

155 FERC ¶ 61,096
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket Nos. ER14-693-000
ER14-693-001
ER14-693-002
ER14-693-003
ER14-693-004
ER14-694-000
ER14-694-001
ER14-694-002
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ER14-704-003
ER14-704-004

Entergy Arkansas, Inc.

Docket Nos. ER14-702-000
ER14-702-001
ER14-702-002
ER14-702-003
ER14-702-004

ORDER CONDITIONALLY ACCEPTING AGREEMENTS

(Issued April 26, 2016)

1. On December 18, 2013, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Entergy Services, Inc. (Entergy Services), on behalf of the Entergy Operating Companies³ (collectively, Entergy)⁴ that operate the

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2015).

³ The Entergy Operating Companies are: Entergy Arkansas, Inc. (Entergy Arkansas); Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States); Entergy Louisiana, LLC (Entergy Louisiana); Entergy Mississippi, Inc. (Entergy Mississippi);

(continued ...)

Entergy Electric System Local Balancing Authority (EES LBA),⁵ filed ten unexecuted Local Balancing Authority (LBA) Agreements (LBA Agreements) with various counterparties.⁶ In addition, Entergy Services filed, on behalf of Entergy Arkansas, an unexecuted LBA Agreement between Entergy Arkansas (on behalf of the Entergy Arkansas LBA) and Calpine Corporation (Calpine) (on behalf of itself and its wholly owned subsidiary Pine Bluff Energy, LLC).⁷

2. We accept the eleven LBA Agreements to be effective December 19, 2013, subject to condition, as discussed below.

Entergy New Orleans, Inc. (Entergy New Orleans); and Entergy Texas, Inc. (Entergy Texas). On October 1, 2015, Entergy Gulf States and Entergy Louisiana concluded a transaction in which they combined substantially all of their respective assets and liabilities into a single successor public utility operating company, Entergy Louisiana Power, LLC, which subsequently was renamed Entergy Louisiana, LLC. The Commission authorized the transaction in *Entergy Gulf States Louisiana, L.L.C.*, 151 FERC ¶ 62,018 (2015), and Entergy Services filed a notice of consummation in Docket No. EC15-47-000 on October 9, 2015.

⁴ We use Entergy and Entergy Services interchangeably throughout this order.

⁵ All of the Entergy Operating Companies except Entergy Arkansas operate the EES LBA. Entergy Services is the administrator of the EES LBA.

⁶ The counterparties (counterparties) are: ExxonMobil Beaumont (Exxon) in Docket No. ER14-693; ExxonMobil Baton Rouge (Exxon) in Docket No. ER14-694; Axiall Corporation (Axiall) in Docket No. ER14-695; Dow Chemical Company (Dow) in Docket No. ER14-696; East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (East Texas Cooperatives) in Docket No. ER14-699; Occidental Chemical Corporation (Occidental) in Docket No. ER14-700; SRW Cogeneration Limited Partnership (SRW) in Docket No. ER14-701; Pine Bluff Energy-Calpine (Calpine) in Docket No. ER14-702; Tenaska Frontier Partners Limited (Tenaska) in Docket No. ER14-703; and Sabine Cogen, LP (Sabine) in Docket No. ER14-704. While Entergy identified Dow as the counterparty to the LBA Agreement filed in Docket No. ER14-697, we are directing Entergy to clarify whether Union Carbide Corporation (Union Carbide) is the correct counterparty for the LBA Agreement in that docket. *See infra* P 90.

⁷ In this order, Calpine is included in references to counterparties, as appropriate.

I. Background and Filing

3. On April 25, 2011, the Entergy Operating Companies announced an intention to join the Midcontinent Independent System Operator, Inc. (MISO) as transmission owning members. On March 12, 2013, Entergy became a signatory to the MISO Amended Balancing Authority Agreement (MISO BA Agreement), which delineates the responsibilities between MISO and LBAs within MISO relating to the implementation of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). On December 19, 2013, the Entergy Operating Companies became transmission owning members of MISO and integrated their transmission facilities into MISO. Accordingly, the EES LBA and Entergy Arkansas LBA now operate their respective LBA Areas within the MISO Balancing Authority Area.

4. Entergy filed the eleven LBA Agreements with a requested effective date of December 19, 2013. In the transmittal letter submitted with the December 18, 2013 filings,⁸ Entergy requested an extended comment period until January 31, 2014 in order to provide time for the parties to further discuss the LBA Agreements to resolve differences and enter into executed final agreements.⁹ On January 29, 2014, February 25, 2014,¹⁰ February 26, 2014,¹¹ and March 31, 2014, Entergy refiled the eleven LBA Agreements, each time requesting additional time in order to conduct further discussions

⁸ Except for identification of the counterparties, the transmittal sheets were substantively the same in each docket; accordingly references to “Transmittal” are intended to address transmittal sheets in all of above-captioned dockets, unless otherwise indicated.

⁹ December 18, 2013 Transmittal at 1.

¹⁰ Entergy’s February 25, 2014 refiling pertained only to Docket Nos. ER14-695 (Axiall), ER14-699 (East Texas Cooperatives), and ER14-703 (Tenaska).

¹¹ Entergy’s February 26, 2014 refiling pertained to Docket Nos. ER14-693 (Exxon), ER14-694 (Exxon), ER14-696 (Dow), ER14-697 (Union Carbide), in ER14-700 (Occidental), ER14-701 (SRW), ER14-702 (Calpine), and ER14-704 (Sabine).

with the counterparties.¹² The March 31, 2014 filings also included substantive revisions to the LBA Agreements. In its December 18, 2013 initial filing and the January 29, 2014, February 25, 2014, February 26, 2014, and March 31, 2014 refilings of the unexecuted LBA Agreements, Entergy requested waiver of the Commission's prior notice requirements in order for the LBA Agreements to have an effective date of December 19, 2013.

5. On June 15, 2015, Commission staff issued a deficiency letter informing Entergy that the LBA Agreements were deficient and that additional information was required within 30 days. On July 16, 2015, Entergy filed a response (Deficiency Letter Response).

II. The Filings

6. Entergy states that the LBA Agreements memorialize the proposed terms and conditions under which the Entergy Operating Companies will operate the EES LBA Area and under which Entergy Arkansas will operate the Entergy Arkansas LBA, following the December 19, 2013 integration of Entergy into MISO. Entergy states that the LBA Agreements identify the counterparties' load and/or generation located within the LBA, operational coordination responsibilities, meter specification requirements, and data sharing requirements between the parties. In addition, in the December 18, 2013 filing, Entergy states that Entergy and the counterparties have agreed to the final terms and conditions of the LBA Agreements and were in the process of having them executed by their respective corporate officials.¹³ Entergy states that it filed the unexecuted LBA Agreements with the Commission while it and counterparties completed their execution of the Agreements so that the LBA Agreements would be effective on December 19, 2013—the date of the Entergy Operating Companies' integration into MISO.

7. Entergy states that the proposed LBA Agreements are consistent with other Local Balancing Authority Agreements that Entergy and its affiliates have entered into with other embedded entities (i.e., entities within the EES and Entergy Arkansas LBA Areas). With respect to costs, the LBA Agreements provide that the LBA will recover from

¹² Except for the LBA Agreements filed in Docket Nos. ER14-696 and ER14-700, Entergy included in each of these refilings revised proposed eTariff metadata effective date of 12/31/9998. In the March 31, 2014 refilings in Docket Nos. ER14-696 and ER14-700, pertaining to Occidental and Dow respectively, the eTariff metadata reflected effective dates of 12/31/2014. Subsequently, on December 29, 2014 Entergy refiled the LBA Agreements in Docket Nos. ER14-696 and ER14-700 to revise the eTariff metadata to reflect a 12/31/9998 effective date.

¹³ December 18, 2013 Transmittal at 1.

counterparties its expenses of providing services to counterparties under the LBA Agreements. Entergy states that as transmission owners and LBAs within the MISO Balancing Authority, Entergy and Entergy Arkansas have obligations pursuant to the MISO Tariff, the MISO Business Practice Manuals, the MISO BA Agreement, and North American Electric Reliability Corporation (NERC) Reliability Standards. Entergy states that the LBAs' obligations are in support of MISO's role as Balancing Authority, but also are independent of MISO's obligations.

