

153 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER13-432-001

ORDER DENYING REHEARING

(Issued November 9, 2015)

1. The Public Utilities Commission of Texas (Texas Commission) and the Louisiana Public Service Commission (Louisiana Commission) (collectively, the Requesting Parties) filed requests for rehearing of the Commission's December 18, 2013 order,¹ which largely accepted Entergy Services, Inc.'s (Entergy)² proposed revisions to the Energy System Agreement (System Agreement) to reflect the departure of Entergy Arkansas from the System Agreement and to facilitate the integration of the Operating Companies into the Midcontinent Independent System Operator, Inc. (MISO). In this order, we deny the requests for rehearing.

I. Background

2. The System Agreement is an agreement among Entergy and the Operating Companies and a Commission-approved tariff that requires that the Operating Companies' generation and transmission facilities be operated as a single, integrated

¹ *Entergy Servs., Inc.*, 145 FERC ¶ 61,247 (2013) (December 18 Order).
Entergy Arkansas withdrew from the System Agreement effective December 18, 2013.

² Entergy filed on behalf of Entergy Corporation and its six Entergy Operating Companies (Operating Companies). The Operating Companies are Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Mississippi, Inc. (Entergy Mississippi); Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana); Entergy Louisiana, LLC (Entergy Louisiana); Entergy Texas, Inc. (Entergy Texas), and Entergy New Orleans, Inc.

system.³ 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 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 Reserve Equalization, MSS-2 Transmission Equalization Among the Companies, MSS-3 Exchange of Electric Energy, MSS-4 Unit Power Purchase, MSS-5 Distribution of Revenue from Sales Made for the Joint Account, MSS-6 Distribution of Operating Expenses of System Operations Center, MSS-7 Merger Fuel Protection Procedure, and, as accepted in the December 18 Order, MSS-8 Distribution of Administrative Changes of MISO.

3. Section 1.01 of the System Agreement provides 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 similar notice on November 8, 2007, with its withdrawal to be effective on November 7, 2015.⁴

³ The generation and bulk transmission systems of all the Operating Companies are collectively referred to as the Entergy System.

⁴ On October 11, 2013, in Docket Nos. ER14-75-000, ER14-76-000, ER14-77-000, ER14-78-000, ER14-79-000, and ER14-80-000, Entergy filed an amendment to the System Agreement to shorten the notice period for an Operating Company to withdraw from the System Agreement from 96 months to 60 months (Notice Filing). On October 18, 2013, in Docket No. ER14-128-000, Entergy Texas filed a notice of cancellation of participation in the System Agreement within 60 months or as consistent with the period determined in the ER14-75-000 *et al.* proceeding. On February 14, 2014, in Docket Nos. ER14-1328-000 and ER14-1329-000, Entergy Louisiana and Entergy Gulf States Louisiana, respectively, filed similar notices of cancellation of participation in the System Agreement effective in 60 months or as consistent with the period determined in Docket No. ER14-75-000 *et al.* On December 18, 2014, the Commission set the Notice Filing for hearing and consolidated the six dockets associated with the Notice Filing for the purpose of such hearing procedures. The Commission also conditionally accepted the three withdrawal filings subject to the outcome of the Notice Filing proceedings. *Entergy Arkansas, Inc.*, 149 FERC ¶ 61,262, at P 1 (2014). On August 14, 2015, Entergy filed an offer of settlement (August 14 Settlement) to resolve all outstanding issues in the Notice Filing and withdrawal filings proceedings. The Settlement provides for the System Agreement to terminate, effective August 31, 2016, if the Settlement is approved by the Commission and retail regulators.

4. By order dated November 19, 2009, the Commission accepted Entergy Arkansas' and Entergy Mississippi's subsequently filed Notices of Cancellation.⁵ 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.⁶ 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.⁷ 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.⁸

5. In the Withdrawal Order, the Commission directed Entergy to make a filing to describe future operating arrangements among the Operating Companies and noted that Entergy must ensure that any future operating arrangements are just and reasonable, and encouraged Entergy to file successor arrangements under section 205 of the Federal Power Act (FPA)⁹ as soon as possible.¹⁰ In its order on rehearing in that proceeding, 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."¹¹ The Commission also stated that "[a]ny 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."¹² In addition, the Commission stated that two discrete matters involving, first, allocation of costs related to network upgrades used to

⁵ See *Entergy Servs., Inc.*, 129 FERC ¶ 61,143 (2009) (Withdrawal Order), *reh'g denied*, 134 FERC ¶ 61,075 (2011) (Withdrawal Rehearing Order) (collectively, Withdrawal Orders), *aff'd sub nom. Council of the City of New Orleans v. FERC*, 692 F.3d 172 (D.C. Cir. 2012) (*New Orleans*), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FERC*, 133 S. Ct. 2382 (2013).

⁶ Withdrawal Order, 129 FERC ¶ 61,143 at P 59.

⁷ *Id.* PP 60-61.

⁸ *Id.* P 62.

⁹ 16 U.S.C. § 824d (2012).

¹⁰ Withdrawal Order, 129 FERC ¶ 61,143 at P 63.

¹¹ Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at P 27 n.27.

¹² *Id.* P 37.

benefit the Ouachita Generating Station and, second, the allocation of proceeds from a legal settlement between Entergy Arkansas and Union Pacific Corporation (Union Pacific Settlement) would be more appropriately raised in a future proceeding regarding the structure of the post-withdrawal Entergy System.¹³ The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed these findings.¹⁴

6. In April 2011, Entergy and MISO announced a proposal for the Operating Companies to join MISO effective December 19, 2013. On December 19, 2013, the Operating Companies integrated into MISO.

7. On November 20, 2012, Entergy filed under FPA section 205 successor arrangements for operations following Entergy Arkansas's withdrawal, as the Commission encouraged it to do in the Withdrawal Order (November 20 Filing). Specifically, Entergy proposed amendments to the System Agreement to remove all references to Entergy Arkansas (Withdrawal Amendments) and amendments to allocate costs that the Operating Companies would incur in MISO among the remaining participating Operating Companies (MISO Cost Allocation Amendments) (collectively, Amendments). Entergy requested that the Amendments be accepted without suspension or hearing, effective December 19, 2013. It stated that prompt approval of the changes would 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. Several parties, including the Louisiana Commission and the Texas Commission, filed comments or protests and on March 12, 2013, Entergy filed an answer (Answer) to the protests, in which it proposed modifications to aspects of its proposal.

8. In the December 18 Order, the Commission accepted the Amendments, with the modifications proposed in Entergy's Answer, subject to a further compliance filing and, for certain Amendments, subject to a Commission determination regarding related proposed revisions to proposed definitions of Company Load Responsibility and Responsibility Ratio in the System Agreement filed by Entergy in Docket No. ER14-73-000.¹⁵ The Commission suspended the Amendments for a nominal period, to become effective December 19, 2013, subject to refund. In addition, the Commission established hearing and settlement judge procedures on one narrow issue concerning the allocation of proceeds from the Union Pacific Settlement. The Commission also accepted Entergy's commitment to make further filings in the future regarding the allocation of MISO charges and credits among the Operating Companies.

¹³ *Id.*

¹⁴ *New Orleans*, 692 F.3d at 177.

¹⁵ December 18 Order, 145 FERC ¶ 61,247 at P 125.

9. On January 17, 2014, the Louisiana Commission filed a request for rehearing and/or clarification, and the Texas Commission filed a request for rehearing.

II. Requests for Rehearing and/or Clarification

A. Scope of the Proceeding and Requests for a Hearing

1. December 18 Order

10. In the December 18 Order, the Commission rejected requests by parties to expand the scope of the proceeding from an examination of whether Entergy's proposed amendments to the System Agreement were just and reasonable to a more fundamental *de novo* examination of whether the System Agreement remains just and reasonable in light of changed circumstances, such as Entergy's integration into MISO and the withdrawal of Operating Companies from the System Agreement. The Commission likewise rejected parties' assertions that Entergy bore the burden of demonstrating that the System Agreement as a whole remained just and reasonable in light of such changes.¹⁶

2. Request for Rehearing

11. In its request for rehearing, the Texas Commission contends that the Commission arbitrarily and capriciously narrowed the scope of its review to only the proposed amendments. According to the Texas Commission, the Commission was wrong to accept Entergy's argument that by filing only limited amendments to the existing agreement, Entergy did not open up the entire System Agreement for scrutiny. The Texas Commission states that on rehearing the Commission should find that continued participation in the System Agreement is not just and reasonable and that no "successor arrangements" are necessary due to the Operating Companies' integration into MISO. In the alternative, the Texas Commission urges the Commission to allow a hearing on the matter, given the materially changed circumstances.¹⁷

12. The Texas Commission states that in the Withdrawal Order the Commission directed Entergy to make the FPA section 205 filing because of concerns arising from Entergy Arkansas' withdrawal from the System Agreement. The Texas Commission argues that the purpose of this proceeding was to determine what "successor arrangements" to the System Agreement would govern the operations of the participating Operating Companies as of December 19, 2013, following the withdrawal of Entergy

¹⁶ *Id.* P 104.

¹⁷ Texas Commission Request for Rehearing at 5-6.

