

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

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

Entergy Arkansas, Inc.

Docket No. ER13-1317-001

ORDER DENYING REHEARING

(Issued November 5, 2015)

1. On July 29, 2013, the Council of the City of New Orleans, Louisiana (New Orleans Council) filed a request for rehearing of the Commission's June 28, 2013 order issued in this proceeding.¹ In this order, we deny New Orleans Council's request for rehearing.

I. Background

2. In the June 28 Order, the Commission accepted for filing five separate Agreements Regarding Apportionment of Reserved Source Points and Division of Proceeds (Agreements) filed by Entergy Services, Inc. (Entergy) on April 22, 2013 on behalf of Entergy Arkansas, Inc. (Entergy Arkansas) and the five other Entergy Operating Companies² (Counterparty Operating Companies). The Agreements provide for an apportionment of Reserved Source Points as permitted under applicable terms of Midwest Independent Transmission System Operator, Inc.'s³ (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

¹ *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299 (2013) (June 28 Order).

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

³ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

3. On May 17, 2007, the Commission conditionally accepted MISO's Tariff provisions implementing Order No. 681⁴ by establishing entitlements to, and the nomination and allocation of, Long Term Transmission Rights (LTTRs) in the form of Auction Revenue Rights (ARRs).⁵ ARR are financial instruments establishing entitlements to a share of the revenues generated in MISO's annual auction of Financial Transmission Rights (FTRs). LTTRs are long-term variants of ARRs, allocated in Stage 1A of the Annual ARR Allocation Process, with annual rollover rights of at least 10 years.⁶ The entitlements, called "ARR Entitlements," are predicated on historical firm transmission usage, including transmission service pertaining to non-carved-out grandfathered agreements, and rights to eligible generation resources, which are denominated Reserved Source Points. Failure to secure adequate LTTRs or ARRs could leave a load serving entity (LSE) without sufficient congestion hedges and expose it to congestion costs under MISO's market design.

4. In March 2013, the Commission accepted a proposal by MISO to amend its Tariff to allow for two supplemental rules for the allocation of LTTRs (MISO Supplemental Rules).⁷ The MISO Supplemental Rules were designed in part to enable Entergy region LSEs to qualify for sufficient LTTRs, given the prevalence of qualifying facilities, short-term purchases, and a lack of counterflow resources, which in combination would otherwise result in an LTTR shortfall.⁸

5. MISO's Tariff requires long-term supply arrangements for a resource to qualify as a Reserved Source Point that can be the basis for an entitlement to LTTRs. The supply arrangement must take the form of resource ownership, or contractual right to the resource's output for at least five years and a minimum historical capacity factor of 50

⁴ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g and clarification*, Order No. 681-B, 126 FERC ¶ 61,254 (2009).

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,143, at P 50, *order on reh'g*, 121 FERC ¶ 61,063 (2007).

⁶ The Tariff defines "Long Term Transmission Rights (LTTR)" as "ARRs allocated in Stage 1A of the Annual ARR Allocation process" carrying "annual" rollover rights lasting ten (10) years or more." Tariff, Module A, § 1.368 (0.0.0).

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,236 (2013) (MISO Supplemental Rules Order).

⁸ June 28 Order, 143 FERC ¶ 61,299 at P 5.

percent.⁹ As required by Order No. 681, LTTRs can also be allocated in MISO based on direct participant funding of network upgrades that add incremental transmission capacity.¹⁰ In addition, LTTR nominations that are not allocated (i.e., that are curtailed) in Stage 1A of the MISO ARR allocation process can be allocated in a restoration phase if made possible by the expiration or requested termination of other LTTRs, or by the assignment of non-nominated LTTR entitlements (“counterflow” LTTRs).¹¹

6. The first Supplemental Rule reduces the minimum Reserved Source Point ownership/contractual right term requirement from the existing five years to as short as one year, while maintaining the minimum 50 percent capacity factor requirement, and thereby allows the creation of additional LTTR entitlements to the extent necessary to fill an entitlement gap. LTTRs are awarded to resources in order of longest contract term, beginning from the length of term closest to five years to that closest to or at a term of one year. The second Supplemental Rule, which is applied only if application of the first rule does not yield sufficient LTTRs, provides that Reserved Source Points that meet the five-year minimum ownership or contractual right requirement but cannot meet the minimum capacity factor requirement of 50 percent may still be awarded LTTRs based upon the average heat rate of the market participant’s Reserved Source Points in the Peak Reserved Source Set collection of Reserved Source Points. MISO would award such Reserved Source Point LTTRs in order of lowest to highest heat rate resources.