8. In the March 31, 2014 filing, Entergy Services states that its discussions with customers have provided input that has led Entergy to revise the unexecuted LBA Agreements to reflect a number of non-substantive edits and substantive revisions to simplify and clarify the process for allocating the costs and benefits of Residual Loads¹⁴ within the LBA Areas. Entergy states that as originally proposed, the LBA Agreements provided that Entergy and customers would undertake a process that would entail the reporting of metering data and the subsequent correction and adjustment of meters as a means of resolving meter errors that led to Residual Loads within the LBA Areas. Entergy states that following the Entergy Operating Companies' integration into MISO in December 2013, Entergy has gained experience with LBA Area metering practices and the MISO settlements process and has come to understand that its original proposed Residual Load allocation process could be simplified and improved.¹⁵ Entergy states that in the revised LBA Agreements filed on March 31, 2014, it proposes to undertake a process of allocating the costs (or credits) associated with Residual Loads to customers on a *pro rata* basis in a manner that will simplify the burden associated with meter corrections.

9. In response to an inquiry in the Commission staff deficiency letter concerning the status of discussions with the counterparties, Entergy states that on March 5, 2015, it conducted a day-long meeting with embedded entities in the Entergy Arkansas and the EES LBA Areas. Entergy states that during this meeting it provided information on the real time operations based on Entergy's experiences serving as LBA administrator since the Entergy Operating Companies integrated into MISO. Entergy states that it also provided updates about policy issues affecting LBA operations and coordination with MISO, an overview of meter data management agency and meter data quality processes and data sharing activities, informational updates about the possible impact of MISO

¹⁴ MISO uses the term Residual Load as the amount of over- or under-claimed energy in an LBA Area.

¹⁵ March 31, 2014 Transmittal at 2.

market re-settlement activities, and explained proposed updates to improve the Residual Load cost allocation provisions of the proposed LBA Agreements.¹⁶

10. Entergy states that Entergy Arkansas and Entergy Services have undertaken good faith efforts to perform their obligations as LBA Area administrators as identified in the proposed LBA Agreements, including with respect to meter data management, information sharing, and settlement of residual load amounts and have taken actions to keep the LBA Agreement counterparties updated with relevant information about LBA Area administrative activities and to help maintain system reliability. Entergy adds that Entergy Arkansas and Entergy Services have provided settlement statements to the counterparties identifying Residual Load amounts and associated costs and credits during periods between December 2013, when the Entergy Operating Companies integrated into MISO as transmission owning members and Entergy Arkansas and Entergy Services assumed LBA Area administrator responsibilities, and June 2014. Entergy states that the settlement statements are based on the settlement statements provided by MISO as part of the MISO settlement process. Entergy notes that Entergy Arkansas and Entergy Services have deferred providing settlement statements for periods since July 2014 pending the outcome of an ongoing MISO proceeding involving the allocation of costs associated with resources committed for voltage and local reliability requirements to the load in LBA Areas.¹⁷

III. Notice and Responsive Pleadings

11. Notice of Entergy's December 18, 2013 filings and request that the Commission extend the comment period was published in the *Federal Register*, 78 Fed. Reg. 79,429 (2013), with protests and interventions due on or before January 8, 2014.¹⁸ An errata notice extending the comment date to January 30, 2014 was issued on December 20, 2013.¹⁹

¹⁶ Deficiency Letter Response at 2.

¹⁷ *Id.* In the proceeding, Docket Nos. ER12-678 and EL14-58, a request for rehearing and an uncontested settlement are pending.

¹⁸ Entergy's December 18, 2013 Filings pertaining to Docket Nos. ER14-693-000 and ER14-694-000 are the only initial filings that did not contain a request for an extended comment period.

¹⁹ Errata Notice Extending Comment Date, Docket Nos. ER14-695-000, ER14-696-000, ER14-697-000, ER14-699-000, ER14-700-000, ER14-701-000, ER14-702-000, ER14-703-000, and ER14-704-000 (Dec. 20, 2013).

12. Notice of Entergy's January 29, 2014 refiling of the unexecuted LBA Agreements and request that the Commission extend the comment period was published in the *Federal Register*, 79 Fed. Reg. 7445 (2014), with protests and interventions due on or before February 28, 2014. An errata notice extending the comment date to February 28, 2014 was issued on January 30, 2014.²⁰ On January 31, 2014, Occidental filed a motion to intervene and on February 28, 2014, Occidental filed a comment and protest. On February 28, 2014, East Texas Cooperatives filed a motion to intervene and comment.

13. Notice of Entergy's February 25, 2014 refiling of the unexecuted LBA Agreements and request that the Commission extend the comment period was published in the *Federal Register*, 79 Fed. Reg. 12,502 (2014), with protests and interventions due on or before March 18, 2014. An errata notice extending the comment date to March 31, 2014 was issued on February 27, 2014.²¹

14. Notice of Entergy's February 26, 2014 refiling of the unexecuted LBA Agreements and request that the Commission extend the comment period was published in the *Federal Register*, 79 Fed. Reg. 13,049 (2014), with protests and interventions due on or before March 31, 2014.

15. Notice of Entergy's March 31, 2014 filing of the revised unexecuted LBA Agreements and request that the Commission extend the comment period was published in the *Federal Register*, 79 Fed. Reg. 19,325 (2014), with protests and interventions due on or before May 2, 2014. An errata notice extending the comment date to May 2, 2014 was issued on April 1, 2014.²² On May 1, 2014, Occidental filed a supplement to its February 28, 2014 comment and protest. On May 2, 2014, Exxon, Dow, Calpine, Tenaska, and Union Carbide filed motions to intervene, comments, and protests. On May 6, 2014, Exxon filed supplemental comments to its May 2, 2014 comment and protest. On July 16, 2014, Sabine filed a motion to intervene out-of-time, comment, and protest.

²⁰ Errata Notice Extending Comment Date, Docket No. ER14-703-001 (Jan. 30, 2014).

²¹ Errata Notice Extending Comment Date, Docket Nos. ER14-695-002, ER14-699-002, and ER14-703-002 (Feb. 27, 2014).

²² Errata Notice Extending Comment Date, Docket Nos. ER14-700-003 and ER14-702-003 (Apr. 1, 2014).

16. Notice of Entergy's December 29, 2014 refiling²³ of the unexecuted LBA Agreements was published in the *Federal Register*, 80 Fed. Reg. 217 (2015), with protests and interventions due on or before January 20, 2015. On January 20, 2015, Occidental filed a second supplemental protest.

17. Notice of Entergy's Deficiency Letter Response was published in the *Federal Register*, 80 Fed. Reg. 44,095 (2015), with protests and interventions due on or before either August 6 or August 7, 2015.²⁴ On August 6, 2015, Exxon filed a comment to the Deficiency Letter Response and Sabine, Tenaska, and Occidental separately filed comments and protests.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant Sabine's late-filed motion to intervene in Docket Nos. ER14-704-000, *et al.*, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

19. We find that Entergy has demonstrated that the LBA Agreements will assist in ensuring reliable operations of the EES and Entergy Arkansas LBAs. However, as discussed below, we will require Entergy to revise its proposed Residual Load cost allocation methodology, to refile certain LBA Agreements that were filed in incorrect dockets, and to file the executed LBA Agreements within 30 days of execution.

²³ As noted, Entergy on December 29, 2014 refiled only the LBA Agreements in Docket Nos. ER14-696 and ER14-700, pertaining to Occidental and Dow, respectively.

²⁴ Protests and interventions were due on or before August 6, 2015 for Docket Nos. ER14-694-004, ER14-695-004, ER14-696-004, ER14-699-004, ER14-699-005, ER14-700-005, ER14-701-004, ER14-702-004, ER14-703-004, and ER14-704-004. Protests and interventions were due on or before August 7, 2015 for Docket Nos. ER14-693-004, and ER14-697-005.

Accordingly, the Commission accepts the LBA Agreements to be effective December 19, 2013, subject to condition, as discussed below.²⁵

1. The Need for an LBA Agreement

a. Entergy's Proposal

20. Entergy states that under the MISO BA Agreement, to which Entergy is a signatory, LBAs have a number of enumerated obligations with respect to their LBA Areas. According to Entergy, these obligations include ensuring that adequate metering, communications, and related equipment is maintained and employed to obtain Actual Interchange²⁶ data as identified in applicable MISO protocols; collecting, verifying, and providing MISO with Actual Interchange values, as identified in MISO operating protocols, for external tie lines; providing MISO with interchange meter error information; and gathering and providing to MISO after-the-fact tie line accounting data.²⁷ Entergy states that the MISO BA Agreement also requires LBAs to know the status of all resources, generation and transmission available for use within the LBA Area.²⁸

21. Entergy states that the MISO BA Agreement anticipates that LBAs may enter into agreements with other entities as appropriate to help carry out their LBA responsibilities. Entergy states that “[n]othing in this [MISO BA] Agreement would preclude an LBA from delegating one or more of its LBA tasks described in this document to one or more entities . . . [and] [i]n [such] circumstances, local agreements between those entities will

²⁵ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission’s conditions by withdrawing its filing.