Arkansas and Entergy Mississippi from the System Agreement. It adds that the Withdrawal Orders made clear that Entergy would need to establish that any successor arrangements were just and reasonable.¹⁸

13. The Texas Commission also contends that the Commission should adopt the broader scope of review set out in the Withdrawal Orders because those orders were issued long before Entergy submitted the filing in this docket. The Texas Commission notes that these orders direct Entergy to file “successor arrangements” to the System Agreement (not merely amendments thereto).¹⁹ The Texas Commission states that in the Withdrawal Orders the Commission clearly stated that any concerns about the viability of the System Agreement after Entergy Arkansas and Entergy Mississippi withdraw from the System Agreement would be addressed in the proceeding on Entergy’s FPA section 205 filing:

However, we note that Entergy has an obligation to ensure that any future operating arrangement is just and reasonable. With our acceptance of these Notices of Cancellation regarding the System Agreement, we expect Entergy and all interested parties to move forward and develop the details of *all needed successor arrangements*. We encourage Entergy to make its section 205 filing for the post-2013 arrangements as soon as possible in order for the Commission to review the *replacement arrangement* prior to the withdrawals.^[20]

14. The Texas Commission states that the Commission’s use of the broader terms “successor arrangement” and “replacement arrangements” to describe post-2013 arrangements that will govern the Operating Companies is deliberate and distinct from the narrower phrase “amendment to the System Agreement.” It notes that the term “successor arrangement” is repeated in the Withdrawal Rehearing Order.²¹

15. The Texas Commission states that since the issuance of the Withdrawal Orders, further material developments have arisen that call into question the viability of the

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 7 (citing Withdrawal Order, 129 FERC 61,143 at P 63 (emphasis added)) (footnotes and citations omitted).

²¹ *Id.* at 8 (citing Withdrawal Rehearing Order, 134 FERC ¶ 61,075 at PP 3, 27, 37).

System Agreement, such as Entergy Mississippi's decision to exit the System Agreement and the integration of the Operating Companies into MISO. The Texas Commission states that these developments put the Operating Companies in a wholly different planning, operating and market environment than existed or was even contemplated at the formation of the System Agreement. It notes that the filing of subsequent notices of withdrawals by other Operating Companies makes clear that it is not just and reasonable for the System Agreement to survive such developments, particularly given that the MISO structure provides the appropriate arrangements for the coordinated operation of the Operating Companies' generation and bulk transmission facilities. The Texas Commission states that the Commission failed to meaningfully address these significant and material changed circumstances when it approved Entergy's limited filing.²²

16. The Texas Commission states that the Commission's reliance on *New Orleans* to support its determination is unfounded, as *New Orleans* is inapposite.²³ It notes that in *New Orleans* the court found that the Commission 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.²⁴ The Texas Commission states that this is not the issue before the Commission in this proceeding because here the Commission did not merely suggest that it might require new, successor arrangements to the System Agreement. The Texas Commission states that instead the Commission expressly held that successor arrangements must be filed by Entergy for post-2013 operations, given the withdrawal of two of the six Operating Companies from the System Agreement. The Texas Commission asserts that Entergy cannot escape review of the System Agreement *de novo* and, if Entergy chooses to file the old System Agreement, it must demonstrate that continuation of the old System Agreement remains just and reasonable given significantly changed circumstances.²⁵

17. The Texas Commission states that the need for a full review of the successor arrangements, even if those new arrangements are akin to the old arrangements, is further heightened by the Operating Companies' integration into MISO. The Texas Commission states that integration into a regional transmission organization (RTO) with a centralized energy market was never contemplated by the System Agreement, which dates from the 1980s, prior to the existence of RTOs.²⁶ It states that the very breadth of the

²² *Id.* at 5.

²³ *Id.*

²⁴ *Id.* (citing *New Orleans*, 692 F.3d at 176).

²⁵ *Id.* at 10.

²⁶ *Id.* at 11.

Amendments establishes, if nothing else, that the System Agreement as it was could not function in the MISO context, is obsolete and unworkable, and is unjust and unreasonable. The Texas Commission states that the “sea change” precipitated by Entergy’s integration into MISO demands a new approach.

3. Commission Determination

18. We deny the Texas Commission’s request for rehearing. As an initial matter, we note that the August 14 Settlement, if approved by the Commission, would terminate the System Agreement on August 31, 2016. However, we continue to reject the requests for rehearing to terminate or substantially modify it sooner. As discussed below, until its dissolution, it is just and reasonable for the System Agreement to continue in effect. The Texas Commission argues that the Commission’s use of the phrase “successor arrangement” in the Withdrawal Orders requires the Commission to reopen the entirety of the System Agreement, and to set for hearing the continued justness and reasonableness of the Entergy System. We disagree.

19. The Commission’s use of the phrase “successor arrangement” does not imply that Entergy is required to re-justify its System Agreement, nor does it imply that Entergy is required to dissolve the System Agreement or reach some new arrangement upon the withdrawal of one or more members. As the Commission noted in the December 18 Order, 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; the only requirement in the System Agreement related to the exit of a member is a 96-month notice provision.²⁷ The Texas Commission essentially asks us to add an additional requirement to the exit provision of the System Agreement—i.e., that the System Agreement be dissolved and a new arrangement be developed upon the withdrawal of one or more members. We decline to do so. The System Agreement remains in place for the benefit of the participating Operating Companies, and we do not see a reason to overturn that agreement at this time. Entergy’s filing reflects the exit of Entergy

²⁷ December 18 Order, 145 FERC ¶ 61,247 at P 104 (citing *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 sub nom. 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 sub nom. 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)).

Arkansas and the entry of Entergy into MISO, and thus meets the conditions established by the Commission in prior orders.²⁸

20. As the Commission stated in the December 18 Order, it 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.”²⁹ In general, the Commission has interpreted the System Agreement to retain the benefits of that document for its parties even when terms are ambiguous.³⁰ The Commission has only required 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,³¹ and when it directed that cost overruns at the Grand Gulf Nuclear Facility be reallocated among the Operating Companies.³² The Texas Commission’s request that the Commission *sua sponte* require major changes to or abolishment of the System Agreement, or order a hearing to examine the same, goes far beyond the Commission’s traditional interpretation of the System Agreement’s requirements concerning the exit of an Operating Company. On rehearing, we continue to see no reason to do so.

21. Earlier in this proceeding protestors raised concerns regarding provisions of the System Agreement that they alleged are outdated. The Texas Commission makes this claim again on rehearing. However, the Commission noted in the December 18 Order noted, and we here affirm, that the System Agreement’s core cost allocation provisions in the Service Schedules continue to function, as do transmission and generation planning

²⁸ See Withdrawal Order, ¶ 129 FERC 61,143 at P 63.

²⁹ December 18 Order, 145 FERC ¶ 61,247 at P 105 (citing *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282, at P 106 (2005)).

³⁰ *Id.* (citing *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, Opinion No. 521, 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)).

³¹ *Id.* (citing *La. Pub. Serv. 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. La. Pub. Serv. Comm’n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008)).

³² *Id.* (citing Opinion No. 234, 31 FERC ¶ 61,305).

and other provisions of the System Agreement.³³ As the Commission stated, 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 Entergy System and in a manner that strikes a balance between the needs of individual Operating Companies and the system as a whole.³⁴ The Commission noted that protestors had not contended otherwise. There is nothing in the Texas Commission's request for rehearing that merits reversing this finding and we continue to hold to it here.

22. With respect to the Texas Commission's request for a hearing in this proceeding, the Commission already found that a hearing is not necessary to address the potential need for wider revisions to the System Agreement. The Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it sees fit.³⁵ In this proceeding, there was sufficient evidence in the record for the Commission to reach findings on all issues except one—the Union Pacific Settlement. The Commission set this issue for hearing because it found that there were issues of material fact that could not be resolved based on the record. This is not the case with regard to whether the System Agreement should be dissolved and a new arrangement be developed upon the withdrawal of one or more Operating Companies from the System Agreement. As the Commission has found, there is no provision in the System Agreement that requires dissolution of the System Agreement or extensive revision upon the exit of one or more members. Accordingly, there is no issue of material fact warranting a hearing on this matter, and we see no reason to reverse the decision not to set this issue for hearing. The Texas Commission's request for rehearing on this issue is denied.

B. Departure of Operating Companies from the System Agreement

1. December 18 Order

23. In the December 18 Order, the Commission rejected protestors' contentions that the deletion of references to Entergy Arkansas was insufficient to address deeper cost allocation issues raised by pending and possible future Operating Company withdrawals from the System Agreement.³⁶ The Commission also rejected the Texas Commission's

³³ *Id.* P 106.

³⁴ *Id.* P 129.

³⁵ *See Ameren Energy Generating Co.*, 108 FERC ¶ 61,081, at P 23 (2004).

³⁶ December 18 Order, 145 FERC ¶ 61,247 at P 103.

request that the Commission evaluate Entergy Texas' request to withdraw from the System Agreement in this proceeding, rather than in a separate proceeding.³⁷

2. Requests for Rehearing

a. The Louisiana Commission

24. The Louisiana Commission contends that in December 18 Order the Commission failed to determine which, if any, Operating Companies are responsible for residual costs left with the remaining Operating Companies when an Operating Company withdraws.³⁸ It states that the Commission has ruled that an Operating Company may depart without responsibility for these costs, but has not ruled on whether Entergy or other Operating Companies are responsible for the residual costs. The Louisiana Commission states that, given the fact that two additional Operating Companies have given notice of withdrawal, and others may soon follow, this is an issue of critical importance. It states that it would be unjust and unreasonable to require the ratepayers of the last Operating Company to leave the System Agreement to bear all the costs to serve a six Operating Company System.³⁹

25. The Louisiana Commission states that the departure of Entergy Arkansas and Entergy Mississippi from the System Agreement strands a portion of costs incurred to plan and operate the resources of the six Operating Companies.⁴⁰ It states that these costs were incurred in part for Entergy Arkansas and Entergy Mississippi, but Entergy intends that these Operating Companies depart from the System Agreement without further responsibility for them. It states that as Entergy made the choice that caused or permitted those Operating Companies to withdraw, and because Entergy wholly owns its subsidiaries and directs their actions, the remaining Operating Companies should not be responsible for the unduly discriminatory consequences of Entergy's choices.⁴¹

26. The Louisiana Commission also asserts that the Withdrawal Orders and *New Orleans* did not address whether a withdrawing Operating Company would share

³⁷ *Id.* P 117.