7. In the MISO Supplemental Rules Order, the Commission noted that to the extent that LSEs have concerns regarding their allocations of LTTRs, MISO made clear that it will work with these parties to assess their concerns regarding LTTR entitlement gaps.¹² The Commission further noted 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 the Commission accepted MISO’s Tariff revisions as a means towards that end.

⁹ *Id.* P 4, citing Tariff, Module C, § 43.2.1 (0.0.0). The Tariff also caps the LTTRs that an LSE can nominate at a level of reasonable need for LTTRs, which is linked to Baseload Usage, defined in the Tariff as 50 percent of Peak Usage. The Reserved Source Points comprise a Peak Reserved Source Set, which includes a subset called the Baseload Reserved Source Set, consisting of Reserved Source Points with a minimum capacity factor of 50 percent, and in each of which a Market Participant has a minimum five-year ownership or contractual interest at any point of an appropriate reference period, called the reference year.

¹⁰ *See* Tariff, Module C, § 46.1 (0.0.0).

¹¹ Tariff, Module C § 43.2.5 (0.0.0).

¹² MISO Supplemental Rules Order, 142 FERC ¶ 61,236 at P 38.

8. In its filing of the Agreements, Entergy explained that the Agreements are needed because the MISO Supplemental Rules will not result in adequate congestion hedges for the Counterparty Operating Companies.¹³ The Agreements are intended to complement the MISO Supplemental Rules by allowing the Counterparty Operating Companies to be able to gain access to Entergy Arkansas's surplus Reserved Source Points that are eligible for nomination for LTTRs. While each Counterparty Operating Company should, upon integration into MISO, be able to nominate LTTRs equal to 50 percent of its peak load (the cap under the MISO Tariff) pursuant to the Supplemental Rules, they will be unable to do so from baseload and "baseload-like" units alone.¹⁴ Entergy explained that absent the Agreements, the Counterparty Operating Companies will not be able to reach that level of LTTR nominations unless they nominate from "legacy" and steam generating units. Entergy stated that upon Entergy's anticipated integration into MISO in 2013, Entergy Arkansas will have a surplus of baseload generating units that are eligible to be nominated for LTTRs, while the Counterparty Operating Companies will have a shortfall of such generating units and will be unable to nominate LTTRs equal to 50 percent of their peak load using baseload and "baseload-like" units to qualify for sufficient LTTRs.

9. The Agreements reallocate or reapportion baseload and baseload-like Reserved Source Points from Entergy Arkansas to the Counterparty Operating Companies. The Agreements also require each Counterparty Operating Company to convert apportioned Reserved Source Points to ARR entitlements, convert ARRs to FTRs in MISO's annual FTR auction, and exercise any rollover rights available for LTTRs associated with apportioned Reserved Source Points.¹⁵ In return for agreeing to the apportionment, the Agreements provide for Entergy Arkansas to receive a share of the revenues associated with the apportioned Reserved Source Points.

10. In the June 28 Order, the Commission found it just and reasonable for the Counterparty Operating Companies to enter into the Agreements to help ensure that their LTTR needs are met.¹⁶ The Commission further found that the Agreements' provisions for sharing revenues from allocated Reserved Source Points with Entergy Arkansas are just and reasonable as payment of consideration to ensure a right of access to such Reserved Source Points and resulting LTTRs.¹⁷ The Commission rejected arguments by New Orleans Council that the Agreements will result in Counterparty Operating

¹³ *Id.* P 8.

¹⁴ June 28 Order, 143 FERC ¶ 61,299 at P 4.

¹⁵ *See id.* P 17, citing Agreements, §§ 4.1, 4.2, 4.3, 4.4, 4.5.

¹⁶ *Id.* P 78.