²⁶ Net Actual Interchange is the summation of all actual energy flow into and out of an LBA via all interconnected tie points. Positive Net Actual Interchange indicates a LBA is a net exporter of energy and a negative Net Actual Interchange indicates a LBA is a net importer of energy. Net Actual Interchange is reported to MISO from each LBA based on meter data from interconnection tie points. The Physical Scheduling System maintains the Net Actual Interchange data and provides the data to the Market Settlements System. MISO Business Practice Manual 005 at 100.

²⁷ Deficiency Letter Response at 3 (citing MISO BA Agreement § 4.5).

²⁸ *Id.* (citing MISO BA Agreement § 4.6.3).

govern the delineation of responsibilities and associated compliance for that LBA [Area].”²⁹

22. Entergy asserts that, given the scope of Entergy’s and Entergy Arkansas’ responsibilities pursuant to the MISO Tariff, the MISO Business Practice Manuals, the MISO BA Agreement, and NERC Reliability Standards, and given the need to coordinate with entities in their LBA Areas to be able to meet those responsibilities, Entergy and Entergy Arkansas have sought to enter into LBA Agreements with embedded entities to establish a framework for the coordination and communication of operational and metering information that Entergy and Entergy Arkansas require to carry out their LBA functions. To that end, Entergy states that each LBA Agreement includes an appendix that identifies in detail the equipment and facilities owned by the counterparty that comprise the counterparty’s revenue quality metering system, which is necessary for LBA functions.³⁰

23. Entergy states that the proposed LBA Agreements are not intended to, and do not, duplicate the MISO Tariff, the MISO Business Practice Manuals, the MISO BA Agreement, or NERC Reliability Standards. Entergy states that those governing documents impose various operational, metering, and communications obligations on entities that operate in the MISO Balancing Authority, use the MISO transmission system, and transact in the MISO markets. However, Entergy states that the documents do not establish obligations on entities embedded within the EES and Entergy Arkansas LBA Areas to coordinate with Entergy and Entergy Arkansas with respect to operational and metering issues or to communicate operational and metering information to Entergy and Entergy Arkansas that they need to carry out their LBA functions.³¹

24. In regard to generator interconnection agreements, Entergy similarly states that the LBA Agreements serve a different function and are not duplicative of existing interconnection agreements, such as those between Entergy (succeeded to by MISO) and Sabine,³² as well as Entergy (succeeded to by MISO) and Tenaska.³³ Entergy asserts that

²⁹ *Id.* at 4 (quoting MISO BA Agreement § 4.3.3).

³⁰ *Id.*

³¹ *Id.*

³² Interconnection and Operating Agreement dated June 10, 1999 between Sabine and Entergy Gulf States Louisiana (succeeded to by MISO). *See Midcontinent Indep. Sys. Operator, Inc.*, Delegated Letter Order, Docket Nos. ER14-689-000, *et al.*, April 28, 2014.

such interconnection agreements provide the terms and conditions by which generators interconnect with the transmission system, whereas the LBA Agreements are structured to establish a framework for the coordination and communication of operational and metering information between entities and the EES and Entergy Arkansas LBAs. Entergy states that the specific counterparty obligations identified in the LBA Agreements are not duplicative of generator interconnection obligations under generator interconnection agreements, with one exception: the obligation to operate facilities consistent with Good Utility Practice and applicable NERC/SERC Reliability Corporation (SERC) standards. Entergy states, however, that because generators have obligations to operate their facilities consistent with Good Utility Practice and applicable NERC/SERC standards that are independent of either the generator interconnection agreements and the LBA Agreements, this duplication of obligations under both agreements does not impose any additional obligations or burdens on the counterparties.³⁴

b. Comments and Protests

25. East Texas Cooperatives filed comments in support of the LBA Agreements. East Texas Cooperatives requests that the Commission grant Entergy's requested waiver of the Commission's 60-day notice requirement in order to establish the December 19, 2013 effective date. East Texas Cooperatives contends that this effective date is mutually beneficial because the LBA Agreement memorializes the terms and conditions under which the EES LBA operates its LBA Area within the MISO Balancing Authority Area following Entergy's integration into MISO.

26. Dow, Union Carbide, Occidental, Calpine, Tenaska, and Sabine all argue that their respective LBA Agreement is unjust and unreasonable, and is unnecessary, as it is not required by any rule or policy adopted by MISO or the Commission. They claim that the LBA Agreement does not accomplish anything beyond what is already covered by the MISO Tariff and Business Practice Manuals, and/or NERC Reliability Standards, and that Entergy has not justified a need for the LBA Agreement. Sabine and Tenaska also argue that the LBA Agreement is duplicative of, and potentially conflicts with, an existing interconnection agreement.

³³ Interconnection and Operating Agreement dated June 10, 1999 between Tenaska and Entergy Gulf States, Inc. (succeeded to by MISO). *See Midcontinent Indep. Sys. Operator, Inc.*, Delegated Letter Order, Docket Nos. ER14-689-000, *et al.*, April 28, 2014.

³⁴ Deficiency Letter Response at 6.

27. Dow and Union Carbide state that the closest rule or policy in support of the LBA Agreement is section 4.6.3 of the MISO BA Agreement, which requires LBAs to know the status of all generation resources within their LBA areas.³⁵ However, Dow and Union Carbide contend that compliance with section 4.6.3 does not require an agreement as expansive as the LBA Agreement.

28. Occidental and Sabine question Entergy's reliance on section 4.3.3 of the MISO BA Agreement's providing that LBAs can delegate responsibilities to justify the LBA Agreements. Occidental asserts that under section 4.3.3 the responsibilities that an LBA administrator may delegate do not include the coordination and communication of operational and metering information.³⁶ Sabine argues that while section 4.3.3 permits Entergy to delegate "one or more of its LBA tasks described...to one or more entities," this does not mean that Entergy can force an unwilling party to accept a delegation of responsibilities without compensation.

29. Sabine also disputes Entergy's assertion that section 4.5 of the MISO BA Agreement supports Entergy's claim that Entergy needs the LBA Agreement in order to "carry out [its] responsibilities as LBA [Area] administrator."³⁷ Sabine argues that Entergy has failed to demonstrate how this administrative function of the MISO BA Agreement, which relates only to equipment and data requirements associated with External Balancing Authorities, requires Entergy to enter into a separate agreement with an entity such as Sabine, a generation owner that merely sells excess energy into the MISO market.

30. Tenaska argues that Entergy has also not been able to explain why the LBA Agreements are necessary given that Tenaska and Entergy Gulf States are parties to an interconnection agreement that remains in effect.³⁸ Tenaska contends that the LBA Agreement includes provisions addressing operations and the maintenance of metering

³⁵ Dow Protest at 7 (citing MISO BA Agreement § 4.6.3); Union Carbide Protest at 7 (citing MISO BA Agreement § 4.6.3).

³⁶ Occidental Protest to Deficiency Letter Response at 4 (quoting Deficiency Letter Response at 4).

³⁷ Sabine Second Protest at 5 (citing Deficiency Letter Response at 4).

³⁸ Tenaska Protest at 9.

and communications equipment, and cost allocations for modifications to equipment, but these issues are already addressed in the interconnection agreement.³⁹

c. Commission Determination

31. We find that Entergy has supported the need for the LBA Agreements and will accept them, subject to condition, as discussed below. We disagree that, because no Commission or MISO rule or policy mandates agreements such as the LBA Agreements, they are unnecessary and unjust and unreasonable. A transmission owner is not foreclosed from proposing a revision to its tariff in the absence of a specific Commission rule requiring such a revision.⁴⁰ Furthermore, while the MISO BA Agreement does not require agreements such as the proposed LBA Agreements, it anticipates that an LBA may enter into such agreements. Specifically, section 4.3.3 of the MISO BA Agreement provides as follows:

[n]othing in this Amended Agreement would preclude an LBA from delegating one or more of its LBA tasks described in this document to one or more entities. In those circumstances, local agreements between those entities will govern the delineation of responsibilities and associated compliance for that [LBA Area].

Accordingly, we find unpersuasive arguments that the LBA Agreements are unnecessary and that the counterparties should not be required to adhere to the terms and conditions of the LBA Agreements.

32. In addition, we are unpersuaded by arguments that Entergy does not need the LBA Agreements in order to carry out its responsibilities as an LBA Area administrator. The MISO BA Agreement imposes certain obligations on LBAs within the MISO Balancing Authority Area. These LBA obligations are in support of MISO's role as administrator of the MISO Balancing Authority, but also are independent of MISO's own obligations. For example, each LBA within MISO is responsible for knowing the status of all resources, generation, and transmission available for use within the LBA Area.⁴¹

³⁹ *Id.*

⁴⁰ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229, at P 168 (2015) (“Under section 205, transmission providers such as MISO have discretion to determine not only what to propose in its filing, but also when to submit such a filing.”); *Sw. Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 117 (2010); *W. Mass. Elec. Co.*, 23 FERC ¶ 61,025 (1983), *aff'd sub nom. Commonwealth of Mass. v. FERC*, 729 F.2d 886 (1st Cir. 1984).