³⁸ Louisiana Commission Request for Rehearing at 3.

³⁹ *Id.* at 3.

⁴⁰ *Id.* at 15.

⁴¹ *Id.*

responsibility for costs caused by its departure.⁴² It states that the need to allocate stranded costs exists independent of the cost allocation terms of the System Agreement, which allocate costs that have not been stranded. The Louisiana Commission states that under principles of cost causation, Operating Companies for which costs were incurred must bear responsibility for the costs. According to the Louisiana Commission, “there is no question that costs will be stranded by the departures of Entergy Arkansas and Entergy Mississippi.”⁴³ The Louisiana Commission states that these two 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, as an example, the cost allocations to Entergy Arkansas and Entergy Mississippi for the System Operations Center will become “stranded”. The Louisiana Commission states that Entergy shareholders should bear responsibility for these costs.⁴⁴

27. The Louisiana Commission states that if the Commission does not reconsider its determination and set the stranded cost issue for hearing, it should clarify that the determination applies to all the Operating Companies on a non-discriminatory basis and that in the December 18 Order the Commission did not intend to favor Entergy Arkansas and its ratepayers over other Operating Companies and their customers.⁴⁵

b. The Texas Commission

28. The Texas Commission contends that the Commission’s finding that Entergy Texas’ withdrawal from the System Agreement is beyond the scope of the proceeding is arbitrary and capricious.⁴⁶ The Texas Commission argues that the Commission’s determination unreasonably removes from the proceeding a relevant item of significance to the Texas Commission, as expressed in the Texas Commission’s pleadings. The Texas Commission notes that in its own retail “Change of Control” Order, it found that it would not be in the public interest for Entergy Texas to continue participation in the

⁴² *Id.* at 15-16 (citing Withdrawal Order, 129 FERC ¶ 61,143 (2009); New Orleans, 693 F.3d 172, 177 (D.C. Cir. 2012)).

⁴³ *Id.* at 16.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 20.

System Agreement once Entergy Texas joins MISO because continued participation would prevent Entergy Texas from realizing the full benefits of joining MISO.⁴⁷

3. Commission Determination

29. We deny the requests for rehearing. We disagree with the Louisiana Commission's contention that in the December 18 Order the Commission failed to determine which Operating Companies are responsible for "stranded costs" left when an Operating Company withdraws from the System Agreement because the Commission did not rule on whether Entergy or other Operating Companies are responsible for the residual costs. The terms of the System Agreement provide guidance regarding the appropriate responsibilities. First, the terms of the System Agreement allocate costs and benefits between Operating Companies, not between Entergy shareholders and a particular Operating Company. The terms of the System Agreement also direct for costs to be allocated between Operating Companies based upon which Operating Companies are members of the System Agreement at a given point in time.⁴⁸

30. Second, the notice provision of section 1.01 of the System Agreement affords Operating Companies, public utility commissions, and other interested parties ample opportunity to address any issues related to an Operating Company's withdrawal. The System Agreement contains no provision that requires withdrawing Operating Companies to pay an exit fee or to otherwise compensate remaining Operating Companies nor does the System Agreement place a 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. Likewise, we do not read anything in the System Agreement as obligating an exiting Operating Company to continue to share the kinds of costs the Louisiana Commission characterizes as "stranded" when an exiting Operating Company, acting in accordance with its rights under the System Agreement, terminates its participation in the System Agreement.

31. We also reject the Louisiana Commission's assertion that failure to reassign costs to exiting Entergy Arkansas (or any exiting Operating Company) as it advocates violates principles of cost causation. The System Agreement exists for the benefit of the Operating Companies (and their customers) while they are participating in the System Agreement. The System Agreement does not allow the participating Operating

⁴⁷ *Id.* (citing Application of Entergy Texas, Inc. for Approval to Transfer Operational Control of its Transmission Assets to the MISO RTO, Docket No. 40346, 30-31 (PUCT Oct. 26, 2012)).

⁴⁸ *See* System Agreement, § 3.01.

Companies to impose costs on entities that are no longer participating in the System Agreement. Accordingly, costs such as those associated with the System Operations Center, for example, may have been incurred for the benefit of all six Operating Companies while all six participated in the System Agreement, and as such should have been borne by all six while members. However, as the Commission found in the December 18 Order based on Entergy's explanation, "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."⁴⁹

32. Accordingly, the Commission found, and we affirm that protesters did not substantiate 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.⁵⁰ Furthermore, to the extent that the Louisiana Commission contends 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, as the Commission found:

cost reallocations that occur by operation of the System Agreement's terms, and that result 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.^[51]

⁴⁹ December 18 Order, 145 FERC ¶ 61,247 at P 131 (citing Entergy Answer at 48). Entergy has filed and the Commission has accepted rate schedules between Entergy Services and Entergy Arkansas whereby, as of December 19, 2013, Entergy Services provides Entergy Arkansas, and Entergy Arkansas pays for, services in support of Entergy Arkansas' generation planning, operations and dispatch, purchased power procurement, operations activities, transmission planning and reliability obligations. *Entergy Servs., Inc.*, 145 FERC ¶ 61,241 (2013), *order on reh'g*, 148 FERC ¶ 61,202 (2014).

⁵⁰ December 18 Order, 145 FERC ¶ 61,247 at P 131.

⁵¹ *Id.* P 109.

33. With respect to the Louisiana Commission's request that the Commission clarify that the last remaining participant in the System Agreement will not bear all remaining costs, we find that such a determination is premature and that the record does not adequately describe the nature of any such costs to make sure a determination.

34. We also deny the Texas Commission's request for rehearing of the Commission's finding in the December 18 Order that the issue of the proposed withdrawal of Entergy Texas is outside the scope of this proceeding. This proceeding is intended to reflect revisions to the System Agreement to address the exit of Entergy Arkansas from the System Agreement and the entry of the Operating Companies 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, as are similar requests from Entergy Louisiana and Entergy Gulf States Louisiana.

C. Operating Companies' Integration into MISO

1. December 18 Order

35. In the December 18 Order, the Commission rejected protestors' assertions that the System Agreement, or components thereof, will be duplicative of MISO's Open Access Transmission, Energy and Operating Reserves Markets Tariff (MISO Tariff) provisions or MISO procedures, or conflict with them, once the Operating Companies enter MISO. The Commission also rejected related arguments that continuation of the System Agreement after the Operating Companies' integration into MISO should be deemed unjust and unreasonable because MISO offers analogous or superior mechanisms to many provisions of the System Agreement.⁵²

2. Requests for Rehearing

a. The Louisiana Commission

36. The Louisiana Commission states that the Commission erred in failing to examine whether the retention of the System Agreement is just and reasonable given Entergy's integration into MISO. It states that the System Agreement's Service Schedules are redundant to cost allocation provisions that already exist in MISO, that MISO has capacity obligations and a capacity market, transmission pricing zones, and a Locational Marginal Price-based (LMP) energy market, and that the Service Schedules would

⁵² December 18 Order, 145 FERC ¶ 61,247 at P 182.

“rescramble” (i.e., reallocate) the costs allocated pursuant to the MISO Tariff and undo otherwise just and reasonable results.⁵³

37. The Louisiana Commission states that the December 18 Order’s observation that “[h]olding company coordination agreements . . . can provide valuable services beyond these provided by the RTO markets” fails to address: a) whether Entergy’s proposed reallocation of MISO billings to individual market participants is just and reasonable; b) how the Entergy energy allocations, which it contends are redundant to MISO allocations, are necessary or reasonable; or c) how the planning provisions of the System Agreement can still be workable in light of impending withdrawals.⁵⁴ The Louisiana Commission also asserts that the Commission’s acceptance in the December 18 Order of Entergy’s proposal in its Answer to file proposed revisions to address such concerns 18 months after Entergy’s entry into MISO does nothing about unjust and unreasonable cost allocations during the intervening 18-month period.⁵⁵

38. First, regarding its claim concerning Entergy’s proposed reallocation of MISO billings, the Louisiana Commission states that by retaining Service Schedule MSS-3’s basic form, Entergy maintains an arrangement that reverses fundamental incentives in RTO pricing. The Louisiana Commission contends 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, Service Schedule MSS-3’s energy exchange pricing will be redundant.⁵⁶

39. The Louisiana Commission states that this issue is particularly important because Entergy reversed the assumption it put forth in the Alternative Dispute Resolution process—that the five remaining Operating Companies should join MISO as one market participant. The Louisiana Commission notes that the Operating Companies subsequently entered into MISO as individual market participants and asserts that this change of position undermines the assumption justifying Entergy’s proposals to modify the Service Schedule MSS-3 energy exchange provisions. The Louisiana Commission states that rather than receiving a single bill, the costs of which to be distributed among the Operating Companies, the Operating Companies instead will each receive their own separate bills that, according to the Louisiana Commission, will presumably reflect just and reasonable allocations made pursuant to the MISO Tariff. It states that Entergy’s

⁵³ Louisiana Commission Request for Rehearing at 2.