¹⁷ *Id.* P 79.

Companies receiving ARR/FTRs that are “inferior” because they include a sharing of revenues with Entergy Arkansas. The Commission also found that Entergy had structured the Agreements to place Entergy Arkansas in a position no worse off than it would have been without the Agreements. And since Entergy Arkansas has no obligation to share its Reserved Source Points with the Counterparty Operating Companies, the Commission found this to be just and reasonable. The Commission rejected New Orleans Council’s assertions that the Agreements are not necessary or just and reasonable because the Counterparty Operating Companies are entitled to have their reasonable needs for LTTRs satisfied under Order Nos. 681 and 681-A, finding that whether the reasonable needs for LTTRs will be satisfied was addressed in the proceeding addressing the Supplemental Rules. Thus, the Commission found New Orleans Council’s challenge on this point to be outside the scope of this proceeding.¹⁸ The Commission also required Entergy to file with the Commission an informational filing providing analysis of the allocation of Reserve Source Points through the Agreements, resulting ARRs and FTRs, and the results of payments between Entergy Arkansas and the Counterparty Operating Companies on an annual basis following MISO’s annual ARR allocations.

II. New Orleans Council Request for Rehearing

11. In its request for rehearing, New Orleans Council argues that the Commission erred by accepting the Agreements’ requirement that the Counterparty Operating Companies pay Entergy Arkansas for the right to use Entergy Arkansas’ surplus Reserved Source Points to nominate LTTRs in Stage 1A of the MISO allocation process. Specifically, New Orleans Council states two issues of alleged error: (1) the Commission erred by requiring the Counterparty Operating Companies to pay Entergy Arkansas a portion of congestion revenues derived from apportioned Reserved Source Points in exchange for the use of Entergy Arkansas’s surplus Reserved Source Points because it is unjust, unreasonable and unduly discriminatory and preferential; and (2) the Commission erred by concluding that the adequacy of LTTR allocations to the Counterparty Operating Companies was outside the scope of this proceeding.¹⁹

12. With regard to its first statement of error (i.e., the sharing of congestion revenues under the Agreements with Entergy Arkansas) New Orleans Council maintains that LTTRs provided under the Agreements do not afford the Counterparty Operating Companies the same economic hedging power as the Stage 1A LTTRs allocated to all other MISO LSEs.²⁰ New Orleans Council states that the Commission provided no explanation why the ARRs nominated under the Agreements, which New Orleans

¹⁸ *Id.* P 77.

¹⁹ New Orleans Council Request for Rehearing at 3.

²⁰ *Id.* at 13.

Council state pay less than full congestion revenues, are not inferior to the LTTRs allocated to other MISO LSEs that provide full congestion revenues. New Orleans Council also argues that the Commission's determination ignored the basis for LTTR entitlements under MISO's rules, i.e., the historical use of the transmission system, not resource ownership.²¹

13. In addition, New Orleans Council argues that the Counterparty Operating Companies are being treated in an unduly discriminatory manner as compared to other MISO LSEs, to the benefit of Entergy Arkansas. Even if the Counterparty Operating Companies are able to use the apportioned Reserved Source Point LTTRs equal to 50 percent of peak load, New Orleans Council argues that the associated congestion revenue the companies retain from any FTRs resulting from the Reserved Source Point apportionment will by definition be less than the equivalent of 50 percent of peak load. New Orleans Council states that it is the revenue derived from the LTTR, not the LTTR itself, that provides the ability to hedge against congestion costs. New Orleans Council argues that Entergy Arkansas, on the other hand, is being afforded the ability to collect congestion revenues as though it had received LTTRs in excess of 50 percent peak load cap under the MISO Tariff and that this disparate treatment is unjust, unreasonable and unduly discriminatory.²²