⁴¹ MISO BA Agreement § 4.6.3.

Because this obligation is independent of the obligations placed on embedded entities by the MISO Tariff and Business Practice Manuals, as well as the NERC Reliability Standards, we find the LBA Agreements to be a reasonable means for Entergy and embedded entities to establish a framework for the coordination and communication of operational and metering information that Entergy and Entergy Arkansas require to fulfill their LBA obligations. Accordingly, we find unpersuasive the arguments that Entergy has not justified a need for the LBA Agreements.

33. Similarly, we find that the LBA Agreements are not duplicative of existing interconnection agreements. The interconnection agreements that Entergy and Entergy Arkansas enter into with generators provide a means for generators to interconnect with the transmission system and define the terms and conditions for such interconnection. On the other hand, as proposed, the LBA Agreements outline the framework for the coordination and communication of operational and metering information between entities and the EES and Entergy Arkansas LBAs in support of their functions as LBA Area administrators. Accordingly, we find it reasonable for Entergy and embedded entities to execute and abide by the terms and conditions of LBA Agreements while abiding by the terms of existing interconnection agreements.

2. Collection of Costs Pursuant to the LBA Agreements

a. Residual Load Costs

i. Entergy's Proposal

34. Entergy states that MISO determines Residual Loads pursuant to the methodology in MISO Business Practice Manual No. 005, *Market Settlements*. Entergy states that MISO defines Residual Load as the amount of over- or under-claimed energy in an LBA Area, and calculates Residual Load using (1) the reported amount of injections, (2) the reported amount of withdrawals, (3) the LBA Area Actual Net Interchange, and (4) the amount of MISO State Estimator-determined losses for the LBA Area. For purposes of settling Residual Load costs within its Balancing Authority, MISO assigns the Residual Load to one asset, and thus one Asset Owner, in each LBA Area. The Asset Owner's designated Market Participant for the asset is financially responsible for the effect of the Residual Load.⁴² Entergy Louisiana is the designated Market Participant within the EES LBA, and therefore Entergy Louisiana is responsible for financially settling the Residual Load within MISO for the EES LBA. Similarly, Entergy Arkansas is the designated

⁴² MISO Business Practice Manual 005 at 100.

Market Participant within the Entergy Arkansas LBA, and therefore Entergy Arkansas is responsible for financially settling the Residual Load for the Entergy Arkansas LBA.⁴³

35. Entergy states that MISO calculates Residual Load for the LBA Area for each hour, and then, on a monthly basis, MISO assigns the total Residual Load as either a cost or credit to Entergy Arkansas, in its capacity as MISO Market Participant for the Entergy Arkansas LBA, and to Entergy Louisiana, as MISO Market Participant for the EES LBA. Entergy asserts that because Residual Loads are a function of injections and withdrawals into and from the LBA Area, Net Actual Interchange for the LBA Area, and losses for the LBA Area, they are caused by the actions of all embedded entities in the LBA Area. Entergy argues that it is unfair and inconsistent with cost causation principles to require Entergy and Entergy Arkansas to bear the entire cost of Residual Loads associated with the EES and Entergy Arkansas LBA Areas, when the Residual Loads are caused by the accumulated actions of all embedded entities within the LBA Areas.⁴⁴

36. To remedy this problem, Entergy proposes, as part of the March 31, 2014 revised LBA Agreements, to allocate the MISO-determined monthly Residual Load on a *pro rata* basis among all embedded entities within the EES and Entergy Arkansas LBA Areas, based on energy injections and withdrawals. Specifically, section 4.8 of the LBA Agreements (with counterparties in the EES LBA) provides that:

[c]onsistent with the methodology identified in Appendix E, [Entergy] LBA will allocate to each [Market Participant] or [Non Market Participant] located in the [Entergy] LBA Area, on a *pro rata* basis for each hour, the cost responsibility associated with the Residual Load assigned by MISO to the [Entergy] LBA Area.⁴⁵

37. Entergy states that it will use data provided by MISO to determine an hourly Residual Load cost allocation for each Commercial Participant Node within the LBA Area. Where the monthly sum of hourly cost allocations for a Commercial Participant Node associated with the customer results in a monthly charge to the customer's

⁴³ Deficiency Letter Response at 8.

⁴⁴ Entergy notes that the Entergy Operating Companies are embedded entities within the respective LBA Areas and that they represent the large majority of the load in those LBA Areas; therefore, they will bear the largest responsibility for Residual Load costs among all embedded entities in those LBA Areas. Deficiency Letter Response at 10.

⁴⁵ EES LBA Agreement § 4.8.

Commercial Participant Node, the LBA will issue an invoice to the customer's Market Participant or non-participant and recover that cost. Where the monthly sum of hourly costs allocations results in a monthly credit to the Commercial Participant Node, the LBA will issue a payment or credit to the customer's Market Participant or non-participant.⁴⁶

38. Entergy states that the data available to Entergy and Entergy Arkansas in their capacity as the EES and Entergy Arkansas LBAs typically are not adequate to allow them to directly assign all Residual Load to individual embedded entities. Entergy explains that, with some exceptions, the Residual Load within an LBA Area over a period of time represents the accumulation of small variations between actual and metered injections and withdrawals, small deviations from schedules that give rise to small measures of Net Actual Interchange, and varying amounts of losses. According to Entergy, these individual inputs aggregate across the LBA Area to create Residual Load, but such individual inputs are generally too small to measure and track, and therefore it is generally not possible to directly assign the individual contributions to Residual Load to the entity that contributes to it. Entergy argues that assigning Residual Load costs on a *pro rata* basis based on energy injections and withdrawals is a reasonable means of allocating costs in a manner consistent with other cost-sharing methodologies based on *pro rata* distributions, such as the allocation of transmission service costs on the basis of transmission system usage.⁴⁷

39. Entergy acknowledges that in *Midwest Independent Transmission System Operator, Inc.*,⁴⁸ the Commission rejected, without prejudice, a 2006 proposal by MISO to allocate costs associated with Residual Loads to all MISO load on a load ratio share basis. Entergy argues that *MISO* does not apply to the instant proposal because MISO's 2006 proposal predated the Entergy Operating Companies' integration into MISO, and the circumstances confronted by Entergy and Entergy Arkansas today are significantly different than the circumstances faced by MISO in 2006.⁴⁹ Entergy notes that after the Commission rejected MISO's 2006 proposal, MISO resorted to the current arrangement in which MISO assigns the Residual Loads in an LBA to a single entity in the LBA. Entergy maintains that this arrangement leaves it up to the assigned entities, in this case Entergy and Entergy Arkansas, to devise a means for allocating the costs of the Residual

⁴⁶ March 31, 2014 Transmittal at 2.

⁴⁷ Deficiency Letter Response at 10-11.

⁴⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,006 (2006) (*MISO*).

⁴⁹ Deficiency Letter Response at 11.

Loads to the embedded entities that are causing the Residual Loads, and the means they have devised are the proposed LBA Agreements.⁵⁰

40. In addition, Entergy states that the Residual Load cost allocation methodology in the LBA Agreements is distinguishable from MISO's 2006 proposal in key respects. First, Entergy states that MISO's proposed Residual Load cost allocation would have assigned Residual Load, in the form of "unaccounted for energy," to all load in the MISO Balancing Authority on a load ratio share basis; in contrast, the methodology in the LBA Agreements includes additional steps intended to reduce or eliminate Residual Load and the associated costs before allocating them to the embedded entities including the Entergy Operating Companies. Entergy explains that one such additional step is that Entergy and Entergy Arkansas will review the data to identify drivers of Residual Load, such as metering errors and data communications failures, and will work with the counterparties to identify the causes of data irregularities and facilitate a resolution. According to Entergy, if the irregularities can be corrected and the corrected data can be reported to MISO before MISO issues its updated settlement statement, then the amount of Residual Load assigned to the LBA Area can be reduced and the associated cost impact can be remediated.⁵¹

41. In addition, Entergy states that during the months of March and April 2015, Entergy tendered updated proposed LBA Agreements to many counterparties.⁵² Entergy states that the updated LBA Agreements feature refined provisions under which Entergy or Entergy Arkansas can directly assign Residual Load responsibility to a specific counterparty where Entergy or Entergy Arkansas has the means to associate the actions of the counterparty to some or all of the Residual Load assigned by MISO to Entergy or Entergy Arkansas.⁵³ Entergy states that the intent of this refinement is to reduce or eliminate the amount of Residual Load that must be allocated to embedded entities, and that this step of identifying uncorrected issues that cause Residual Load and directly

⁵⁰ *Id.* at 12.