⁵⁴ *Id.* at 6 (citing December 18 Order, 145 FERC ¶ 61,247 at P 110).

⁵⁵ *Id.*

⁵⁶ *Id.* at 6-7.

practice of combining the bills and redistributing the costs in a manner different from the MISO allocations is inconsistent with joining the RTO, and that neither Entergy's filing nor the December 18 Order supported such redistributions.

40. The Louisiana Commission states that Entergy's proposal for reallocating MISO charges and credits among the Operating Companies has the effect of overruling the just and reasonable allocation of MISO charges through the MISO Tariff. It states that because Entergy chose to enter MISO with each Operating Company a separate market participant, allocating the MISO charges and credits as if they were first received on a System basis makes no sense, and the December 18 Order fails to demonstrate that the reallocation of MISO charges and credits is just and reasonable.

41. Additionally, concerning the proposed energy allocations, the Louisiana Commission states that Entergy historically has operated the energy exchange under the System Agreement under the principle that energy generated within or delivered to the Entergy System is deemed delivered to the designated recipient Operating Company regardless of transmission constraints. According to the Louisiana Commission, if a transmission constraint prevents the physical flow of energy to an Operating Company, Entergy nevertheless assumes for cost allocations that the electricity reaches the recipient. The Louisiana Commission states that Entergy proposes to continue the "deemed delivered" principle in the revised System Agreement, even though it conflicts with a primary objective of an RTO to provide price signals reflecting congestion.⁵⁷

42. The Louisiana Commission contends that the System Agreement's energy exchange provisions will reverse the pricing signals built into the LMP system accepted by the Commission. It states that Service Schedule MSS-3 often deems energy from the highest-cost resources of an Operating Company to be "excess" and reallocates the costs to some other Operating Company. The Louisiana Commission argues that if a transmission constraint causes the LMP to be higher on the constrained side of a transmission bottleneck, then the pricing signal is supposed to provide an incentive for load on the constrained side to make appropriate investments in new transmission. However, the Louisiana Commission states that the energy exchange often reallocates the high costs to other Operating Companies, eliminating this price signal that a Day 2 Market provides.⁵⁸ It states that the "deemed delivered" principle is also in conflict with the congestion pricing protocols of the MISO Day 2 Market. The Louisiana Commission

⁵⁷ *Id.*

⁵⁸ *Id.* at 8.

states that nothing in Entergy's proposed amendments provides support for the continuation of these provisions in light of the MISO Day 2 Market.⁵⁹

43. The Louisiana Commission also claims that Entergy fails to justify the retention of certain Service Schedules in the System Agreement. It states that Service Schedule MSS-1 is redundant to the capacity requirements that MISO will impose on the Operating Companies and to MISO's capacity market, and that Service Schedule MSS-2 will reallocate cost allocations built on transmission pricing zones in MISO.⁶⁰

44. Concerning how the planning provisions of the System Agreement can still be workable in light of impending withdrawals, the Louisiana Commission states that given that several Operating Companies have withdrawn or will withdraw from the System Agreement, it makes no sense to plan on a System basis because System planning commits Operating Companies to long term resources that may not maximize their own interests.

b. The Texas Commission

45. The Texas Commission states that the December 18 Order does not meaningfully address any of the issues the Texas Commission raised concerning Entergy's entry into MISO, but rather merely states that protestors have not identified "a clear conflict" between the System Agreement and the MISO Tariff.⁶¹ The Texas Commission states that even absent a clear conflict, the Commission should not presume that the System Agreement remains just and reasonable in this proceeding simply because it was once just and reasonable.⁶² It states that the D.C. Circuit agreed that the Commission put all parties on notice in the Withdrawal Order that any successor arrangements post-2013, whatever they may be, would be evaluated under the current circumstances, and must be proven (as distinct from being presumed) to be just and reasonable.⁶³

⁵⁹ *Id.*

⁶⁰ *Id.* at 9.

⁶¹ Texas Commission Request for Rehearing at 15.

⁶² *Id.*

⁶³ *Id.* at 15 (citing *New Orleans*, 692 F.3d at 176 (citing Withdrawal Order, 129 FERC ¶ 61,143 at P 67) (noting that FERC "must still review the post-withdrawal arrangements to ensure that they are just, reasonable, and not unduly discriminatory.")).

46. The Texas Commission states that any successor arrangements must necessarily be evaluated in the context of MISO market operations and that it is the MISO market and not the System Agreement that provides the proper foundation upon which any successor operational arrangements must be based.⁶⁴

47. The Texas Commission asserts that in the December 18 Order the Commission summarily and incorrectly concludes that Entergy's explanation concerning how it intends to deploy the System Agreement's single system optimization, as opposed to each Operating Company responding to MISO market signals, is acceptable. The Texas Commission asserts that the Commission's acceptance of Entergy's explanation because it is "consistent with the System Agreement's terms and historical operational practice" is incorrect because it is unsupported by record evidence. The Texas Commission also contends that the Commission's conclusion is circular and premised upon Entergy's unsupported conclusion to continue the System Agreement even though the Operating Companies have entered MISO.⁶⁵

48. The Texas Commission also states that the Commission did not address its stated concerns that the System Agreement will inappropriately redistribute the benefits and burdens of the Operating Companies as individual market participants, nor its observation that the System Agreement's Service Schedules were developed in an era that long predates an organized electric market. It states that the Commission likewise did not address its assertion that without a System Agreement, each Operating Company will be free to meet its reserve requirements in the manner it sees as best for that Operating Company and its ratepayers. The Texas Commission states that, in contrast, under the System Agreement, the Operating Companies do not have the same decision-making latitude, as generation acquisition decisions are made by Entergy for all of the Operating Companies, with reserves and costs then assigned to each Operating Company by formula.

49. Additionally, the Texas Commission asserts that the Commission did not respond to Texas Commission evidence that continuation of the System Agreement will perpetuate decision-making that may benefit Entergy as a whole, but not Entergy Texas or any other Operating Company specifically. The Texas Commission argues that "system planning" under the System Agreement has not been particularly beneficial for Entergy Texas, having resulted in no new construction of generation in Entergy Texas'

⁶⁴ *Id.* at 16.

⁶⁵ *Id.* at 17.

service territory since 1979 despite its “short” position, and in little addition of transmission facilities despite congestion and reliability issues in Entergy Texas.⁶⁶

50. The Texas Commission also asserts that the Commission should have taken note of evidence that the Texas Commission presented concerning Service Schedule MSS-5, which provides the basis for the distribution of the revenue from sales made for the joint account of the Entergy system. The Texas Commission states that such evidence demonstrated that continuation of that Service Schedule in the MISO environment would distort market signals and deprive each Operating Company of the opportunity to engage in its own market transactions.⁶⁷

3. Commission Determination

51. We affirm the Commission’s finding in the December 18 Order that the Operating Companies’ integration into MISO does not require a broader review of the System Agreement. Nothing about Entergy’s intent to operate as a power pool within MISO is inherently inconsistent with behavior in an organized market. As noted in the December 18 Order, other holding company systems have integrated into MISO, PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool, Inc. (SPP).⁶⁸ Holding company coordination agreements such as the System Agreement can provide valuable services beyond those provided by the RTO markets.

52. We find to be speculative and without foundation the Requesting Parties’ arguments that the System Agreement or Service Schedules thereto will unnecessarily reallocate costs or benefits that MISO will allocate to individual Operating Companies, distort price signals from MISO, or undermine incentives Operating Companies would otherwise have. In particular, we find that the Louisiana Commission does not articulate

⁶⁶ *Id.* at 18.

⁶⁷ *Id.* at 19.

⁶⁸ December 18 Order, 145 FERC ¶ 61,247 at P 110, n.155 (noting 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)).

clearly how the “deemed delivered” principle that it alleges guides energy exchanges under the System Agreement would necessarily undermine MISO market designs or operations. While participation by the Operating Companies as a power pool in MISO may produce outcomes that may be different from individual market participation, Entergy’s decision to treat the Operating Companies as a power pool in MISO is consistent with how other holding companies have integrated into MISO, PJM, and SPP. Furthermore, nothing in the System Agreement or Commission precedent would bar Entergy from integrating the Operating Companies into MISO as a power pool. The Louisiana Commission contends that the System Agreement’s energy exchange provisions could eliminate price signals to individual Operating Companies to invest in new transmission. However, this contention ignores that the System Agreement contains provisions governing investment in new transmission⁶⁹ within the service area of the Operating Companies in the System Agreement.

53. We also clarify that redundancy between the System Agreement and MISO Tariff provisions, as alleged by the Louisiana Commission in numerous respects including cost allocation, is not sufficient to defeat an otherwise just and reasonable proposal. The Louisiana Commission has not shown how any such redundancy justifies rejection of Entergy’s proposal.

54. Many of the Requesting Parties’ allegations of conflicts between the System Agreement, including Service Schedules MSS-1, MSS-3, MSS-5, and MSS-6, and future Operating Company operations in MISO appear to relate the System Agreement’s use of single system optimization. We disagree with the Louisiana Commission’s assertion on rehearing that Entergy and the System Agreement are silent regarding whether the Operating Companies, once integrated into MISO, will maximize the economic interests of the Entergy System as a whole while acting as market participants in MISO. Entergy stated that it will continue to employ the System Agreement’s single system optimization as it has employed it in the past.⁷⁰ We find that this is consistent with the System Agreement’s terms and historical operational practice, and we see no reason why admission to MISO should require abandonment of single system optimization.

