reserve Zone" is similarly allocated by hourly energy usage, and not by monthly peak demand.[185] The Mississippi Commission argues that it appears to be unreasonable in principle for Entergy to replace energy-based allocation with a demand-based responsibility ratio.

150. The Mississippi Commission states that it may be appropriate to use fuel cost allocators to assign charges and credits for ancillary services provided by generators, as

[184] Mississippi Commission Comments at 12-13.

[185] *Id.* at 12 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 391 (2008)).

Entergy proposes to do, at least if the credits flow through to the retail customers of the Operating Companies that own the credit-receiving resources, via fuel clauses. The Mississippi Commission expresses concern that disparate treatment of load-side and resource-side ancillary services billings, with the former based upon a peak demand allocator and the latter based upon Monthly Unit Fuel Cost Allocation Factors may, taken together, exacerbate the present filing's cost-shifting effect.

151. Based upon the Mississippi Commission's protest, Entergy in its answer proposes to allocate charges and credits to load based upon an energy allocator, rather than a demand allocator.

152. In its response to Entergy's answer, the Louisiana Commission states that the revised proposal to use an energy allocator for ancillary services is not justified with evidence or explanation.[186]

(b) Determination

153. We conditionally accept Entergy's proposal to allocate the costs of ancillary services to load, subject to Entergy filing revised tariff sheets to use energy as the base for the allocator instead of peak demand, as it agrees to in its answer. We are accepting the use of an energy allocator to allocate ancillary service costs to load, in principle, subject to a compliance filing in which Entergy will be required to provide revised tariff sheets specifying how the energy-based allocator will be calculated, with appropriate support. We also accept Entergy's proposal to allocate ancillary services charges and credits to generating units based on the monthly unit fuel cost allocation factors.

154. As with losses, we find that Entergy's proposal to allocate ancillary services costs to load through use of a demand-based allocator is unjust and unreasonable. We agree with the Mississippi Commission that under the System Agreement, the costs of ancillary services are allocated initially to each Operating Company based on the extent to which its generation is dispatched to provide ancillary services for its own hourly loads, and secondarily to the Operating Companies that are net energy recipients in any given hour. This allocation is based upon energy use rather than peak load. Likewise, MISO's generally-applicable allocation of payments for operating reserves within a given "Reserve Zone" is similarly allocated by hourly energy usage, and not by monthly peak demand.[187] We reject Entergy's attempt to support a peak load demand-based allocator

[186] Louisiana Commission Answer at 14.

[187] *Mississippi Commission Comments* at 12 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 391 (2008)).

with the Commission's holding in *Kentucky Utilities* for the same reason described in our discussion of losses.

155. We reject the Louisiana Commission's assertion that use of an energy allocator is not supported with explanation or justification. As discussed above, we find there is sufficient basis for our acceptance here of an energy-based allocator, in principle, to allocate ancillary services costs to load. Also, as with our acceptance of such an allocator for losses, we will direct Entergy to provide revised tariff sheets specifying how the energy-based allocator will be calculated, and support for the same, in a compliance filing.

156. As noted, Entergy proposes to allocate compensation to generators for supplying ancillary services by summing hourly ancillary services charges and credits and allocating the resulting amount based on monthly unit fuel cost allocation factors as defined in new section 2.32 of Service Schedule MSS-3. We agree with Entergy that this is just and reasonable because it allocates net charges and credits associated with generating units in a manner that appropriately represents costs incurred to provide operating reserves on a relative basis among Operating Companies.

157. We also find that the acceptance of an energy allocator to allocate ancillary services costs to load addresses the Mississippi Commission's concerns regarding a possible conflict between use of a peak load demand allocator for load and a monthly unit fuel cost allocation factor for generators**.**

(3) Uplift

(a) Filings

158. With respect to its Amendments related to uplift, Entergy states that in order to efficiently operate its market and incentivize appropriate economic behavior, MISO provides revenue sufficiency guarantee (RSG), or make-whole payments, to the generating units it selects to satisfy its requirements. Entergy states that these payments, also referred to as "uplift" payments or credits, ensure that generating units that are committed and scheduled by MISO in the Day-Ahead and/or Real-Time energy market recover their production and operating reserve costs.[188] Entergy states that uplift generally incentivizes MISO market participants that own generating resources to: (1) offer their resources to MISO at their actual costs and capabilities; (2) follow MISO instructions corresponding to selected units; and (3) schedule generating units as accurately as possible in the Day-Ahead Market. It states that MISO generally makes

[188] Entergy Transmittal at 10.

uplift payments to generators and funds these payments through charges to load, though it notes that charges to generators are also possible.

159. In its original filing, Entergy proposes to allocate uplift charges and credits to load in the same manner as the allocation for ancillary services, based upon Entergy's Responsibility Ratio, and justifies its cost allocation proposals on the same basis, including reliance upon *Kentucky Utilities*.

160. Entergy proposes to allocate compensation to generators in the form of revenue sufficiency guarantee/make-whole payments by summing hourly revenue sufficiency guarantee/make-whole payment charges and credits over the month and allocating the resulting amount based on monthly unit fuel cost allocation factors as defined in new section 2.32 of Service Schedule MSS-3 and justifies this allocation methodology identically as it did for use of the monthly unit fuel cost allocation factors for ancillary services.