⁵¹ *Id.*

⁵² *Id.* at 2.

⁵³ Entergy states, for example, such direct assignment would occur if an LBA Agreement counterparty suffered an uncorrected meter error that caused a variance between the counterparty's actual and reported generation output. If Entergy was able to establish the meter error as a cause of some or all of the Residual Load assigned to it by MISO for the relevant period, Entergy would directly assign the Residual Load cost responsibility to the specific counterparty. *Id.*

assigning them to the responsible counterparties is a significant difference from MISO's 2006 proposal.⁵⁴

42. Entergy also states that the methodology, as refined, provides an incentive for reliable LBA Area operations that was lacking in MISO's 2006 proposal. Entergy argues that the active involvement of Entergy and Entergy Arkansas in helping embedded entities maintain metering and communications equipment, coupled with the prospect of incurring Residual Load-related costs arising from metering and communications errors, provides an incentive to embedded entities to maintain adequate metering and robust processes for reporting data.

43. Finally, Entergy states that MISO's 2006 proposal would have assigned Residual Load, in the form of unaccounted for energy, to all load in the MISO Balancing Authority. In contrast, Entergy states that the proposal of Entergy and Entergy Arkansas is to allocate cost responsibility for Residual Load to all embedded entities in the EES and Entergy Arkansas LBA Areas, comprising both load and generation. Entergy states that the proposed Residual Load provisions are just and reasonable because they allocate, on a *pro rata* basis, the costs and credits associated with MISO determined assignments of Residual Loads to the Entergy and EES LBAs among the entities within the LBA Areas whose facilities give rise to the Residual Load. Entergy also states that the proposed Residual Load provisions are consistent with principles of cost causation that properly ascribe cost responsibility to actors that give rise to costs.⁵⁵

ii. Comments and Protests

44. Protesters question the proposed Residual Load cost allocation methodology in the LBA Agreements.

45. Occidental argues that the fact that Entergy would be subject to potential Residual Load cost allocation under the MISO Tariff but for the LBA Agreement, while Occidental would not be, raises concerns that Entergy's filing is an attempt to reallocate costs under the guise of an EES LBA reliability agreement.⁵⁶ Occidental also argues that in the transmittal to the March 31, 2014 filing, Entergy states that its allocation proposal "will assign cost responsibility for MISO-determined [Entergy] LBA residual loads to the

⁵⁴ *Id.* at 13.

⁵⁵ March 31, 2014 Transmittal at 2 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,165, at P 25 (2014)).

⁵⁶ Occidental Protest at 14.

market participates[sic] or non-market participants responsible for the loads, generating facilities, and other energy assets located in the LBA [Area] which give rise to residual loads,” which Occidental asserts is not true.⁵⁷ Rather, Occidental argues that section 4.8 and Appendix E of the revised LBA Agreement only allocate the cost of Residual Load among all entities that have signed an LBA Agreement, leaving non-parties to an LBA Agreement free from any cost responsibility for Residual Load.⁵⁸ According to Occidental, allowing Entergy to pass through its cost responsibility for MISO-determined monthly Residual Load removes Entergy’s financial incentive to remedy metering problems in its LBA.⁵⁹

46. In addition, Occidental argues that Entergy’s Residual Load cost allocation methodology raises the same concern that the Commission found with MISO’s 2006 proposal.⁶⁰ Occidental argues that the “additional steps” Entergy claims it will take to reduce or eliminate Residual Load before allocating the Residual Load costs to embedded entities ignore the basis upon which the Commission rejected MISO’s 2006 proposal, i.e., that MISO’s 2006 proposal failed to “allocate [Residual Load costs] to the load that caused it.”⁶¹ Occidental also asserts that if Entergy believes the current cost assignment methodology for Residual Load, as stipulated by the MISO Tariff, is “unfair and inconsistent with cost causation principles,” then Entergy should file a complaint under section 206 of the FPA, not collaterally attack previously accepted provisions of the MISO Tariff.⁶² Finally, Occidental emphasizes that Entergy’s claim that its Residual Load allocation proposal is justified because individual inputs generally are too small to measure and track, is not an excuse to ignore cost causation principles, nor did it save MISO’s 2006 proposal from being rejected as unjust and unreasonable.⁶³

⁵⁷ Occidental Supplemental Protest at 3 (quoting Entergy’s March 31, 2014 Filing).

⁵⁸ *Id.* at 3.

⁵⁹ *Id.* at 5.

⁶⁰ Occidental Protest to Deficiency Letter Response at 5 (citing *MISO*, 115 FERC ¶ 61,006 at P 23).

⁶¹ *Id.* at 5.

⁶² *Id.* at 7.

⁶³ *Id.*

47. Calpine and Tenaska argue that Entergy's claim that its proposed Residual Load allocation method follows the principle of cost causation is incorrect.⁶⁴ They assert that it does not track the methodology set forth in the MISO Tariff or any other methodology for determining how much Residual Load is actually attributable to a specific Market Participant.⁶⁵ Rather, according to Calpine and Tenaska, the proposed allocation methodology would result in responsibility for Residual Load charges being assigned to Market Participants based on their respective energy injections or withdrawals, rather than their contribution to "over- or under-claimed energy within" the LBA Area.⁶⁶ Calpine and Tenaska argue that as the entities responsible for owning and maintaining meters, Entergy and Entergy Arkansas should be responsible for any meter errors and imbalances that result in Residual Load within their LBA Areas, and thus the Commission should reject Entergy's attempt to foist Residual Load charges onto the counterparties.⁶⁷ Tenaska adds that under its interconnection agreement, Entergy is responsible for owning and operating the meters at Tenaska's Frontier Facility.⁶⁸

48. Tenaska also argues that Entergy's revised proposal does nothing to address the fact that the proposed allocation methodology will penalize embedded entities for simply injecting or withdrawing energy, even if those withdrawals and injections result in no Residual Load.⁶⁹ Tenaska requests that the Commission reject Entergy's proposal to allocate Residual Load charges to entities that Entergy cannot even show contributed to such charges.⁷⁰

49. In addition, Tenaska states that although Entergy states that it revised the proposed LBA Agreements to include refined Residual Load cost allocation provisions, Tenaska never received an updated LBA Agreement from Entergy.⁷¹ Tenaska also claims that

⁶⁴ Calpine Protest at 10; Tenaska Protest at 11.

⁶⁵ Calpine Protest at 11; Tenaska Protest at 12.

⁶⁶ Calpine Protest at 12; Tenaska Protest at 13.

⁶⁷ Calpine Protest at 12; Tenaska Protest at 14.

⁶⁸ Tenaska Protest at 13.

⁶⁹ Tenaska Supplemental Protest at 6.

⁷⁰ *Id.* at 6.

⁷¹ *Id.* at 3.

Entergy has not filed any such agreement with the Commission, questioning how it is possible for the Commission to assess the justness and reasonableness of provisions without seeing them.⁷²

50. Sabine claims that Entergy fails to point to any MISO Tariff provision that would support the allocation of Residual Load to Sabine, and that the imposition of Residual Load cost allocations on generators such as Sabine is an unusual practice with respect to other LBA Areas in MISO.⁷³ Sabine states that it agrees with Tenaska's assertion that Entergy's proposed *pro rata* allocation methodology improperly imposes cost responsibility for Residual Load charges based on a facility's energy injections and withdrawals, rather than on the facility's contributions to the over- or under-claimed energy.⁷⁴ Sabine further argues that Entergy's own assertions as to its proposal's consistency with cost causation principles are internally inconsistent, because Entergy refers to allocating Residual Load on a facility-specific basis, as well as a *pro rata* basis.⁷⁵

51. Sabine further contests Entergy's proposal because Sabine would have no ability to control the level of Residual Load charges to which it would be subject.⁷⁶ Sabine also points out that it is interconnected with Entergy Texas and has no contractual or other relationship with Entergy Louisiana, to whom MISO assigns the Residual Load charges.⁷⁷ However, according to Sabine, Entergy has not provided justification as to why charges imposed by MISO on Entergy Louisiana could be reallocated to Sabine.⁷⁸

52. In addition, Sabine argues that Entergy's *pro rata* allocation of Residual Load is at odds with the MISO Tariff, under which Residual Load is to be assigned to a Load Zone asset first and may only be assigned to a generation asset in the absence of a Load Zone asset. Sabine asserts that Entergy has failed to support the allocation of Residual Load to

⁷² *Id.*

⁷³ Sabine Protest at 6-7.

⁷⁴ *Id.* at 7.