55. In addition, we affirm the Commission’s finding in the December 18 Order that the Louisiana Commission’s arguments that vesting discretion in Entergy facilitates conduct that favors some Operating Companies at the expense of other Operating Companies are speculative. Additionally, many of the System Agreement’s Service Schedules are designed to roughly equalize costs for the Operating Companies and their customers over monthly and annual periods, and, therefore, the System Agreement does

⁶⁹ See Service Schedule MSS-2.

⁷⁰ Entergy Answer at 23.

not purport to optimize the financial position of each Operating Company and its customers at all times.

56. We also reject the Louisiana Commission's contention that it makes no sense to plan on a system-wide basis because system-wide planning commits Operating Companies to long term resources that may not maximize their own interests. The Commission has previously noted that Entergy and Entergy Arkansas recognize that they must consider the withdrawals in their planning processes.⁷¹ Additionally, we note in this respect that there are external checks already in place to ensure the reasonableness of the Entergy transmission investment, as Entergy is already participating in the MISO transmission planning process.⁷² Therefore, the Louisiana Commission's concern is speculative. We find that Entergy is capable of planning on a system-wide basis while operating within MISO and that there is no reason to change Entergy's planning process at this time.

57. With respect to the Texas Commission's assertions that any successor arrangement must be evaluated in the context of MISO market operations, we note that the Commission considered the context of the MISO market when evaluating Entergy's amendments. As we discuss more fully below, the allocators accepted for use in allocating MISO charges and credits were based on an analysis of the MISO system and the System Agreement. Even so, the System Agreement is a filed rate at the Commission that serves purposes that are distinct from the MISO Tariff. The Texas Commission's proposal to subsume it within the MISO tariff and operational rules would suggest that we disregard a filed rate, which would be arbitrary and capricious.

58. We also reject the Texas Commission's assertions that continuation of the System Agreement will perpetuate decision-making that may benefit Entergy as a whole, but not Entergy Texas or any other Operating Company specifically. Even if the Texas Commission's evidence demonstrates that under the System Agreement there has been lack of new construction of generation and little building of transmission in Entergy Texas' service territory, this does not provide a reason to terminate the System Agreement. As the Texas Commission states "Entergy's centralized planning considers what is best for the [Operating Companies] as a whole and not what is best for each individual [Operating Company]."⁷³ This reflects the fact that the System Agreement was designed to allow for operation of the Operating Companies' generation and

⁷¹ *Ark. Elec. Energy Consumers, Inc. v. Entergy Corp.*, 126 FERC ¶ 61,051, at P 38, n 30 (2009).

⁷² *Midwest Indep. Trans. Sys. Operator, Inc.*, 143 FERC ¶ 61,193, at P 1 (2013).

⁷³ Texas Commission Request for Rehearing at 18.

transmission facilities as a single, integrated system with the benefits and costs of coordinated operation allocated among the Operating Companies. The Texas Commission's assertion amounts to a collateral attack on the System Agreement not a reason to eliminate it. Accordingly, we deny rehearing.

D. Sufficiency of the Evidentiary Record

1. Request for Rehearing

59. The Texas Commission contends that the Commission's decision in the December 18 Order to allow continuation of the System Agreement is not based upon substantial record evidence, is arbitrary and capricious, and is not the product of reasoned decision-making.⁷⁴ The Texas Commission states that Entergy as the applicant bears the burden of demonstrating that its proposal is just and reasonable, and that Entergy failed to proffer a single piece of evidence to support its proposal, including no witnesses, no testimony, and no study.⁷⁵

60. In particular, as concerns the integration of the Operating Companies into MISO, the Texas Commission states that Entergy failed to proffer any witnesses or testimony to demonstrate why the System Agreement is needed if the Operating Companies are to be part of MISO. It states that such a demonstration would include: (1) support for the purpose(s) that would be served by continuing the System Agreement; (2) quantification of the benefits of the MISO charges and revenues when filtered through the System Agreement versus without the System Agreement; (3) identification of services that would be provided under the System Agreement that are not also provided as part of the MISO paradigm; and (4) evaluation of the potential effect for the System Agreement to filter and distort the economic signals (to build or not build) that the MISO markets and architecture are designed to send.⁷⁶ The Texas Commission states that Entergy did not explain why the System Agreement is necessary, or just and reasonable, given the fact that MISO will now perform centralized dispatch and operations. The Texas Commission rejects as inadequate Entergy's explanation that it will continue to employ the System Agreement's single system optimization as it has been employed in the past.⁷⁷

⁷⁴ Texas Commission Request for Rehearing at 2, 12-14.

⁷⁵ *Id.* at 12.

⁷⁶ *Id.* at 16.

⁷⁷ *Id.* (citing Entergy Answer at 30).

61. The Texas Commission argues that the Commission's only alternatives given such lack of evidence were to either reject the filing or set the matter for evidentiary hearing for the purpose of creating a record upon which an informed decision may be made.⁷⁸ The Texas Commission states that as the Commission did neither, the December 18 Order is arbitrary and capricious and not the result of reasoned decision-making.

62. The Texas Commission also argues that, in contrast to Entergy's lack of evidence, the Texas Commission proffered an expert witness to support its position that the System Agreement should not continue once the Operating Companies, or at least Entergy Texas, enters MISO.⁷⁹ It states that Texas Commission Witness Carraher testified that maintaining the System Agreement after Entergy Texas' integration into MISO would prevent Entergy Texas from capturing the full benefit of integration into MISO and giving it transmission and generation authority; that the System Agreement has in the past deterred investment in generation; and that Entergy Arkansas' withdrawal from the System Agreement removes low-cost production from the System.⁸⁰

63. The Texas Commission states that Entergy responded to the Texas Commission's evidence by arguing that the Texas Commission was incorrect, but did not substantiate its argument with record evidence, testimony, or affidavits, and therefore Entergy's arguments, based upon "bald assertions," should be rejected.⁸¹ The Texas Commission claims that a Commission order based upon substantial evidence could only have reached a conclusion consistent with Texas Commission Witness Carraher's testimony, given that the record in the proceeding contains no evidence that contradicts his testimony.⁸²

64. The Texas Commission also states that Entergy did not submit any of the analyses made in pre-filing consultations and the Alternative Dispute Resolution (ADR) process that contained material facts relevant to the Commission's determination, and that such facts should be disclosed through a hearing.⁸³ The Texas Commission states that there is

⁷⁸ *Id.* at 12-13.

⁷⁹ *Id.* at 13.

⁸⁰ *Id.* (citing Corrected Protest and Request for Hearing of Public Utilities Commission of Texas (PUCT Protest), Attachment B, Revised Redacted Direct Testimony of Shawn Carraher on Behalf of the PUCT Staff Before the PUCT at 45, 52).

⁸¹ *Id.* at 13-14.

⁸² *Id.* at 14.

⁸³ *Id.*

evidence in Entergy's possession that Service Schedule MSS-3 significantly alters the economic operating results that the Operating Companies experience in MISO compared to what they would experience without a System Agreement, which should cause the Commission to investigate this matter.⁸⁴ The Texas Commission states that absent facts in the record, the Commission's findings in the December 18 Order cannot reasonably be found to be based on substantial evidence.⁸⁵

2. Commission Determination

65. We reject the Texas Commission's assertions that Entergy's filing fails to support its proposed amendments to the System Agreement. The Texas Commission states that as the applicant, Entergy bears the burden of demonstrating that its proposal is just and reasonable and that Entergy failed to proffer evidence to support its proposal.⁸⁶ We disagree that Entergy has not provided any support, as Entergy provided detailed explanations for its amendments.⁸⁷

66. The Texas Commission's claim that it should essentially receive a default judgment because it produced an expert witness to support elimination of the System Agreement upon Energy Texas' integration into MISO, whereas Entergy failed to produce a countering witness, is invalid. Expert witness testimony may serve as evidentiary support for the Texas Commission's argument, but the mere existence of expert witness testimony does not resolve a dispute, nor does it require the Commission to support one side over another.

67. The Texas Commission also asserts that the Commission erred by failing to demand consideration of evidence it contends is in Entergy's possession from the pre-filing and ADR process that occurred prior to Entergy's filing. It states that such evidence shows that Service Schedule MSS-3 would significantly alter Operating Company economic operating results in MISO compared to what they would experience without a System Agreement. We reject the Texas Commission's assertion as speculative. We find it unnecessary for Entergy to have submitted evidence based on the pre-filing and ADR process. As we have found, the Commission reviewed Entergy's filing and all of the pleadings and found the record sufficient to make a determination. We also note that Entergy's commitment to provide the retail regulators of the Operating

⁸⁴ *Id.* at 19.

⁸⁵ *Id.* at 14.

⁸⁶ *Id.* at 12.

⁸⁷ November 20 Filing at 6-15.

Companies copies of the Entergy Intra-System Bill every six months showing the allocation of the MISO charges and credits to all of the Operating Companies participating in the System Agreement (i.e., actual data based upon Operating Company performance in MISO) will provide better information than the pre-filing and ADR information referred to by the Texas Commission for assessing the impact of the System Agreement upon Operating Company performance in MISO. Additionally, while applicants under section 205 of the FPA must provide sufficient evidence to demonstrate that their proposals are just and reasonable, there is no obligation for applicants to provide all analysis and materials that they produced prior to filing. We deny rehearing on the issue of sufficiency of evidence.