161. The Mississippi Commission expresses similar concerns with respect to the allocation of uplift credit and charges to load using a peak load demand allocator as it did to the corresponding Entergy losses and ancillary services proposals, noting that both MISO and the System Agreement allocate such costs or similar ones based on cumulative energy takes over time, not based on peak demand.[189] It notes that under the existing System Agreement, the cost of unit commitment, which it states is the closest analog to RSG charges under the System Agreement, is borne in the first instance by the Operating Company that owns each committed resource, and secondarily by the Operating Companies that are net energy recipients in any given hour, through the Service Schedule MSS-3 formula for pricing hourly energy exchanges. It states that in combination, these primary and secondary cost allocation mechanisms mean that the allocation of unit commitment costs across Operating Companies is tied to their cumulative energy takes over time, as distinguished from their peak demands. Similarly, it states that under the MISO Tariff, RSG costs are allocated based on hourly energy loads and Day-Ahead RSG credits are funded through charges to hourly demand bids, while Real-Time RSG credits are funded through charges tied to real-time demands.[190]

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[189] Mississippi Commission Comments at 13-14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at PP 2-3 (2012); Service Schedule MSS-3).

[190] *Id.* at 15.

162. Based on the Mississippi Commission's protest, Entergy in its answer proposed to instead allocate such charges and credits to load based upon an energy allocator, rather than a demand allocator.

163. In its response to Entergy's answer, the Louisiana Commission contends that Entergy fails to associate uplift costs with energy use, especially since Entergy runs units out of economic order primarily for reliability in load pockets.[191] The Louisiana Commission also states that the revised proposal to use an energy allocator for uplift is not justified with evidence or explanation.[192]

(b) Determination

164. We conditionally accept Entergy's proposal to allocate the costs of uplift to load, subject to Entergy filing revised tariff sheets to use **e**nergy as the basis for the allocator instead of peak demand, as it agrees to in its answer. We are accepting the use of an energy allocator to allocate uplift costs to load, in principle, subject to a compliance filing in which Entergy will be required to provide revised tariff sheets specifying how the energy-based allocator will be calculated, with appropriate support. We also accept Entergy's proposal to allocate compensation to generating units based on the monthly unit fuel cost allocation factors.

165. As with losses and ancillary services, we find that Entergy's proposal to allocate the costs of uplift to load through use of a demand-based allocator is unjust and unreasonable. We agree with the Mississippi Commission that such a methodology is inconsistent with the fact that both MISO and the System Agreement allocate such costs or analogous costs based on cumulative energy takes over time, not based on peak demand.[193] We agree with use of an energy allocator to allocate charges and credits to load for uplift, for the same reasons identified above in the analysis of losses and ancillary services, namely that it better approximates the allocation of analogous costs under the System Agreement and the manner in which such costs are incurred in the MISO markets. The System Agreement allocates unit commitment cost responsibility on an hourly energy basis. In addition, we agree with the Mississippi Commission that in MISO such costs and credits are largely tied to demands in the market in each dispatch

[191] Louisiana Commission Answer at 15.

[192] *Id.*

[193] Mississippi Commission Comments at 13-14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at PP 2-3 (2012); Service Schedule MSS-3).

interval on a Day-Ahead and Real-Time basis, rather than based upon peak demand.[194] We reject Entergy's attempt to support a peak load demand-based allocator with the Commission's holding in *Kentucky Utilities* for the same reason applicable in our discussion of losses and ancillary services.

166. We reject the Louisiana Commission's assertion that use of an energy allocator is not supported with explanation or justification. As discussed above, we find there is sufficient basis for our acceptance here of an energy-based allocator, in principle, to allocate the costs of uplift to load. Also, as with our acceptance of such an allocator for losses and ancillary services, we will direct Entergy to provide revised tariff sheets specifying how the energy-based allocator will be calculated, and support for the same, in a compliance filing.

167. As noted, Entergy proposes to allocate compensation to generators in the form of revenue sufficiency guarantee/make-whole payments by summing hourly revenue sufficiency guarantee/make-whole payment charges and credits over the month and allocating the resulting amount based on monthly unit fuel cost allocation factors as defined in new section 2.32 of Service Schedule MSS-3. We agree with Entergy that this is just and reasonable because it allocates net charges and credits associated with generating units in a manner that appropriately represents the costs of unit commitment incurred on a relative basis among Operating Companies.

(4) Allocation of Congestion Costs and Long-term Transmission Rights

(a) Filings

168. Entergy proposes amendments to allocate congestion costs in MISO among the Operating Companies. Entergy explains that congestion costs in MISO are more explicit than in the Entergy region and are reflected by different energy prices, LMPs, being established on each side of a transmission constraint. Entergy states that its approach to allocating congestion costs reflects several interrelated factors. First, Entergy states that in MISO the Operating Companies should receive a reasonable hedge on congestion based on their historical rights to the transmission system associated with their existing

[194] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at PP 2-3 (2012) (citing sections 39.3.2B and 40.2.19 of the MISO Tariff). MISO also allocates voltage or local reliability commitments to load on a pro rata basis using actual energy withdrawals. *Id.* P 8; *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,204, at P 28 (2012).

long-term resources, consistent with the Commission's Order Nos. 681 and 681-A.[195] Pursuant to those orders, congestion hedging in MISO is addressed through allocation of ARRs with long-term durations, and long-term transmission rights, to load-serving entities. Entergy further states that assuming this, if the participating Operating Companies end up facing a net congestion charge or credit in MISO – meaning that total congestion charges are different from total congestion credits – then the net congestion charge or credit relates to the participating Operating Companies' use of short-term purchases in place of the existing long-term resources that were the basis of the allocation of the congestion hedges. It states that, given this relationship between congestion hedges and short-term purchases, any net congestion charge or credit should be allocated to the participating Operating Companies that receive the short-term purchases.