⁷⁵ *Id.* at 7-8.

⁷⁶ *Id.* at 8.

⁷⁷ *Id.* at 9.

⁷⁸ *Id.*

Sabine as a generator.⁷⁹ Sabine further argues that the actual contribution of a facility to Residual Load may vary significantly based on the size of the facility, a fact that Entergy's *pro rata* allocation proposal has failed to address.⁸⁰

53. Finally, Sabine questions Entergy's argument that the Commission's Residual Load precedent should not be binding here because Entergy faces different circumstances than the circumstances faced by MISO.⁸¹ According to Sabine, the "different circumstances" are only that Entergy is the designated Market Participant that is assigned Residual Load pursuant to the MISO Tariff and Business Practice Manual procedures.⁸²

54. Exxon argues that the Commission should inquire how Entergy recovered Residual Load before Entergy joined MISO and why Entergy's longstanding cost allocation arrangement should now change.⁸³

iii. Commission Determination

55. We find Entergy's proposed Residual Load cost allocation, revised in accordance with the methodology explained in the Deficiency Letter Response, to be a reasonable means for allocating Residual Load costs under the LBA Agreements. Accordingly, as discussed further below, we will require Entergy to make a compliance filing to modify its Residual Load cost-allocation process to include the ability to directly assign Residual Load costs.

56. In MISO's 2006 proposal, MISO proposed to allocate Residual Load to all MISO load on a *pro rata* basis. In *MISO*, the Commission stated that in another case, *Sierra Pacific Power Co.*,⁸⁴ it had rejected proposed tariff revisions because they failed to allocate unaccounted for energy to the load that caused it and found that to be the case with regard to MISO's proposal. The Commission stated "[t]he revisions proposed here would lump together all of the errors, many of which may be attributable to the retail load

⁷⁹ *Id.* at 15.

⁸⁰ *Id.*

⁸¹ *Id.* at 16.

⁸² *Id.* at 16-17 (citing MISO Business Practice Manual on Market Settlements, section 2.14.3; Entergy Response at 12).

⁸³ Exxon Comments on Deficiency Letter Response at 3.

⁸⁴ 93 FERC ¶ 61,107, at 61,305 (2000) (*Sierra Pacific*).

of the local distribution company associated with the [Balancing Authority Area], and allocate the amount evenly across all wholesale customer classes.”⁸⁵ The Commission also stated that it agreed with commenters that “as a consequence of not following cost-causation principles, the proposed revisions, if accepted, could serve as a disincentive to [Balancing Authority Areas] to improve their metering facilities.”⁸⁶ In rejecting the proposed revisions, the Commission did so without prejudice to MISO revising the proposal to address the intervenors’ and the Commission’s concerns.

57. Entergy’s Residual Load allocation methodology, as originally proposed, suffers from the same flaws the Commission identified in MISO—i.e., it fails to allocate unaccounted for energy to the load that causes it. However, as Entergy explains in the Deficiency Letter Response, it has refined the proposed Residual Load allocation provisions to require Entergy or Entergy Arkansas to directly assign Residual Load responsibility to a specific counterparty where Entergy or Entergy Arkansas has the means to associate the actions of the counterparty to some or all of the Residual Load assigned by MISO to Entergy Louisiana or Entergy Arkansas. We find that Entergy’s proposal to include the ability to directly assign Residual Load costs, when possible, to be an improvement to the methodology rejected in MISO’s 2006 proposal and the methodology Entergy originally proposed in its December 18, 2013 filings. Directly assigning Residual Load costs aligns with the principles of cost causation because it ensures that, where possible, the entity that caused the Residual Load is the entity that pays for it.

58. Furthermore, we agree with Entergy that Entergy Louisiana and Entergy Arkansas should not be required to bear the entire cost of residual loads associated with the Entergy Arkansas and EES LBA Areas, regardless of which entities own and maintain the meters, because such costs are caused by the accumulated actions of all embedded entities within the LBA Areas, including the Entergy Operating Companies. As Entergy points out, the Commission’s rejection of MISO’s 2006 proposal left the assigned Market Participants, in this case Entergy Louisiana for the EES LBA and Entergy Arkansas for the Entergy Arkansas LBA, to bear the financial burden for the Residual Loads associated with their LBA Areas. We find Entergy’s proposed Residual Load cost allocation, revised in accordance with the methodology explained in the Deficiency Letter Response to be a reasonable means to allocate the Residual Load costs.

59. Therefore, we accept the LBA Agreements, subject to condition, and direct Entergy to file, within 30 days of the date of issuance of this order, revised LBA

⁸⁵ *MISO*, 115 FERC ¶ 61,006 at P 23.

⁸⁶ *Id.*

Agreements that include the ability to directly assign Residual Load when possible, as described in Entergy's Deficiency Letter Response.

b. Direct Assignment of Other Costs

i. Entergy's Proposal

60. Entergy states that it will directly assign any costs that it would be obligated to bear associated with any of the counterparties' responsibilities under the LBA Agreements, or any costs MISO would assign Entergy Services (as administrator of the EES LBA) or to Entergy Arkansas (for the Entergy Arkansas LBA) because a counterparty failed to satisfy its obligations with respect to those responsibilities. Entergy states that it is not the intent of Entergy or Entergy Arkansas to impose obligations that would give rise to costs that are duplicative of costs under existing generator interconnection agreements.

61. Entergy states that section 4.3 of the LBA Agreements provides the terms under which counterparties may be assigned cost responsibility for costs incurred by Entergy Services or Entergy Arkansas in furtherance of their administration of the EES and Entergy Arkansas LBAs. Specifically, Entergy states that LBA Agreement section 4.3 identifies cost responsibility for physical, logical, and/or transactional configuration or operation costs; metering and operating data costs; telecommunications equipment installation, ownership, and costs; telecommunications path sharing costs; and MISO Tariff Schedule 24 costs.⁸⁷

62. Entergy further states that neither Entergy nor Entergy Arkansas has needed to incur costs on an embedded entity's behalf that would be directly assignable to a counterparty pursuant to section 4.3. However, Entergy states that section 4.3 would permit such direct assignment if the need arose.⁸⁸ For example, Entergy states that if a counterparty failed to maintain its metering equipment, which initially was installed pursuant to the customer's obligations under its generator interconnection agreement but which also is needed for the provision of operational data to Entergy or Entergy Arkansas so it may satisfy its LBA responsibilities, and if Entergy or Entergy Arkansas remedied the problem on the counterparties' behalf, then Entergy or Entergy Arkansas would utilize section 4.3 to directly assign those costs to the counterparty.⁸⁹

⁸⁷ Deficiency Letter Response at 7.

⁸⁸ *Id.*

⁸⁹ *Id.*

ii. Comments and Protests

63. Occidental contends that despite Entergy's claim to the contrary, there are no "expenses of providing services to [Occidental] under the LBA Agreement" that are "appropriately assigned" to Occidental.⁹⁰ According to Occidental, the only purported "services" to be provided by Entergy under the LBA Agreement relate to "the terms and conditions under which [Entergy] LBA will operate its [LBA Area]," which, Occidental asserts, the LBA Agreement acknowledges are required by the MISO BA Agreement.⁹¹

64. Occidental further states that the Commission-approved method for recovering costs related to operating the EES LBA Area in accordance with the MISO BA Agreement is through Schedule 24 of the MISO Tariff.⁹² Occidental argues that, considering that Schedule 24 of the MISO Tariff already provides for recovery of costs related to operating the EES LBA Area, the LBA Agreement provides the potential for double-recovery of such costs.⁹³ Occidental also argues that section 4.3.2 of the LBA Agreements is vague and ambiguous. According to Occidental, section 4.3.2 provides that "EES LBA may seek to recover costs that are properly billed and recovered pursuant to Schedule 24 or such other rate schedule of the MISO Tariff provided those costs are not directly assigned to any Customer."⁹⁴ Occidental argues that this language is ambiguous because it is not clear from whom EES LBA may seek to recover costs. Occidental questions whether this language means that the EES LBA may seek to recover costs from Occidental that are properly billed and recovered pursuant to Schedule 24 (in which case the provision could result in an impermissible double-recovery), or if it restates EES LBA's rights under the MISO Tariff to recover certain costs (in which case the provision is superfluous and unnecessary).⁹⁵

⁹⁰ Occidental Protest at 9.

⁹¹ *Id.*

⁹² *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,074 (2008) (approving recovery of costs for performance of obligations under the [MISO BA Agreement] through Schedule 24)).

⁹³ *Id.* at 10.

⁹⁴ *Id.* at 14.