E. State Authority and Regulation of Entergy Behavior in MISO

1. December 18 Order

68. In the December 18 Order the Commission found that issues related to state authority over Entergy upon entry into MISO were outside the scope of this proceeding and that “nothing in the Commission’s disposition of Entergy’s filing will interfere with the exercise of state regulatory commission jurisdiction over Entergy.”⁸⁸ The Commission thus rejected assertions that the Commission should clarify that, regardless of the Commission’s acceptance of Entergy’s filing, state authorities may review Entergy’s conduct for prudence and for self-dealing and should act to retain the authority of the Entergy Regional State Committee (ERSC).

2. Request for Rehearing

69. The Louisiana Commission requests that the Commission clarify that its acceptance of the proposed amendments for the allocation of charges and credits in MISO will not preempt the authority of state regulators to review the prudence of Entergy’s bidding and resource nomination strategies in MISO.⁸⁹ It states that in the December 18 Order the Commission finds that “nothing in our disposition of Entergy’s filing will interfere with the exercise of state regulatory commission jurisdiction over Entergy.”⁹⁰ The Louisiana Commission states that the Commission should clarify that this will allow cost disallowances by retail regulators for imprudent behavior.⁹¹

⁸⁸ December 18 Order, 145 FERC ¶ 61,247 at P 118.

⁸⁹ Louisiana Commission Request for Rehearing at 4.

⁹⁰ *Id.* at 1(citing December 18 Order, 145 FERC ¶ 61,247 at P 118).

⁹¹ *Id.*

70. The Louisiana Commission further states that as the Commission has determined that the System Agreement need not specify any criteria under which Entergy must conduct the allocation of charges and credits, the Commission should make clear that this acceptance does not constitute a delegation of authority to Entergy to make determinations that are harmful to individual Operating Companies. It states that in the absence of cost allocation provisions that assign costs resulting from Entergy's decisions on the basis of cost causation or another just and reasonable basis, Entergy's actions should be fully reviewable by state regulators.⁹² The Louisiana Commission adds that in the absence of rules to govern Entergy's conduct, it is unclear what objectives should guide Entergy's MISO-related strategies. The Louisiana Commission asserts that Entergy's assurance that it will bid to accomplish the objectives of the entire Entergy System is too vague to provide any standard of behavior and is inappropriate given the impending breakup of what is left of the Entergy System.

71. The Louisiana Commission states that Entergy's plan for entering MISO calls for each Operating Company to nominate resources for the purpose of obtaining its own awards of Auction Revenue Rights and that some of these Auction Revenue Rights related to long term resources will have a duration of 10 years.⁹³ The Louisiana Commission asserts that the strategy of having each Operating Company nominate resources for its own account reflects a deliberate choice not to maximize the potential awards of Auction Revenue Rights by combining the available resources and nominating on a system-wide basis, and reflects individual Operating Company considerations. It states that Entergy apparently plans to have a centralized department strategize and plan the bidding of resources into the market and the use of Auction Revenue Rights allocations. However, according to the Louisiana Commission, the System Agreement fails to provide for a basis on which to perform these functions such as maximizing benefits for individual Operating Companies, or for the Entergy System as a whole. The Louisiana Commission asserts that if, consistent with Entergy's assertions, individual Operating Company interests are to be subsumed to those of the System as a whole, Entergy has made no proposal that would reallocate the costs associated with the sacrifice. It states that this inadequacy is inherently unjust and unreasonable.⁹⁴

72. The Louisiana Commission states 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-

⁹² *Id.* at 1-2, 4.

⁹³ *Id.*

⁹⁴ *Id.* at 5.

dealing. Instead, the Commission should declare the revised System Agreement as non-preemptive or require Entergy to propose rules to govern its behavior.⁹⁵

3. Commission Determination

73. We deny the request for rehearing. We continue to find that the issues related to state authority over Entergy that the Louisiana Commission raises are outside the scope of this proceeding. State jurisdiction over Entergy remains unaltered as does the scope of the Commission's jurisdiction over the System Agreement. The Louisiana Commission's assertions of a possible regulatory gap are speculative and unfounded. We find the Louisiana Commission's request for clarification on this point to constitute a request to alter this balance. We decline to do so.

F. Use of an Energy Allocator to Allocate MISO Charges and Credits

1. December 18 Order

74. In the proposed Amendments, Entergy proposed to allocate losses, ancillary services charges and credits, and uplift charges and credits to load to each participating Operating Company based on a Responsibility Ratio as defined in section 2.18(a) of the System Agreement. The Responsibility Ratio is used in various service schedules of the System Agreement in order to allocate costs or benefits among the participating Operating Companies based on peak-load demand.

75. The Mississippi Public Service Commission (Mississippi Commission) protested Entergy's proposed demand-based allocation methodology on the basis that it conflicted with the allocation methodology under MISO Tariff [should be defined earlier] and under the System Agreement.⁹⁶ The Mississippi Commission argued that Entergy's filing proposed to replace the existing energy-based System Agreement allocation methodology with a methodology that allocates MISO's energy-based costs through a new demand-based allocator, and that change may not be neutral in its effects across Operating Companies.⁹⁷

⁹⁵ *Id.* at 6.

⁹⁶ Mississippi Commission January 22, 2013 Comments at 8-9, 12-15.

⁹⁷ *Id.* at 8.

76. In an answer, Entergy did not object to the use of an energy-based allocator⁹⁸ for the allocation of losses, ancillary services, and uplift to load. Entergy stated that to address the Mississippi Commission's concerns, it would commit to file revisions to the System Agreement to incorporate an energy-based allocator in a compliance filing.⁹⁹

77. In an answer to Entergy's answer, the Louisiana Commission challenged Entergy's revised proposal on the grounds that it failed to provide notice regarding the change in allocation methodology agreed to in Entergy's answer; that it lacked actual or *pro forma* data, testimony or other evidence by Entergy to support this approach, and that it lacked tariff sheets clearly describing the modified approach.¹⁰⁰ The Louisiana Commission stated that the Commission cannot approve a proposal it has never seen.¹⁰¹

78. In the December 18 Order, the Commission conditionally accepted Entergy's revised proposal for allocation of losses, ancillary services, and uplift to load, subject to Entergy filing revised tariff sheets within thirty days to use energy as the basis for the allocator instead of peak demand, as Entergy agreed to in its answer.¹⁰² The Commission accepted the use of an energy-based allocator "in principle, subject to a compliance filing in which Entergy will be required to provide tariff sheets specifying how the energy-based allocator will be calculated, with appropriate support."¹⁰³ The Commission stated that there was a sufficient basis to accept an energy-based allocator in principle, and that

⁹⁸ Entergy March 12, 2013 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 January 22, 2013 Comments. In those comments, the Mississippi Commission defined the current approach of both the System Agreement and the MISO Tariff'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 January 22, 2013 Comments at 8.

⁹⁹ Entergy March 12, 2013 Answer at 18.

¹⁰⁰ Louisiana Commission April 8, 2013 Answer at 4-6, 15.

¹⁰¹ *Id.* at 6.

¹⁰² December 18 Order, 145 FERC ¶ 61,247 at PP 142, 153, and 164.

¹⁰³ *Id.*

parties such as the Louisiana Commission would have an opportunity to comment upon Entergy's proposal in Entergy's compliance filing.¹⁰⁴

2. Requests for Rehearing

79. The Louisiana Commission contends that the Commission approved an energy-based allocator for ancillary services, losses and uplift in a manner that provides no assurance that the new proposal will be just and reasonable and that is unsupported by evidence in the record.¹⁰⁵ It states that the Commission's acceptance of a revised method, proposed in an Answer that came long after the filing, would deny interested parties a reasonable opportunity to evaluate and comment on the proposal.

80. The Louisiana Commission states that the December 18 Order is irrational because its reasoning is circular.¹⁰⁶ The Louisiana Commission asserts that in the December 18 Order the Commission approved an energy-based allocator based on the method used in MISO, but did not explain why there is a need to superimpose any reallocation method onto the method used in MISO. The Louisiana Commission states that if Entergy proposes a method different from that used in MISO, it will rescrumble the allocation method that the December 18 Order relies on to justify the Commission's ruling. If not, it asserts that the energy-based allocation provisions are redundant and unnecessary.¹⁰⁷ The Louisiana Commission states that the Commission's sole justification for accepting Entergy's proposed method is that these services are allocated based on energy usage in MISO. The Louisiana Commission contends that if that is the basis, there can be no rationale for reallocating those charges through the System Agreement.

81. The Louisiana Commission notes that Entergy originally proposed to allocate losses, as well as ancillary services and uplift to load, based on Responsibility Ratios—the average of Company coincident peaks over a rolling 12 month period (12 Coincident Peak methodology). The Louisiana Commission states that Entergy previously justified the Responsibility Ratio method as being embedded in the System Agreement but that Entergy's 12 Coincident Peak methodology reflects a blend of demand and energy considerations. The Louisiana Commission states that Entergy does not provide a basis for subsequently asserting that all costs for losses, ancillary services and uplift will be

¹⁰⁴ *Id.* P 145.

¹⁰⁵ Louisiana Commission Request for Rehearing at 3, 12.

¹⁰⁶ *Id.* at 12.

¹⁰⁷ *Id.* at 13.

related solely to energy use.¹⁰⁸ It also states that Entergy did not explain why an energy-based allocator would be necessary given the allocation method used by MISO. The Louisiana Commission states that, therefore, the new proposal has not been justified.¹⁰⁹

82. Additionally, the Louisiana Commission states that Entergy did not reveal what energy-based allocator it will decide to use, including whether costs will be allocated as part of the “excess” energy through Service Schedule MSS-3 or based on all energy use, and did not describe how the allocator will be constructed. It states that such issues should be considered in a hearing.