169. Entergy proposes to net all congestion credits received by all of the participating Operating Companies from MISO each month with all congestion charges paid by all of the participating Operating Companies to MISO each month. Entergy proposes to allocate the net result – whether a net charge or a net credit – to each participating Operating Company based on each participating Operating Company's total use of short-term purchases to meet its load over the month. Entergy states that the determination of the portion of total short-term purchases used to meet each participating Operating Company's load reflects the results of Service Schedule MSS-3 exchange energy accounting. Entergy asserts that this approach is reasonable because short-term purchases will be utilized when it is economically beneficial to do so. Further, Entergy contends that this methodology is just and reasonable because it adheres to the principle that burdens should follow benefits by allocating the net congestion amount to the beneficiaries of those short-term purchases. Entergy states that it expects the benefits of engaging in short-term purchases in the MISO markets to outweigh any congestion shortfall on long-term resources, and therefore, it is reasonable to allocate the net congestion amount to the beneficiaries of those short-term purchases.

170. Proposed sections 30.21 and 30.22 describe in more detail how the net congestion amount is determined (section 30.21) and how that amount is allocated among the participating Operating Companies (section 30.22).

171. In their protests and comments, the Mississippi Commission, the Louisiana Commission and the New Orleans Council state that Entergy has failed to adequately

[195] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 (cross-referenced at 116 FERC ¶ 61,077 (2006)), *Reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g and clarification*, Order No. 681-B, 126 FERC ¶ 61,254 (2009).

support its proposal. The Mississippi Commission states that Entergy's explanation has some logic, but that logic depends on how MISO will allocate congestion revenue rights and on how Entergy will apply those rights, and that depending upon this application the linkage between unhedged congestion costs and short-term purchases could become broken or attenuated.[196] It also expresses concern regarding possible unfair misallocation of the sources of revenue resulting from FTRs.

172. The Louisiana Commission contends that Entergy's proposal is unjust, unreasonable and unduly discriminatory and attempts to conflate long-term congestion with short-term congestion. It states that Entergy's explanation does not provide a valid basis to accept the proposal to allocate long-term congestion charges based on use of short-term energy purchases.[197] It states that Entergy proposes to allocate costs of congestion caused by particular resources based on short-term energy purchases from entirely different resources and that Entergy's proposal violates the fundamental cost allocation principle of cost causation.[198] The Louisiana Commission states that Entergy's attempt to conflate long-term and short-term congestion, and its contention that short-term purchases cause all congestion, is inconsistent with MISO's disaggregation of these congestion charges.[199] The Louisiana Commission questions Entergy's suggestion that it will obtain hedges sufficient to deal with differences in LMP prices across transmission constraints because hedges are granted based on feasible transactions, and not all transactions on the Entergy System are feasible.[200]

173. The New Orleans Council expresses concern that Entergy has not demonstrated that congestion cost hedging will be adequate.[201] The New Orleans Council states that Entergy has not met its burden of proof to show that all congestion charges are, in fact, the result of short-term purchases, and thus should not necessarily be allocated to the Operating Companies that receive short-term purchases.[202] It also expresses concerns

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[196] Mississippi Commission Comments at 16.

[197] Louisiana Commission Answer at 23.

[198] *Id.* at 8, 23-25.

[199] *Id.* at 25.

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

[201] New Orleans Council Protest at 8.

[202] *Id.* at 8.

that without knowing if, and to what extent, any Operating Company will be unhedged, the unhedged congestion costs alone may eradicate any benefit that the retail ratepayers taking service from the Operating Companies may accrue from MISO membership.[203]

174. With respect to the allocation of ARRs, the Louisiana Commission states that Entergy's strategy of having each Operating Company nominate resources for its own account reflects a deliberate choice not to maximize the potential awards of ARRs by combining the available resources and nominating on a System-wide basis, and reflects individual Operating Company considerations. Yet, the Louisiana Commission states, Entergy apparently plans to have a centralized department strategize and plan the bidding of resources into the market and make use of ARR allocations. It states that the System Agreement fails to provide for performing these functions to maximize benefits for individual Operating Companies, the System as a whole, or on any other basis.[204]

175. The Louisiana Commission asks the Commission to examine the reasonableness of Entergy's choice to allocate ARR entitlements on an individual Operating Company basis, which it contends unduly discriminates against Operating Companies other than Entergy Arkansas in the System Agreement.[205] The Louisiana Commission states that MISO's auction process permits a party to nominate its base load resources up to 50 percent of its peak load. As Entergy Arkansas owns base load resources significantly above that level, while most of the other Companies have entitlements to base load resources significantly below that level, the Louisiana Commission contends that Entergy's choice disadvantages Operating Companies that were assigned fewer base load resources as the result of the historical System planning process.[206] The Texas Commission states that the costs and benefits of the Operating Companies' participation in MISO, and whether the System Agreement as modified by Entergy's proposed Amendments is just and reasonable, cannot be evaluated until the outcome of MISO's allocation of ARRs to the Operating Companies is known.[207]

176. In its February 6, 2013 answer to protests, the Arkansas Commission states that this docket is not the place to address the protestors' concerns over ARR allocation issues,

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[203] *Id.* at 8-9.

[204] Louisiana Commission Protest at 16.

[205] *Id.* at 6-7, 20.

[206] *Id.* at 20; *see also* Texas Commission Protest at 32.