⁹⁵ *Id.*

65. Sabine and Tenaska also argue that the LBA Agreements impose costs and operation and maintenance responsibility for certain metering, communication, and operational equipment that appear duplicative of costs and obligations currently contained in interconnection agreements. Sabine adds that Entergy has provided no reasoning, support, or justification for the apparently duplicative costs and responsibilities.⁹⁶

66. Sabine objects to Entergy's claim that section 4.6.3 of the MISO BA Agreement, which gives each LBA the responsibility of knowing the status of all resources, generation and transmission available for use within its LBA Area, justifies Entergy passing along such costs to Sabine. Sabine argues that Entergy is attempting to inappropriately pass along the costs of its NERC compliance responsibilities to its customers. Sabine contends that as a Transmission Operator, Entergy is obliged to maintain this information, and it should bear the cost burden of its own compliance responsibilities. Sabine states that it already provides such information to Balancing Authorities in accordance with its responsibilities as a Generator Owner and Generator Operator pursuant to several NERC Reliability Standards.⁹⁷

67. Dow argues that the types of costs that may be directly assigned are defined in a vague and overly broad manner, which makes it unclear exactly what costs may be assigned to Dow.⁹⁸ Dow provides the example of telemetry equipment that it states MISO has already installed whose costs, if such equipment were installed by Entergy, would be unnecessary and duplicative. Exxon argues that if revenue quality meters and telecommunications equipment are required for the counterparties named in this proceeding, then Entergy's own generation and load should be required to execute LBA agreements as well.⁹⁹

iii. Commission Determination

68. We find to be just and reasonable Entergy's proposal to directly assign any costs that it would be obligated to bear associated with any of the counterparties' responsibilities under the LBA Agreements, or any costs MISO would assign Entergy

⁹⁶ Sabine Protest at 9; Tenaska Protest at 9 (citing §§ 4.3, 6.1–6.4.2 of the LBA Agreement).

⁹⁷ Sabine Second Protest at 6.

⁹⁸ Dow Protest at 8.

⁹⁹ Exxon Comments on Deficiency Letter Response at 3.

Services (as administrator of the EES LBA) or to Entergy Arkansas (for Entergy Arkansas LBA) because a counterparty failed to satisfy its obligations with respect to those responsibilities. Specifically, we find that section 4.3 provides an appropriate means for Entergy to recover costs that it may incur on behalf of a counterparty, in fulfilling its responsibilities under the LBA Agreements. For example, costs such as having to install metering equipment on a counterparty's behalf should be borne by that counterparty who is benefiting from the installation of such equipment. The need to ensure that adequate metering is in place is particularly important considering that Residual Load costs can result from inaccurate meters. Appropriate metering should support the reduction of Residual Load costs allocated to counterparties under the LBA Agreements. Furthermore, as Entergy notes, Entergy has not yet needed to utilize section 4.3 to directly assign such costs; rather, section 4.3 is an appropriate means to do so should the need arise.

69. In addition, we find to be misplaced concerns that recovery of costs under section 4.3 of the LBA Agreements is duplicative of cost recovery under the MISO Tariff in general, Schedule 24 of the MISO Tariff in particular, or under interconnection agreements. In the Deficiency Letter Response, Entergy states that LBA Agreement section 4.3 identifies cost responsibility for, among other things, MISO Tariff Schedule 24 costs. As Occidental points out, section 4.3.2 of the LBA Agreements provides that “[EES or Entergy Arkansas LBA] may seek to recover costs that are properly billed and recovered pursuant to Schedule 24 or such other rate schedule of the MISO Tariff provided those costs are not directly assigned to any Customer.” We interpret section 4.3.2 to mean that to the extent Entergy bills and recovers costs under any rate schedule of the MISO Tariff such costs may not be directly assigned to a customer under an LBA Agreement. In other words, we interpret section 4.3.2 as a restatement of Entergy's rights, as an LBA under the MISO Tariff, to recover costs identified in Schedule 24¹⁰⁰ or

¹⁰⁰ Schedule 24, section 1.2 (Costs To Be Recovered) provides as follows:

Pursuant to this Schedule 24, Local Balancing Authorities shall recover their costs incurred as a result of implementing the Markets and Services pursuant to this Tariff (“Local Balancing Authority Costs”). These Local Balancing Authority Costs include daily operation and maintenance costs, administrative and general costs, capital costs, costs for systems-in-place, training of personnel, and any costs that result from the performance of obligations imposed by this Tariff on Local Balancing Authorities; provided, however, that all costs to be recovered under this Schedule must be related to Local Balancing Authority actions in performing obligations under this Tariff and in implementing this Tariff and shall not include any costs reimbursed by the Transmission Provider to Local Balancing Authorities or costs otherwise recovered under this Tariff.

other rate schedules under the Tariff. Rather than superfluous and unnecessary we find section 4.3.2 to clarify that Entergy may not recover through the direct assignment provisions of section 4.3 costs that it bills and recovers under any rate schedule of the MISO Tariff. We also interpret section 4.3.2 to prohibit Entergy from directly assigning costs under section 4.3 that are recoverable under an existing interconnection agreement.

70. In addition, we will not require Entergy to execute LBA agreements for its own generation and load if revenue quality meters and telecommunications equipment are required for the counterparties as suggested by Exxon. As discussed with regard to Residual Load, under the LBA Agreements the costs associated with Residual Loads are allocated to the embedded entities, including the Entergy Operating Companies. The Commission expects that similarly, LBA costs that an Entergy Operating Company causes will be borne by Entergy and not allocated or directly assigned to counterparties to the LBA Agreements.

3. Other Issues

a. Information and Communications

i. Comments and Protests

71. Protesters raise concerns with various other provisions of the LBA Agreements. Specifically, Calpine avers that Entergy had not shown to be just and reasonable section 5.5.1, which requires Calpine to provide Entergy with information, including generator output and generator outage schedules. Calpine argues that it already provides this information to MISO. Calpine also takes issue with section 5.5.2, which requires Calpine to “notify the [Entergy Arkansas] LBA of any change to the operational plan submitted to MISO by [Calpine].”¹⁰¹

72. Similarly, Dow objects to other specific provisions of the LBA Agreements. Dow takes issue with the term “Good Utility Practice” as used in the LBA Agreements. Dow states that it is not clear that references to “Good Utility Practice” are appropriately applied to Dow because Dow’s generation facilities, as Qualifying Facilities at industrial plant sites, are not operated like a typical utility or even like an independent power producer.¹⁰² Dow argues that Entergy’s obligation under certain sections of the LBA Agreements to perform its duties consistent with “Good Utility Practice” should be

¹⁰¹ Calpine Protest at 13.

¹⁰² Dow Protest at 8.

expanded to require Entergy to also perform its duties “consistent with Reliability Standards imposed by [the Commission], NERC, and SERC.”¹⁰³

73. Regarding forecasts, Dow argues that MISO and Entergy should coordinate their activities so that forecasts are generally provided only once, from Dow to MISO, with Entergy then having access to those forecasts through MISO.¹⁰⁴ Dow proposes that forecasts should only be provided to Entergy directly during emergency situations when communications with MISO are interrupted.¹⁰⁵ Dow argues that it is not clear why Entergy cannot access such data through MISO except in emergency situations when communications with MISO are interrupted.

74. Dow also states that under the LBA Agreements Dow and Entergy are required to agree on hourly inputs and outputs, but Dow argues that this is part of normal operations under MISO, and that only under emergency situations when communications with MISO are interrupted should this coordination be done with Entergy.¹⁰⁶ Further, regarding MISO market settlement, Dow states that the LBA Agreement allows Entergy to get involved in the settlement process with MISO when metered hourly inputs and outputs do not match hourly inputs and outputs. Dow argues that it is not clear why Entergy’s involvement is required or appropriate in the MISO settlement process.¹⁰⁷

75. Dow also questions inspection and auditing procedures under the LBA Agreements. Dow may be required to provide Entergy with access to its facilities, which is potentially problematic because Dow’s generation facilities are located at industrial and chemical manufacturing plant sites, access to which is strictly limited for safety and other reasons.¹⁰⁸ Regarding static data, Dow states that under the LBA Agreement, Dow could be required to provide Entergy with one-line diagrams that Dow has already

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 9.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

provided to MISO and which MISO has determined to be acceptable.¹⁰⁹ Dow argues that Entergy should simply obtain the diagrams from MISO.