14. New Orleans Council also argues that the Commission erred by focusing solely on Entergy Arkansas' ownership of the generating resources instead of analyzing whether the Agreements are just and reasonable under Order No. 681 and its progeny, and the MISO Supplemental Rules Order. New Orleans Council states that Entergy New Orleans and the other Counterparty Operating Companies have historically had their load served by network resources, including generation owned by Entergy Arkansas. New Orleans Council states that under the MISO Tariff, Entergy New Orleans must be hedged by revenue from LTTRs up to at least 50 percent of peak load from generation that has historically served Entergy New Orleans. New Orleans Council asserts that it is irrelevant that Entergy Arkansas owns the network resources in question. According to New Orleans Council "[t]he Entergy system should be allocated so that each Operating Company receives at least 50 percent of peak load LTTRs without having to pay ransom to [Entergy Arkansas]."²³ New Orleans Council states that although such allocation will not resolve Entergy New Orleans' congestion issue, it will at least ensure that each Counterparty Operating Company is treated in a non-discriminatory way.²⁴

²¹ *Id.* at 14-15.

²² *Id.* at 17.

²³ *Id.* at 18.

²⁴ *See id.*

15. New Orleans Council also argues that before the Entergy Operating Companies' membership in MISO, network service provided delivery of Entergy-owned network resources to Entergy New Orleans without regard to which generation source served Entergy New Orleans' load. New Orleans Council states that under the Entergy System Agreement, Entergy New Orleans customers receive energy and capacity from designated network resources, and pay the production costs and the cost of transmission in retail rates. New Orleans Council argues that following MISO membership, in addition to those costs, Entergy New Orleans customers will pay the cost of unhedged congestion from the very same resources from which they now receive power. New Orleans Council states that, at best, with adequate congestion hedging, Entergy New Orleans' customers may break even until such time as lower cost generation can displace those resources to lower production costs. New Orleans Council states that, without adequate hedging, the cost for the exact same service increases. New Orleans Council states that this is an inequitable result from which the Commission should protect the Counterparty Operating Companies' ratepayers.²⁵

16. With regard to its claim that the Commission erred by finding that the adequacy of congestion revenues received from allocated LTTRs is outside the scope of this proceeding, New Orleans Council argues that the adequacy of congestion revenues to hedge against congestion costs is the basis of this proceeding. New Orleans Council contends that if the MISO Supplemental Rules had done what they were supposed to do, there would be no reason for the Agreements.²⁶ New Orleans Council argues that the fundamental purpose for filing the Agreements was to remedy the shortcomings of the MISO Supplemental Rules, which were intended to remedy the shortcomings of MISO's then-existing LTTR rules. New Orleans Council states that if the remedy to the original rules does not resolve the LTTR allocation inadequacy, then the inadequacy continues to exist and the remedy is not just and reasonable.²⁷

III. Commission Determination

17. We deny rehearing. We reject New Orleans Council's contention that the Commission erred by requiring the Counterparty Operating Companies to pay Entergy Arkansas a portion of congestion revenues derived from apportioned Reserved Source Points in exchange for the use of Entergy Arkansas's surplus Reserved Source Points and by concluding that the adequacy of LTTR allocations to the Counterparty Operating Companies was outside the scope of this proceeding. New Orleans Council's arguments are rooted in its contention that providing Entergy Arkansas with some of the revenues

²⁵ *Id.* at 19.

²⁶ *Id.*

²⁷ *Id.* at 20-21.

from that allocation is unduly discriminatory and preferential, and that under the Agreements, the Counterparty Operating Companies are receiving ARR/FTRs that are inferior to LTTRs allocated to other MISO LSEs in Stage 1A of the Annual ARR Allocation Process. As the Commission stated in the June 28 Order:

Entergy's Agreements in the instant proceeding are designed to address a particular circumstance in which Entergy generation units that might otherwise qualify for nomination for LTTRs in MISO under the Supplemental Rules would nonetheless not be valuable to load serving entities as congestion hedges because they would cause the load serving entities, the Counterparty Operating Companies, to potentially incur an other-than-positive ARR value under MISO's market rules.²⁸

18. In other words, the allocation of ARRs/FTRs and Reserved Source Points revenue under the Agreement is a reasonable means to address the particular circumstance of a Counterparty Operating Company being unable to nominate LTTRs equal to 50 percent of its peak load (the cap under the MISO Tariff) from baseload and "baseload-like" units alone, pursuant to the Supplemental Rules, upon Entergy Arkansas' exit from the Entergy System Agreement and the Entergy Operating Companies' integration into MISO. As the Commission has found, upon Entergy Arkansas (or any Entergy Operating Company) exiting the Entergy System Agreement, each Entergy Operating Company retains ownership of its own generation.²⁹ Therefore, "without a contractual arrangement such as the Agreements, the Counterparty Operating Companies would have no right to Entergy Arkansas' Reserved Source Points."³⁰