[207] Texas Commission Protest at 32-33.

given that MISO has authority and responsibility to allocate ARRs under its own Tariff, in the first instance. The Arkansas Commission states that concerns over the insufficiency of ARR allocations are better addressed in dockets concerning the Operating Companies' membership in MISO.[208] The New Orleans Council disagrees with the Arkansas Commission that congestion cost allocation is beyond the scope of this proceeding, given that the allocation of congestion revenues and costs is a major component of Entergy's filing, and the New Orleans Council has concerns that an inappropriate allocation of congestion revenues could result in under-hedging detrimental to its state ratepayers.[209]

177. In its answer, Entergy reiterates that its congestion cost allocation proposal is just and reasonable since it allocates net congestion charges or credits included in the MISO invoice to the Operating Companies that receive the resources that caused the net congestion charge or credit to occur.[210] It states that the Operating Companies expect to receive a reasonable congestion hedge for their existing long-term resources, consistent with Order Nos. 681 and 681-A. Entergy states that, as a result, if the Operating Companies rely solely on their existing long-term resources in MISO, they would not expect to incur net congestion charges: the congestion hedges received through the MISO allocation process would be expected to offset the congestion charges associated with the use of the resources. Entergy states that if the Operating Companies rely on short-term purchases in MISO instead of their existing long-term resources, they could incur net congestion in the MISO invoice; the net amount could be a charge or credit depending on the comparison of the congestion charges associated with the short-term purchases and the congestion credits associated with the existing resources that were avoided. Entergy states that the net charge or credit is directly linked to the reliance on short-term purchases: had Operating Companies not made the short-term purchases and, instead, used their existing long-term resources, they would have been hedged (as described above).[211]

178. Entergy rejects the Louisiana Commission's assertion that allocating short-term congestion costs to Operating Companies that receive short-term energy may not have a cost-causation basis because, Entergy states, its proposal as implemented will reflect

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[208] Arkansas Commission February 6, 2013 Answer at 6.

[209] New Orleans Council February 21, 2013 Answer at 2.

[210] Entergy Answer at 19.

[211] *Id.* at 19-20.

actual net congestion invoices from MISO.[212] Entergy also rejects the Louisiana Commission's assertion that its proposal is unjust, unreasonable, and unduly discriminatory because Entergy will not make short-term purchases to displace long-term resources that are burdened with congestion charges on a variety of grounds.

179. With respect to allocation of ARRs, Entergy states that the Operating Companies expect to receive a reasonable congestion hedge for their existing long-term resources, consistent with Order Nos. 681 and 681-A.[213] Entergy states that the allocation of ARRs to Operating Companies cannot be known until the Operating Companies integrate.[214] Entergy states that under the revised transitional proposal proposed in its answer, the Operating Companies will participate in full cycles of the MISO ARR allocation process, informing the Operating Companies and their regulators with actual data that can inform their decisions regarding whether this methodology should be re-evaluated.

180. The Louisiana Commission's subsequent answer to Entergy's answer states that Entergy's answer does not justify Entergy's approach toward congestion costs.[215] It states that Entergy's predictions that all congestion will be hedged, and benefits will outweigh burdens, is unlikely. It reiterates its concerns that Entergy has not considered transmission infeasibility.

181. In its answer to Entergy's answer, the Texas Commission states that Entergy wholly fails to provide data on expected ARR allocations. The Texas Commission states that the lack of actual data should not prevent Entergy and MISO from providing evidence on "the state of ARR allocations, the projected allocations, and the like."[216] The Arkansas Commission in an April 23, 2013 answer to the Louisiana Commission answer contends that the Commission should reject the Louisiana Commission's request for the Commission to examine ARR allocations, given it is based upon erroneous assertions.

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[212] *Id.* at 20.

[213] *Id.* at 19.

[214] *Id.* at 13.

[215] Louisiana Commission Answer at 3-4, 11-12.

[216] Texas Commission March 29, 2013 Answer at 9.

(b) Determination

182. We accept Entergy's congestion cost amendments and reject protests related to allegations of inadequate allocations of ARRs for sufficient hedging. We find that Entergy's proposal to allocate remaining net congestion costs through the use of relative short-term purchases is a reasonable proxy for such costs based on MISO's market design, and we disagree with comments that there is an insufficient causal relationship. We disagree with protestors' arguments that additional data is necessary to support Entergy's proposal as just and reasonable. There is sufficient basis to accept Entergy's proposal on MISO's market design**.** We also note that parties will have the opportunity to review the Intra-System Bill data that Entergy commits to provide as part of its Transition Period Proposal, which we accept below, in order to evaluate whether a more refined allocation may have merit and is feasible. And, as Entergy notes, applicable precedent requires only that the Commission find a proposed rate to be just and reasonable, not necessarily that it is "the 'best,' or 'superior' to all others, in order to adopt it."[217] In addition, we find certain arguments of the Louisiana Commission, such as the alleged conflation between long and short-term congestion, to be unclear.

183. Regarding protestors' concerns related to the adequacy of long-term transmission rights and adequate congestion hedging in MISO, two recent Commission orders have addressed this issue. In *MISO*,[218] the Commission accepted supplemental long-term transmission rights rules proposed by MISO to, *inter alia*, increase non-Entergy Arkansas Operating Companies' access to long-term transmission rights. Also, the Commission recently accepted an Entergy filing that will reallocate Reserved Source Points, the source of ARR entitlements and long-term transmission rights, from Entergy Arkansas to other Operating Companies and thereby increase their long-term transmission rights.[219]

184. We further agree with the Arkansas Commission that protestors' concerns regarding the allocation of sufficient ARRs to individual Operating Companies is in the first instance best addressed to MISO, as MISO is the organization in charge of the ARR allocation. We note that MISO remains obligated to ensure the reasonable long-term

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[217] Entergy Answer at 28 (citing *American Electric Power Service Corp.*, Opinion No. 311, 44 FERC ¶ 61,206, at 61,749, *reh'g denied*, Opinion No. 311-A, 45 FERC ¶ 61,408 (1988), *reh'g denied*, Opinion No. 311-B, 46 FERC ¶ 61,382 (1989)).