83. Turning to specific categories of costs that will be allocated through the energy-based allocator, the Louisiana Commission states that Entergy provides no basis for concluding that net marginal losses would be related to overall energy use and fails to associate uplift costs with energy use, especially since Entergy runs units out of economic order primarily for reliability in load pockets. The Louisiana Commission states that the energy-based method will erase price signals by socializing costs related to inadequate transmission pathways. It states that use of an energy-based allocator for ancillary services is not justified with evidence or explanation.¹¹⁰

84. The Louisiana Commission notes that in the December 18 Order the Commission approved “in principle” an energy-based allocator for losses, ancillary services, and uplift.¹¹¹ The Louisiana Commission states that the December 18 Order approves the proposal—first made in an answer to a protest—effective December 19, 2013, but notes that while Entergy in its Answer committed to file an energy-based allocator, that proposal has not yet been filed.¹¹² It further notes that the December 18 Order did not accept revised tariff sheets or delineate the specifics of what the tariff sheets should provide, but instead accepted the use of an energy-based allocator “in principle.”¹¹³ The

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 12 (citing December 18 Order, 145 FERC ¶ 61,247 at P 145).

¹¹² On February 5, 2014, Entergy filed a compliance filing detailing its revised allocation mechanism for ancillary losses, ancillary services, and uplift in Docket Nos. ER14-1263, -1264, -1265, -1266, -1267, and -1268. The Commission is concurrently issuing an order addressing the compliance filing. *Entergy Gulf State Louisiana, L.L.C. et al.*, 153 FERC ¶ 61,153 (2015).

¹¹³ *Id.* at 14 (citing December 18 Order, 145 FERC ¶ 61,247 at P 142).

Louisiana Commission states that the Commission cannot approve a method it has never seen and make it effective as of the date of the December 18 Order that accepts only the principle underlying an unknown allocation.¹¹⁴ It states that because the Commission only approved the new allocation method in principle, it cannot make the new allocator retroactive to the date of the December 18 Order. The Louisiana Commission also asserts that the courts and the Commission have held that the Commission cannot make a new tariff effective retroactively.¹¹⁵ It states this is contrary to applicable precedent holding that, “in cases where the ratemaking order only decides general ratemaking issues, but does not fix the actual rates to be charged to customers, then the effective date properly should be set based on the date when the rates were fixed, rather than the date of the ratemaking order.”¹¹⁶ The Louisiana Commission states that the compliance filing will not be made until January 17 or 20, 2014, while the December 18 Order makes that filing effective December 19, 2013, resulting in unlawful retroactive ratemaking.

3. Commission Determination

85. We deny the Louisiana Commission’s request for rehearing. Contrary to the Louisiana Commission’s assertions, the Commission in the December 18 Order explained why use of a peak-load demand allocator was not just and reasonable.¹¹⁷

It further explained why an energy-based allocator, rather than a peak-load demand allocator (i.e., the Responsibility Ratio), is appropriate to allocate losses and uplift and ancillary services charges and credits to load.

86. With respect to losses, the Commission explained that :

[T]he 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.[] Likewise, energy losses are currently reflected in the energy allocation formula of Service

¹¹⁴ Louisiana Commission Request for Rehearing at 12.

¹¹⁵ *Id.* at 14.

¹¹⁶ *Id.* (citing *Entergy Serv., Inc. and EWO Marketing, L.P.*, 125 FERC ¶ 61,128, at P 10 (2008) (citing *Public Service Co. of New Mexico v. FERC*, 857 F.2d 833 (D.C. Cir. 1988))).

¹¹⁷ December 18 Order, 145 FERC ¶ 61,247 at P 143.

Schedule MSS-3, in which energy costs are allocated based on energy use, rather than a peak load demand allocator.^[118]

87. As applicable to this matter, the Commission has recognized that it is appropriate to use energy-based allocators to allocate variable costs in a wide variety of contexts, including within the System Agreement.¹¹⁹ We also disagree with the Louisiana Commission's contention that Entergy's 12 Coincident Peak methodology for determining the Responsibility Ratio reflects a blend of demand and energy considerations. By definition a coincident peak-based allocation methodology, which allocates costs based on the average share of peak demand for each month, measures demand and not energy.¹²⁰

88. With respect to ancillary services, the Commission likewise found:

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

¹¹⁸ *Id.* (citing Mississippi Commission Comments at 8; 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).

¹¹⁹ *Id.* P 144 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 119 FERC ¶ 61,311, at P 104 n.76 (2007) ("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 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)).

¹²⁰ The Commission has employed 12 Coincident Peak methodologies to develop demand-based allocators. *See Southwestern Public Service Co.*, 144 FERC ¶ 61,134 at n. 4 (2013).

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.¹²¹

89. The Commission also noted that acceptance of an energy allocator to allocate ancillary services costs to load would address 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.¹²² We continue to believe this represents another reason why this is just and reasonable approach.

90. With respect to uplift costs, the Commission found 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.¹²³ 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

¹²¹ December 18 Order, 145 FERC ¶ 61,247 at P 154 (citing Mississippi Commission Comments at 12 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 391 (2008))).

¹²² *Id.* P 157.

¹²³ December 18 Order, 145 FERC ¶ 61,247 at P 165 (citing Mississippi Commission Comments at 13-14 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at PP 2-3 (2012); Service Schedule MSS-3)).

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 interval on a Day-Ahead and Real-Time basis, rather than based upon peak demand.¹²⁴

91. Thus, contrary to the Louisiana Commission's assertions, the Commission provided principled reasons both for rejecting Entergy's initial proposal to allocate uplift costs and benefits to load through a peak load demand-based allocator and also for instead adopting an energy allocator. And, as the Commission noted, using the same methodology for all three allocators will also assure consistency for the allocation of costs to load.

92. We also disagree with the Louisiana Commission's contention that Entergy provides no basis for concluding that net marginal losses would be related to overall energy use and fails to associate uplift costs with energy use.¹²⁵ The MISO Tariff recovers the costs of losses through the Day-Ahead and Real-Time LMP. LMPs are paid by market participants based on energy usage and not demand.

93. The Louisiana Commission also states that Entergy does not provide a basis for asserting that all costs for losses, ancillary services and uplift will be related solely to energy use. However, we find that the consistency between Entergy's proposed approach and allocation practices in the System Agreement and MISO practice, as described in the preceding paragraphs, is sufficient to justify use of an energy allocator. We see no relationship between uplift, losses, or ancillary services costs and capacity or fixed plant investment or peak load that would merit use of a peak load demand allocator. So long as the Entergy Operating Companies are parties to the System Agreement until they leave per the terms of the System Agreement or the System Agreement terminates, Entergy's energy exchange will be conducted on a system-wide basis and not based on the economics of individual operating companies. It would be unreasonable for losses, ancillary services, or uplift charges that are assessed by MISO to be treated differently than the cost and revenue allocation of the energy with which they are associated. Consequently, losses, ancillary services, or uplift charges should be allocated in a manner consistent with the disposition of the single system principle of the System Agreement.

¹²⁴ *Id.* P 165 (citing *Midwest Indep. Trans. 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. *See Midwest Indep. Trans. Sys. Operator, Inc.*, 141 FERC ¶ 61,204, at P 28 (2012).

¹²⁵ MISO Tariff at 39.2.9.

94. The Louisiana Commission also questions whether there is sufficient specificity regarding the use of an energy-based allocator, given that the Commission accepted it only in principle. In the December 18 Order, the Commission took note of the Louisiana Commission's assertion that it was improper to 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. The Commission stated that "there was a sufficient basis for its 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."¹²⁶

95. We disagree that this approach denies interested parties like the Louisiana Commission an opportunity to comment on Entergy's proposal. In the December 18 Order, the Commission required Entergy to file tariff sheets in compliance with the Commission's order, giving interested parties the ability to file comments on the specifics of Entergy's allocation method. We note that the Louisiana Commission filed extensive comments in the compliance docket.

96. We find such acceptance, with direction to specify precise language and tariff sheets, to be just and reasonable because an energy-based allocator is a common variety of allocator used to allocate the costs and benefits of public utilities. We find the nature of the allocation methodology that the Commission directed was sufficiently precise for the Commission to find the proposal as conditionally accepted to be just and reasonable.¹²⁷

97. The Louisiana Commission also states that accepting Entergy's amendment to the losses, uplift, and ancillary services cost allocation methodology in an unauthorized answer deprived parties of statutory notice of a tariff change and that it would therefore be unlawful to accept the change on the basis of Entergy's Answer. We disagree. Entergy voluntarily, in its answer, proposed to adopt this solution, and the Commission may direct an applicant to make revisions that it commits to during the course of a proceeding in its compliance filing. As we note above, parties had the opportunity in the compliance proceeding to fully address the specifics of Entergy's proposed revisions.

¹²⁶ December 18 Order, 145 FERC ¶ 61,247 at P 145.

¹²⁷ As noted the Commission is issuing an order concurrently in Docket Nos. ER14-1263, -1264, -1265, -1266, -1267, and -1268 addressing the compliance filing.