76. Finally, with regard to penalties and liabilities, Dow states that under the LBA Agreements, if Entergy or Dow is penalized for violations of reliability standards, the other party would be responsible for paying any portion of the penalty that is caused by its own action or inaction.¹¹⁰ Dow argues that the provisions should be expanded to require Entergy and Dow to provide the other party with notice of any investigation or audit that could result in that party having to pay a penalty, as well as an opportunity for the party to participate and be represented in any such investigation or audit.¹¹¹

ii. Commission Determination

77. As discussed above, Entergy has demonstrated that the LBA Agreements will assist in ensuring reliable operations of the EES and Entergy Arkansas LBAs. We find unavailing arguments concerning providing certain information to Entergy or Entergy Arkansas in their roles in the operation and administration of EES or Entergy Arkansas LBAs. Providing information such as generator output and outage schedules and forecasts, and static data and communication on inputs and outputs should not be unduly burdensome, especially if this information is already being provided to MISO. The MISO BA Agreement requires LBAs to know the status of all resources, generation and transmission available for use within the LBA Area. Communication and information sharing under the LBA Agreements should support this obligation as well as the LBAs' obligations for reliable operations of the LBAs.

78. With regard to Dow's concern that the LBA Agreements would give the LBA access to restricted areas, we construe such provisions to allow for reasonable access and that such access would be governed by the LBA Agreements' provision requiring the Entergy and EES LBAs to perform their duties consistent with Good Utility Practice. With regard to Dow's argument that the penalties and liabilities provisions should be expanded, we find that such provisions are already sufficient in that they provide for written notice of any such penalties, as well as the ability for Dow to initiate dispute resolution concerning any such penalties.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

b. Procedural and Process Issues**i. Comments and Protests**

79. East Texas Cooperatives urges the Commission to grant Entergy's requested waiver of the Commission's 60-day notice requirement in order to establish the requested effective date.¹¹² East Texas Cooperatives asserts that waiver of the prior notice requirements is justified as the LBA Agreement memorializes proposed terms and conditions under which EES LBA operates its LBA Area within the MISO Balancing Authority Area following the December 19, 2013 integration of the Entergy Operating Companies into MISO. Accordingly, East Texas Cooperatives contends that an effective date of December 19, 2013 is mutually beneficial to the parties in this matter.

80. Conversely, Dow asserts that the unexecuted LBA Agreement should be accepted subject to further proceedings if a replacement agreement is not executed and filed prior to May 2, 2014 or some later date that is prior to the Commission's issuance of an order.¹¹³ Dow recommends that such further proceedings consist of formal evidentiary hearings that are held in abeyance pending the outcome of settlement judge procedures.

81. Occidental argues that Entergy abused the Commission's eTariff process by using 12/31/9998 metadata in its December 29, 2014 Filing to extend the date by which the Commission must act on the unexecuted LBA Agreements. Occidental contends that Entergy's claim that it only seeks an extension in order to continue discussions with Occidental is untrue because Entergy has made no attempt to engage in further discussions with Occidental.¹¹⁴ Occidental also seeks a denial of Entergy's request for a waiver of the Commission's prior notice requirements because Entergy failed to renew its waiver request in the December 29, 2014 filing.¹¹⁵

82. Calpine also argues that the Commission should deny Entergy's request for a waiver of its prior notice requirements.¹¹⁶ Calpine argues that Entergy has failed to make "a strong showing of good cause" that would satisfy the Commission's standard for

¹¹² East Texas Cooperatives Comments at 3.

¹¹³ *Id.* at 10.

¹¹⁴ Occidental Second Supplemental Protest at 3-4.

¹¹⁵ *Id.* at 4.

¹¹⁶ Calpine Protest at 14.

granting such a waiver.¹¹⁷ Calpine urges that rejection of Entergy's request for waiver of the prior notice requirements is necessary because Entergy attempted to "squat" on an earlier effective date by submitting a patently deficient initial filing.¹¹⁸ Finally, in addition to rejecting Entergy's request for waiver of the prior notice requirements, Calpine requests that the Commission suspend the LBA Agreements for the maximum five-month statutory period under section 205(e) of the FPA.¹¹⁹

83. Exxon requests that the Commission accept a mutually executed, but yet unfiled, LBA Agreement executed by Entergy and Exxon on November 26, 2013, and to set the unexecuted LBA Agreement for hearing.¹²⁰ Exxon states that the unexecuted LBA Agreement as filed by Entergy was actually executed prior to its filing, although the executed version was never filed.¹²¹ Exxon states that Entergy subsequently refiled the same unexecuted LBA Agreement even though there was an existing executed LBA Agreement.¹²² Exxon contends that the LBA Agreement filed by Entergy on March 31, 2014 differs in many respects from the executed LBA Agreement, and further that Exxon believed that Entergy committed to file the executed LBA Agreement.¹²³ Exxon states that in the event that Exxon and Entergy cannot reach a mutually agreed settlement on the terms and conditions of the LBA Agreement, that the Commission accept the mutually executed, but yet unfiled, LBA Agreement executed by Entergy and Exxon on November 26, 2013.¹²⁴

84. Exxon asks that the Commission reject all of Entergy's prior filings of the LBA Agreement because Entergy began circulating an LBA agreement that differs from the LBA Agreement that was previously filed by Entergy.¹²⁵ Exxon also argues that it and

¹¹⁷ *Id.* at 14.

¹¹⁸ *Id.* at 15.

¹¹⁹ *Id.* at 17.

¹²⁰ Exxon Protest at 1.

¹²¹ *Id.*

¹²² *Id.* at 2.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Exxon Comments on Deficiency Letter Response at 2.

other affected counterparties should have been served by Entergy¹²⁶ and should have the opportunity to file comments and to request other processes, including a technical conference, to explore the issue of cost allocation, among others.¹²⁷

85. Union Carbide states that its parent company, Dow, was incorrectly identified as the counterparty in the unexecuted agreement that was filed and re-filed in Docket Nos. ER14-697-000. Union Carbide explains that Union Carbide is the correct counterparty, as the unexecuted agreement is applicable to 353 MW of generation that Union Carbide owns and operates at its industrial and manufacturing complex in Hahnville, St. Charles Parish, Louisiana.¹²⁸

ii. Commission Determination

86. We are unpersuaded by arguments that the Commission should reject Entergy's filings and subject them to additional proceedings. As we have found, Entergy has supported the need for the LBA Agreements and we will accept them to be effective December 19, 2013 as requested, subject to condition.

87. Entergy originally filed the LBA Agreements unexecuted on December 18, 2013 seeking to make them effective on December 19, 2013 to coincide with the Entergy Operating Companies' integration into MISO and Entergy Services' and Entergy Arkansas' assumptions as LBA Area administrators for the EES and Entergy Arkansas LBAs, respectively. We find it reasonable for Entergy to seek to make the LBA Agreements effective to coincide with the date on which Entergy Services and Entergy Arkansas would commence serving as LBA Area administrators under the MISO Tariff.

88. While Entergy ultimately refiled the LBA Agreements several times, we find that the counterparties were sufficiently on notice of Entergy's original request to make the LBA Agreements effective on December 18, 2013 to coincide with the Entergy

¹²⁶ Exxon states that Entergy failed to serve the unexecuted LBA Agreement that Entergy filed on March 31, 2014 on any Exxon representative designated for service. Exxon Supplemental Comments at 1.

¹²⁷ *Id.* at 2.

¹²⁸ Union Carbide Protest at 1.

Operating Companies' integration into MISO. Furthermore, we find Entergy's use of the 12/31/9998 effective date in the eTariff metadata to be appropriate.¹²⁹

89. Finally, in regard to Union Carbide's concern that it, not its parent Dow, is the correct counterparty to the unexecuted LBA Agreement in Docket No. ER14-697-000, *et al.*, in the deficiency letter Commission staff asked Entergy if it agrees with that statement, and if it did not to explain why. In the Deficiency Letter Response, Entergy states:

Entergy Services does not have a basis to dispute Union Carbide Corporation's representation that [Dow Chemical Corporation should be the counterparty to the proposed LBA Agreement filed in Docket No. ER14-697-000, *et al.*, and will refile a corrected version that identifies The Dow Chemical Corporation as the counterparty.¹³⁰

90. It is not clear from Entergy's response who it understands is the appropriate counterparty to the proposed LBA Agreement filed in Docket No. ER14-697-000, *et al.*. Accordingly, when it refiles the LBA Agreement that it submitted in Docket No. ER14-697, Entergy must reflect Union Carbide as the counterparty or explain in its compliance filing why that is not the case.

The Commission orders:

(A) Entergy's LBA Agreements are accepted effective December 19, 2013, as requested, subject to condition, as discussed in the body of this order.

¹²⁹ *Order Establishing Procedures Relating to Tariffs Filed Electronically*, 130 FERC ¶ 61,047, at n.10 (2010) ("for statutory filings with indeterminate effective dates, for example, where the effective date is contingent on Commission approval..., filers must still include a Tariff Record Proposed Effective Date, but should set that date to 12/31/9998").

¹³⁰ Deficiency Letter Response at 14.

(B) Entergy is hereby directed to submit compliance filings within 30 days of the date of this order, 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.