[218] *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,236 (2013) (*MISO*).

[219] *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299 (2013).

transmission rights needs of the Entergy Operating Companies.[220] We also find that protestors' assertions of inadequate ARR allocations are speculative and premature prior to actual ARR allocation results.

(5) Other MISO Cost-related Amendments

(a) Filings

185. Entergy proposes certain Amendments to Service Schedules MSS-3 and MSS-5 of the System Agreement related to Joint Account Energy Purchases and Joint Account Energy Sales in MISO, which would clarify how information provided by MISO will be used to identify the quantity and price at which these types of LMP purchases and sales will occur in MISO's Day-Ahead and Real-Time markets. Entergy states that two proposed Service Schedule MSS-3 amendments describe how the quantity and price of LMP purchases (section 30.24) and LMP sales (section 30.25) are determined. Entergy states that the price of the LMP purchases will be based on the load zone LMPs of the participating Operating Companies, with generation plus scheduled purchases net of sale that are less than the participating Operating Companies' load in the hour. It states that the price of LMP sales will be based on the LMP of the resource determined to source the sale. Entergy states that the quantity of LMP purchases and sales is reflected in the difference between the total load and the total generation plus scheduled purchases and sales identified on the MISO settlement statements. Entergy states that the proposed methodology is reasonable because the price for LMP purchases and LMP sales will reflect the prices in the MISO markets.[221]

186. Entergy also proposes to add a new Service Schedule MSS-8 to allocate MISO administrative charges, which would allocate such charges pursuant to the System Agreement's Responsibility Ratio load allocator.

187. Service Schedule MSS-1 equalizes the costs of certain capacity reserves on the Entergy System through allocation of the ownership of certain generation resources. Entergy proposes a minor amendment to clarify that an Operating Company's capability includes allocated amounts of joint account capacity purchases in the MISO Resource Adequacy Market. Additionally, Entergy proposes an amendment to Service Schedule

[220] *See MISO*, 142 FERC ¶ 61,236 at P 38 ("We note that MISO remains bound by the Commission's statements in Order Nos. 681 and 681-A regarding its obligations to meet the reasonable LTTR needs of eligible LSEs and we accept MISO's Tariff revisions as a means toward that end.").

[221] Entergy Transmittal at 15.

MSS-4 (Unit Power Purchases) to allow the cost of purchased energy related to unit power purchases from designated generating units to reflect any related MISO uplift charges and credits and ancillary services.

188. Service Schedule MSS-2 equalizes certain transmission ownership costs. Entergy proposes to continue the historical application of Service Schedule MSS-2 transmission equalization upon MISO integration with one exception. It states that in Service Schedule MSS-2, investments otherwise eligible for equalization are excluded if the investments are "included in billings under other agreements." Entergy proposes to revise Service Schedule MSS-2 (Section 20.02) to make clear that investments for upgrades contained in Schedules 26 (Network Upgrade From Transmission Expansion Plan) and 26-A (Multi-Value Project Usage Rate) of the MISO Tariff are considered billings under other agreements and are excluded from the calculation of a participating Operating Company's transmission investment. Entergy states that this proposal is just and reasonable because for Schedules 26 and 26-A, MISO will determine which transmission pricing zones will benefit from a particular upgrade and that, as a result, upgrades that are included in Schedules 26 and 26-A will not be equalized. It notes that Schedules 26 and 26-A are MISO schedules that are outside the System Agreement.

(b) Determination

189. We accept Entergy's proposed amendments to allocate costs for joint account energy purchases and sales, its modifications to Service Schedules MSS-1, MSS-2, MSS-3, MSS-4, and MSS-5, and its addition of Service Schedule MSS-8. We find Entergy's proposed manner of allocating costs for joint account energy purchases and sales to be just and reasonable because it accurately reflects the quantity and price of the LMP purchases and LMP sales. We find that the use of a Responsibility Ratio load allocator to apportion MISO administrative charges under proposed Service Schedule MSS-8 is just and reasonable because it is consistent with a similar allocator used presently in Service Schedule MSS-6 to allocate similar costs. We find Entergy's proposed amendments to Service Schedules MSS-1, MSS-2, and MSS-4 will increase the accuracy of cost allocations for the Operating Companies' operations in MISO.

(6) Data Support for the MISO Cost Allocation Amendments

(a) Filings

190. Protestors contend that Entergy has not carried its FPA section 205 burden of proof to show that the MISO Cost Allocation Amendments are just and reasonable.[222] Protestors claim that Entergy has not provided adequate data for the Commission to find that that these amendments are just and reasonable.[223] They note that Entergy filed no testimony or evidentiary support for its filing. The Entergy Retail Regulators contend that Entergy's failure to populate the System Agreement with actual or forecasted MISO cost and payment information that would permit Entergy Retail Regulators to understand the practical effect of Entergy's proposed changes is a violation of Commission regulations that require utilities that file a formula rate to populate the formula with actual data to facilitate determination of the rate impact and whether the rate is just and reasonable. The Mississippi Commission makes similar assertions.[224] The Entergy Retail Regulators claim that in the absence of actual cost and payment information, understanding the rate impacts of a formula is nearly impossible.[225] The Entergy Retail Regulators claim that the complexity of Entergy's many pending filings before the Commission that may affect the MISO Cost Allocation Amendments make setting this matter for hearing essential.[226]

191. Protestors state that the ADR process was limited by Entergy[227] and functioned under the false premise that Entergy would enter MISO as a single market participant

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[222] Mississippi Commission Comments at 1; Entergy Retail Regulators Initial Comments at 5; Texas Commission Protest at 12; Louisiana Commission Protest at 1, 3-4, 9; New Orleans Council Protest at 1.