G. Allocation of Congestion Costs and Long-term Transmission Rights

1. December 18 Order

98. In the November 20 Filing, Entergy proposed amendments to allocate congestion costs in MISO among the Operating Companies. Entergy proposed 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 and 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. In the December 18 Order the Commission accepted Entergy’s proposed congestion allocation methodology.¹²⁸

2. Request for Rehearing

99. The Louisiana Commission states that Entergy’s proposed allocation of net long- and short-term congestion charges and credits based on relative short-term purchases is not just and reasonable because it lacks causation and is not consistent with System Agreement allocations.¹²⁹ The Louisiana Commission notes that Entergy proposes to combine short-term and long-term congestion charges and credits and attach the net amount to short-term purchases, which it asserts means these purchases will effectively balance energy allocations made after the fact by MISO to match resources and load. The Louisiana Commission asserts that the need for balancing will arise because the Operating Companies will produce less energy than their load and Entergy in pricing short-term purchases attributes this imbalance to the short Operating Companies. The Louisiana Commission asserts, however, that Entergy fails to demonstrate that the cause of net congestion, particularly long-term congestion, will be short-term energy purchases.¹³⁰

100. The Louisiana Commission states that while Entergy asserts that it will make short-term purchases to displace long-term resources and that short-term congestion will be caused by short-term purchases, justifying the allocation of all congestion to the Companies that caused the short-term purchases,¹³¹ this does not reflect operational

¹²⁸ December 18 Order, 145 FERC ¶ 61,247 at P 182.

¹²⁹ Louisiana Commission Request for Rehearing at 8-9.

¹³⁰ *Id.* at 10.

¹³¹ *Id.* at 3 (citing December 18 Order, 145 FERC ¶ 61,247 at P 177).

realities. It asserts that because Entergy allocates short-term purchases based on Responsibility “Rates” [Ratios, sic], and these purchases are reallocated to other Operating Companies through Service Schedule MSS-3 only if they are more costly than the energy from owned generation, much of the purchased energy remains with the Operating Company to which it was allocated, which conflicts with Entergy's assumption in pricing short-term purchases that are caused by the “short” Operating Companies. The Louisiana Commission states that the rationale for Entergy’s proposal thus is inconsistent with its own assumptions and that the result has not been shown to be just and reasonable.¹³²

101. The Louisiana Commission states that Entergy’s proposed congestion cost allocation methodology also does not reflect the underlying allocation of congestion costs to the Operating Companies from MISO. The Louisiana Commission states that MISO’s Tariff provisions for assigning short- and long-term congestion to market participants have been approved by the Commission as just and reasonable, and that each Operating Company, operating as a separate market participant, will receive its own MISO bill. The Louisiana Commission states that because Entergy has decided to have each Operating Company register as an individual MISO market participant, there is no justification for the congestion cost allocation methodology that now appears to be based on adding up all of the MISO specifically assigned and designated congestion costs for each Operating Company and reallocating these costs following the proposed Entergy allocation formula.¹³³ The Louisiana Commission asserts that Entergy’s proposal to net all charges and credits on a System basis undoes the MISO scheme, with no showing that the rescrambling is just and reasonable. It also asserts that Entergy’s Amendments would allocate all congestion, including long-term congestion, on the basis of rebalancing purchases, which also has not been shown to be just and reasonable.¹³⁴

102. The Louisiana Commission also states that Entergy’s proposal to allocate long-term congestion charges to the Companies that are allocated short-term purchases through the System Agreement’s energy exchange is unjust, unreasonable and unduly discriminatory.¹³⁵ The Louisiana Commission states that Entergy will not make short-term purchases to displace long-term resources that are burdened with congestion charges and that the charges would not be assessed if the long-term resources are displaced. The Louisiana Commission states that Entergy’s proposal to redistribute long-term congestion

¹³² *Id.*

¹³³ *Id.* at 8-9.

¹³⁴ *Id.* at 11.

¹³⁵ *Id.*

charges would effectively reverse MISO pricing signals designed to provide transmission investment incentives and is inconsistent with MISO's disaggregation of long-term and short-term congestion charges. The Louisiana Commission states that the Commission should summarily reject Entergy's proposal to aggregate long-term with short-term congestion, or require a hearing on the proposal.¹³⁶

103. The Louisiana Commission states that the Commission approved Entergy's proposed allocation of net congestion based entirely on conclusory assertions that do not address the concerns raised by retail regulators.¹³⁷ It states that while the December 18 Order says that the Commission disagrees with the argument that there is an insufficient causal relationship, it provides no description of the basis for the alleged disagreement.¹³⁸

104. The Louisiana Commission asserts that the Commission's rationale for accepting Entergy's proposal was brief and conclusory, providing no explanation at all for adopting Entergy's proposal.¹³⁹ The Louisiana Commission states that the Commission is obligated to reasonably explain its decisions but does not even attempt to do so in the December 18 Order and effectively accepts Entergy's proposals on faith and without any refund requirement. Contrary to the Commission's assertion that the conflation of short-term and long-term congestion is "alleged," for example, the Louisiana Commission states that the December 18 Order elsewhere concedes that such a conflation occurs.¹⁴⁰

3. Commission Determination

105. We deny the Louisiana Commission's request for rehearing of the Commission's acceptance of the congestion cost Amendments. In the December 18 Order, the Commission found that Entergy's proposal to allocate remaining net congestion costs through the use of relative short-term purchases was a reasonable proxy for such costs based on MISO's market design.¹⁴¹ We disagree with the Louisiana Commission's assertion that there is an insufficient causal relationship and that additional data is necessary to support Entergy's proposal as just and reasonable. We find that its

¹³⁶ *Id.*

¹³⁷ *Id.* at 9 (citing December 18 Order, 145 FERC ¶ 61,247 at P 182).

¹³⁸ *Id.*

¹³⁹ *Id.* (citing December 18 Order, 145 FERC ¶ 61,247 at P 182).

¹⁴⁰ *Id.* (citing December 18 Order, 145 FERC ¶ 61,247 at P 169).

¹⁴¹ December 18 Order, 145 FERC ¶ 61,247 at P 182.

congestion allocation proposal is just and reasonable because it allocates net congestion charges or credits included in the MISO invoice to the Operating Companies that receive the resources that cause the net congestion charge or credit to occur.¹⁴² The scope of congestion costs that will be allocated through the Amendments is smaller than the Louisiana Commission implies:

it is net congestion charges or credits that are allocated based on short-term purchases, not *total* congestion charges. The MISO invoice will reflect congestion charges on existing long-term resources, congestion charges on short-term resources, and congestion credits (revenues) on existing long term resources. It is the *net* of these amounts that is allocated based on short-term purchases.^[143]

106. Furthermore, through various Commission orders the Commission has sought to ensure that the Operating Companies entering into MISO will have sufficient long-term congestion hedges. In March 2013, for example, the Commission accepted a proposal by MISO to amend its Tariff to allow supplemental rules for the allocation of long-term transmission rights to ensure adequate congestion hedging for the Operating Companies as load serving entities under the MISO Tariff.¹⁴⁴ The Commission evaluated and accepted with modifications a separate filing by Entergy to reallocate reserved source points from Entergy Arkansas to other Operating Companies to further enable them to acquire sufficient congestion hedges under the MISO Tariff as MISO load serving entities.¹⁴⁵ We find that the allocation of all net congestion costs based on short-term firm purchases is appropriate. As Entergy explained,¹⁴⁶ it is reasonable to expect most long-term firm purchases to be hedged. If the vast majority of net (unhedged) congestion costs are associated with short-term firm purchases, the amount of such purchases, and not long-term purchases, is the appropriate basis to allocate their costs.

107. As with losses, ancillary services, or uplift charges, so long as the Entergy Operating Companies are parties to the System Agreement, which we discuss above is appropriate until they leave per the terms of the System Agreement or the System

¹⁴² Entergy Answer at 19.

¹⁴³ *Id.* at 21.

¹⁴⁴ *Midwest Indep. Trans. Sys. Operator, Inc.*, 142 FERC ¶ 61,236 (2013).

¹⁴⁵ *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299 (2013).

¹⁴⁶ Entergy Answer at 19.

Agreement terminates, Entergy's energy exchange will be conducted on a system-wide basis and not based on the economics of individual operating companies. It would be unreasonable for congestion charges that are assessed by MISO to be treated differently than the cost and revenue allocation of the energy with which the congestion is associated. Consequently congestion charges should be allocated in a manner consistent with the disposition of the single system principle of the System Agreement as Entergy, which reallocates such costs to the Operating Companies. We thus reject the Louisiana Commission's assertions that there is no justification for adding up congestion costs for different Operating Companies and reallocating them through the System Agreement. Additionally, as the Commission explained, parties will have the opportunity to review the Intra-System Bill data that Entergy commits to provide at six-month intervals in order to evaluate whether a more refined allocation methodology may have merit and is feasible.¹⁴⁷

108. Further, we find allegations that Entergy's approach is inconsistent with MISO's disaggregation of long-term and short-term congestion to be incorrect. MISO has not disaggregated short- and long-term congestion charges. According to the MISO Tariff, MISO "shall make available Financial Transmission Rights (FTRs) within the Transmission Provider Region to provide a financial hedging mechanism for managing the risk of congestion charges reflected in Day-Ahead Ex Post LMPs."¹⁴⁸

The Commission orders:

The requests for rehearing and clarification are 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.

¹⁴⁷ December 18 Order, 145 FERC ¶ 61,247 at P 182.

¹⁴⁸ MISO, FERC Electric Tariff, Module C, at IV (FINANCIAL TRANSMISSION RIGHTS AND AUCTION REVENUE RIGHTS) (32.0.0).