19. Rather than being unduly discriminatory to Entergy New Orleans and the other Counterparty Operating Companies, the Agreements "further address an imbalance in the value of resources held by Entergy Arkansas and the Counterparty Operating Companies, by allocating Entergy Arkansas [Reserved Source Points] to the Counterparty Operating Companies."³¹ As the Commission found,

[the Agreements] provide for allocation of some revenues from those [Reserved Source Points] to Entergy Arkansas to recognize that the

²⁸ June 28 Order, 143 FERC ¶ 61,299 at P 74.

²⁹ See *Entergy Servs., Inc.*, 129 FERC ¶ 61,143, at P 62 (2009), *reh'g denied*, 134 FERC ¶ 61,075 (2011), *aff'd sub. nom Council of the City of New Orleans v. FERC*, 692 F.3d 172, 175 (D.C. Cir. 2012), *cert. denied*, 133 S.Ct. 2382 (2013).

³⁰ June 28 Order, 143 FERC ¶ 61,299 at P 76.

³¹ *Id.* P 74.

Agreements would otherwise cause Entergy Arkansas to incur opportunity costs from lost revenues that it could otherwise have realized and that such allocations could cause Entergy Arkansas to incur certain costs that it would not otherwise be obligated to incur.³²

20. Accordingly, the Commission reasonably concluded that “the Agreements reflect a careful balancing of interests,”³³ and that Entergy met its burden to demonstrate that the Agreements represent a just and reasonable and not unduly discriminatory approach to enhance the value of LTTRs available to the Counterparty Operating Companies, upon their integration into MISO.³⁴

21. We reject New Orleans Council’s assertion that the Agreements will result in Counterparty Operating Companies receiving ARR/FTRs that are “inferior” because they include a sharing of revenues with Entergy Arkansas. As discussed, the allocation of ARR/FTRs and Reserved Source Points revenue under the Agreement is a reasonable means to address the particular circumstance of a Counterparty Operating Company being unable to nominate LTTRs equal to 50 percent of its peak load pursuant to the Supplemental Rules, upon Entergy Arkansas’ exit from the Entergy System Agreement and the Entergy Operating Companies’ integration into MISO. Further, given that, as discussed above, Entergy Arkansas has no obligation to share its Reserved Source Points with the Counterparty Operating Companies, we find this to be just and reasonable. We agree with Entergy that while the MISO Tariff does not require a payment between parties that agree to apportion Reserved Source between them, neither does it prohibit one.³⁵

22. Finally, with regard to New Orleans Council’s argument that the Commission erred “by concluding that the adequacy of LTTR allocations to the Counterparty Operating Companies was outside the scope of this proceeding[,]”³⁶ as the Commission stated in the June 28 Order, “[w]e reject New Orleans Council’s assertions that the Agreements are not necessary or just and reasonable because the Counterparty Operating Companies are entitled to have their reasonable needs for LTTRs satisfied under Order Nos. 681 and 681-A.”³⁷ Even if the New Orleans Commission is correct that “[t]he

³² *Id.*

³³ *Id.* P 75.

³⁴ *Id.*

³⁵ *Id.* P 79.

³⁶ New Orleans Council Request for Rehearing at 3.

³⁷ June 28 Order, 143 FERC ¶ 61,299 at P 77.

fundamental purpose of the Reserved Source Points filing is to remedy the shortcomings of the MISO Supplemental Rules, which were intended to remedy the shortcomings of MISO's then-existing LTTR rules",³⁸ for the reasons discussed above we continue to find that Entergy met its burden to demonstrate that the Agreements represent a just and reasonable approach to enhance the value of LTTRs available to the Counterparty Operating Companies, upon their integration into MISO.

The Commission orders:

New Orleans Council's request for rehearing is denied, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁸ New Orleans Council Request for Rehearing at 19.