[223] Mississippi Commission Comments at 6; Texas Commission Protest at 12.

[224] Entergy Retail Regulators Initial Comments at 5-6 & n.4 (citing *S. Minn. Mun. Power Agency*, Deficiency Letter, Docket No. ER06-586-000 (Mar. 15, 2006) and *Baltimore Gas and Elec. Co.*, Deficiency Letter, Docket No. ER07-576-000 (May 4, 2007)); Mississippi Commission Comments at 2, 6-7.

[225] Entergy Retail Regulators Initial Comments at 5.

[226] *Id.* at 6.

[227] Louisiana Commission Protest at 11-12; New Orleans Council Protest at 10.

rather than (as was subsequently announced) five market participants[228] and is no substitute for a complete investigation and hearing.[229] The Texas Commission also contends that Entergy did not introduce certain limited data regarding MISO costs discussed in the ADR process.[230] The New Orleans Council states that Entergy does not provide adequate explanation and analysis of those changes, nor a sufficient showing of how the cost allocations will impact the individual Operating Companies.[231]

192. In its answer, Entergy states that it shared MISO-related data and analysis that was currently available during the ADR process and has thereby satisfied any reasonable need for information.[232] Entergy asserts that the data that the protestors seek can only be achieved through Entergy operation in the MISO markets and that the lack thereof cannot logically be used as a bar to accepting the MISO Cost Allocation Amendments. Entergy asserts that setting this matter for evidentiary hearing now would generate litigation before the relevant facts necessary for a Commission determination will be available.

193. Entergy states that because the formulas themselves are the rates on file, populated formulas are not required as a part of this transition filing or to determine if the allocation methods are just and reasonable.[233] It states that in other proceedings, the Commission has not required the filing of populated formula rate templates.[234] Although it states that the proposed Amendments to the System Agreement have been fully justified, Entergy

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[228] Louisiana Commission Protest at 13.

[229] Louisiana Commission Protest at 12; New Orleans Council Protest at 11.

[230] Texas Commission Protest at 4-5.

[231] New Orleans Council Protest at 7.

[232] Entergy Answer at 13. This data was not included in Entergy's filing with the Commission.

[233] Entergy Answer at 14-15 (citing *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,545 (1994)).

[234] *Id.* at 15 (citing *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007) (*ITC Holdings*); *Green Power Express LP*, 127 FERC ¶ 61,031 (2009), *reh'g denied*, 135 FERC ¶ 61,141 (2011); *Tallgrass Transmission, LLC and Prairie Wind Transmission, LLC*, 125 FERC ¶ 61,248 (2008); *RITELine Illinois, LLC and RITELine Indiana, LLC*, 137 FERC ¶ 61,039 (2011)).

also asserts that a two-year transition period, as has been used with other RTOs, would help to address the concerns raised by the retail regulators.[235]

194. The Texas Commission states that Entergy in its answer admits that it has no operating data upon which to make informed decisions about allocating costs among the Operating Companies. According to the Texas Commission, this demonstrates that the proposed modified System Agreement has not been proven to be just and reasonable.[236]

195. The New Orleans Council states that Entergy's answer does not provide any further information or data regarding the impact of the MISO Cost Allocation Amendments on ratepayers and without such a showing, the Commission should not find Entergy's proposal just and reasonable.[237] The Texas Commission states that any departure by Entergy from the MISO Tariff must be proven by its proponent to be just and reasonable, yet Entergy has offered no explanation, no testimony, no demonstration or data, and no precedent to explain why the System Agreement should continue in any form on a post-integration basis.[238] The Texas Commission states that the Commission does not simply accept pre-existing arrangements because they are pre-existing to the company's participation in an RTO.[239] The Texas Commission reiterates that the Commission should examine the proper duration for notice to withdraw from the System Agreement and reject Entergy's request in its answer to defer this issue.[240]

(b) Determination

196. We reject protestors' assertions that Entergy has filed insufficient data and data analysis for us to determine if its MISO Cost Allocation Amendments are just and reasonable. As noted by Entergy, the Commission has not uniformly required the filing

[235] *Id.* This transition period is discussed in the Transition Period Proposal section of this order that follows.

[236] Texas Commission March 29, 2013 Answer at 8.

[237] New Orleans Council March 27, 2013 Answer at 9.

[238] Texas Commission March 29, 2013 Answer at 5.

[239] *Id.* at 6 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 108 FERC ¶ 61,236 (2004), *order on reh'g*, 111 FERC ¶ 61,042, *order on reh'g*, 112 FERC ¶ 61,311 (2005), *aff'd sub nom. Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007)).

[240] *Id.* at 8.

of *pro forma* or actual data in similar cases.[241] As the Commission noted in *ITC Holdings*, "[t]he Commission has accepted formula rates for public utilities for many years, if the formula is clear enough that all parties can determine what costs go into the rate and how it will be calculated."[242] Entergy has supported the MISO Cost Allocation Amendments with formulas whose costs and manners of calculation are clear, with the exception of its proposed energy allocator, which will be supplied and supported in a compliance filing. As discussed above in our determinations on the proposed MISO Cost Allocation Amendments, there is sufficient basis to accept Entergy's proposal, as modified, based on the current provisions of the System Agreement and MISO's market design and we find that an evidentiary hearing is not required.[243] Entergy's additional proposal for a subsequent filing, as discussed and accepted in the Transition Period Proposal section that follows, will provide further data and reexamination of such rates in the context of experience, and strikes a reasonable approach toward examining improvements to Entergy's MISO Cost Allocation Amendments in a timely fashion.

d) Transition Period Proposal

(1) Filings

197. In its answer, Entergy proposes to modify its original filing to address the concerns of protestors. It states that, "recognizing the concerns of its regulators," as well as the fact that there are a range of practices and methodologies that can be considered just and reasonable under the FPA, its answer outlines a "framework for addressing these broader concerns in a way that ensures timely integration of all [Operating Companies] into MISO and a prompt determination of the path beyond integration."[244] We refer to this proposed framework as Entergy's Transition Period Proposal.

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[241] *See, e.g., Midwest Indep. Trans. Sys. Operator, Inc.*, 128 FERC ¶ 61,047, at P 33 (2009); *ITC Holdings*, 121 FERC ¶ 61,229 at P 56.

[242] *ITC Holdings*, 121 FERC ¶ 61,229 at P 56.

[243] *See, e.g., Conoco, Inc. v. FERC*, 90 F.3d 536, 543 n.15 (D.C. Cir. 1996) ("The court has repeatedly held that the Commission 'is required to hold hearings only when the disputed issues may not be resolved through an examination of written submissions.' *Environmental Action v. FERC*, 996 F.2d 401, 413 (D.C. Cir. 1993) (citations omitted).").

[244] Entergy Answer at 4-5.

198. Entergy first requests that the Commission allow the Amendments to go into effect as of December 19, 2013, without a hearing and for an initial two-year transition period. It states that to provide transparency to the retail regulators during the transition period, it commits to provide the retail regulators of the Operating Companies every six months copies of the Entergy Intra-System Bill that show the allocation of the MISO charges and credits to all of the Operating Companies participating in the System Agreement.

199. Entergy states that, no later than October 18, 2013, it will submit a filing pursuant to section 205 of the FPA that: (1) provides Entergy Texas' notice of cancellation to terminate participation in the System Agreement; and (2) responds to the Texas Commission's position that Entergy Texas should be allowed to terminate its participation prior to the end of the mandatory 96-month notice period. It states that prior to this filing, Entergy Services, Inc., Entergy Texas, and Entergy Corporation will exercise reasonable best efforts to engage the various Operating Companies and their retail regulators to examine the possibility of an agreement that would allow Entergy Texas to exit the System Agreement prior to the end of the mandatory 96-month notice period. It states that if a resolution is reached, then its filing will include Entergy Texas' notice of cancellation and the revisions to the System Agreement necessary to effectuate the agreement. If not, Entergy states that the filing will include Entergy's position regarding the appropriate notice period, as well as the notice of cancellation and any applicable revisions to the System Agreement. Entergy further commits that, to the extent that any other Operating Company decides to provide notice to terminate within this time frame, Entergy will include the notice of cancellation for that Operating Company in the filing to be made no later than October 18, 2013, and prior to that filing will seek consensual resolution on the appropriate notice period.

200. Entergy proposes to submit, at least six months prior to the end of the two-year transition period, an additional filing under section 205 of the FPA that addresses the allocation of MISO charges and credits among the Operating Companies. Entergy states that in that filing it will present the results of the allocation of the MISO charges and credits identified in its original filing applied to actual MISO billing data. Entergy states that prior to making that filing, if the retail regulators still have broader questions about the viability of individual Service Schedules or the entirety of the System Agreement, it will work with the retail regulators to respond to those questions and discuss more fundamental changes to the System Agreement, including its termination. Entergy states that to the extent Entergy believes it would be appropriate to modify the proposed allocations based on experience with actual MISO data or to make more fundamental changes to the System Agreement, it will propose such modifications in that filing.

201. Entergy states that the Transition Period Proposal will allow the Operating Companies to integrate into MISO in December 2013 with regulatory certainty and gain the necessary experience and data that can only come from actually operating in a Day 2 market environment to assess how the allocation methodologies in the System Agreement

are working. It states that during the two-year transition period, the Operating Companies will participate in full cycles of MISO's transmission and generation planning processes and the ARR allocation process. Entergy states that this will provide the Operating Companies and their regulators with actual data that can inform decisions regarding whether the methodologies for allocating the MISO charges and credits should be re-evaluated. Entergy states that similar transition periods have been used in MISO and PJM at the start-up of these RTOs. It adds that this proposal will also allow the Operating Companies to seek to address issues involving the appropriate notice period for any Operating Companies that decide to terminate participation in the System Agreement. To the extent these discussions are not successful, Energy states that its proposal will provide a clear path for these issues to be resolved by the Commission.[245]

202. Entergy asserts that its approach is just and reasonable. It states that the core element of the Operating Companies' future operating arrangements is for all Operating Companies to join MISO on December 19, 2013, with the Operating Companies continuing to conduct single-system wide planning and other integrated operations. To accurately reflect these arrangements, and to avoid cost shifts that could result from more drastic changes, Entergy states that the Operating Companies decided to rely on the current System Agreement as the starting point for revisions necessary to integrate into MISO. It states that this approach is just and reasonable and not unduly discriminatory and furthers the Operating Companies' goal of ensuring a timely entry into MISO by allowing the Operating Companies to rely on historically integrated operations and cost allocation methodologies that are appropriately modified as necessary to reflect the MISO markets without unreasonable cost shifts. Entergy states that, contrary to the understanding of certain regulators, continued reliance on the System Agreement, as modified by the Amendments**,** is not inconsistent with the pricing signals or other efficiencies of an RTO.[246]

203. Entergy states that its proposal is designed to address the retail regulators' concerns – a number of which it states that it shares – that alternative arrangements to the System Agreement may prove to be superior to the status quo once the Operating Companies have integrated into MISO and are able to pursue the collective process described above.[247]

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[245] Entergy Answer at 6-7.

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

[247] *Id.* at 29.

204. In answers to Entergy's answer, the Louisiana Commission and the New Orleans Council allege that Entergy's Transition Period Proposal should be rejected because it attempts to obfuscate the issues in order to improperly bypass the Commission's hearing process and relieve Entergy of the burden to demonstrate that its proposal is just and reasonable and not unduly discriminatory.[248] The New Orleans Council states that Entergy seeks in its answer to improperly amend its section 205 filing – without the requisite notice period – to propose a new procedure that would circumvent the hearing process and that Entergy's proposal should therefore be denied.[249]

205. The New Orleans Council, the Texas Commission and the Louisiana Commission assert in their answers that Entergy is improperly seeking to limit the scope of the proceeding and, the Texas Commission adds, in doing so is acting contrary to representations made by Entergy to retail regulators and the Commission that it would not seek to impose such limits. The New Orleans Council disputes Entergy's answer and its description of the ADR process and, along with the Texas Commission, contends that Entergy's answer gives the incorrect impression that Entergy's retail regulators prioritized the speed of integration over a thorough examination of the justness and reasonableness of rates.[250] The New Orleans Council similarly states that if Entergy's Transition Period Proposal is granted consideration, retail regulators must be able to examine it in a hearing. The Texas Commission states that maintaining the System Agreement in effect for two more years is not just and reasonable, given that the System Agreement is obsolete.[251] The New Orleans Council states that Entergy's proposal could allow unjust and unreasonable rates to be in effect for a two-year period, for which they might not be able to receive a refund.[252]

206. The Louisiana Commission states that while Entergy asserts that its Transition Period Proposal is similar to transitions approved previously for MISO and PJM, those

[248] New Orleans Council March 27, 2013 Reply at 1; Louisiana Commission Protest at 2-3, 7.

[249] New Orleans Council March 27, 2013 Reply at 2.

[250] *Id.* at 4; Texas Commission March 29, 2013 Answer at 4.

[251] Texas Commission March 29, 2013 Answer at 1.

[252] New Orleans Council March 27, 2013 Reply at 6-7.

transitions involved phased changes to a uniform composite transmission rate, not a suspension of regulation.[253]

(2) Determination

207. As noted above, we accept Entergy's Amendments as just and reasonable, subject to refund, subject to a compliance filing previously described and subject to the outcome of Docket No. ER14-73-000, save for one narrow matter we set for hearing. We do not make such acceptance contingent upon a two-year transition period. We do, however, accept Entergy's Transition Period Proposal commitments to: (1) provide retail regulators updates regarding cost allocations in MISO at six-month intervals; (2) make a more comprehensive cost allocation filing no later than 18 months from the effective date; and (3) make a filing on the withdrawal of Entergy Texas from the System Agreement, including any related notice provision proposals and additional Operating Company withdrawal notices. We note that Entergy has already met its commitment with respect to item (3), as discussed above.[254] Entergy's commitments will assist Entergy and its Operating Companies to make a successful transition into MISO, help address the concerns of protestors, and help ensure that any unforeseen contingencies related to the proper method of cost allocation are dealt with appropriately.

208. We disagree with protestors who allege that Entergy's answer represents an improper attempt to amend its filing to avoid a hearing. In this order, the Commission accepts Entergy's Amendments as just and reasonable, save for one discrete matter set for hearing. Entergy's further commitments in its answer do not alter that finding. However, we expect Entergy to meet its commitments concerning adoption of an energy allocator and concerning its Transition Period Proposal actions, as described above.

e) Waiver of eTariff Filing Requirements

209. Entergy requests a limited partial waiver of the Commission's eTariff filing requirements under Order No. 714 and sections 35.7 and 35.9 of the Commission's regulations. It states that good cause exists for the Commission to grant the requested waiver, as the proposed Amendments will not become effective until the MISO integration in December 2013, which integration is dependent upon Commission acceptance of the rates, terms and conditions under section 205 of the FPA. Entergy pledges that it will timely file the Amendments, as they may be revised by the

[253] *Id.* at 6 (citing Entergy Answer at 16-17).

[254] *See supra* P 117.

Commission, in accordance with the eTariff requirements prior to the proposed effective date.

210. We accept Entergy's commitment that it will file its Amendments in accordance with eTariff requirements and direct it to do so in its compliance filing.

The Commission orders:

(A) Entergy's proposed Amendments to the System Agreement, as modified, are hereby conditionally accepted and suspended for a nominal period, to be effective December 19, 2013, as requested, subject to refund, subject to the further compliance filing ordered below, and subject to the outcome of Docket No. ER14-73-000, as discussed in the body of this order.

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

(C) Entergy is directed to submit additional filings pursuant to its Transition Period Proposal, as discussed in the body of this order.

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

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), 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.

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

thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.