

156 FERC ¶ 61,204
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. ER14-700-006

ORDER DENYING REHEARING

(Issued September 21, 2016)

1. On April 26, 2016, the Commission issued an order accepting, subject to condition, ten unexecuted Local Balancing Authority (LBA) Agreements (LBA Agreements) between Entergy Louisiana, LLC (Entergy Louisiana), as operator of the Entergy Electric System LBA, and various counterparties, as well as an unexecuted LBA Agreement between Entergy Arkansas, Inc. (Entergy Arkansas), on behalf of the Entergy Arkansas LBA, and Calpine Corporation.¹ The LBA Agreements govern the terms under which the Entergy Electric System LBA and Entergy Arkansas LBA (collectively, Entergy LBAs) operate their respective LBA areas within the Midcontinent Independent System Operator, Inc. (MISO) balancing authority area following the December 2013 integration of the Entergy Operating Companies into MISO.² As relevant here, the LBA Agreements include a process for allocating the costs or credits associated with the amount of over- or under-claimed energy in an LBA area (residual load).

2. In its May 26, 2016 request for rehearing, Occidental Chemical Corporation (Occidental), a counterparty to one of the unexecuted LBA Agreements, asserts that the Commission erred by accepting the LBA Agreements without record evidence that the agreements are just and reasonable.³ Occidental further asserts that the proposed residual load cost allocation conditionally accepted in the April 26 Order is: (1) inconsistent with principles of cost causation; (2) contrary to MISO's Open Access Transmission, Energy, and Operating Reserves Markets Tariff (MISO Tariff); and (3) unduly discriminatory

¹ *Entergy Servs., Inc.*, 156 FERC ¶ 61,096 (2016) (April 26 Order).

² *See id.* PP 3, 6.

³ Rehearing Request at 2, 3-5.

against the LBA Agreement counterparties and unduly preferential toward Entergy Arkansas and Entergy Louisiana.⁴ For the reasons discussed below, we deny Occidental's request for rehearing.

I. Commission Determination

A. Record Evidence

3. Occidental faults the Commission for failing to cite record evidence demonstrating that Entergy met its burden under section 205 of the Federal Power Act (FPA)⁵ to show that the LBA Agreements are just and reasonable.⁶ We reject this claim, and affirm the finding in the April 26 Order that Entergy has demonstrated that the LBA Agreements are just and reasonable and will assist in ensuring reliable operations of the Entergy LBAs.

4. First, Occidental claims that the Commission erred in finding that the need for the LBA Agreements was supported, in part, by section 4.3.3 of the MISO Amended Balancing Authority Agreement (MISO BA Agreement),⁷ which anticipates that an LBA may enter into agreements delegating certain tasks to other entities.⁸ According to Occidental, the LBA Agreements "do not purport to delegate any Balancing Authority tasks between the parties at all."⁹ But Occidental misunderstands the import of the Commission's reference to section 4.3.3 of the MISO BA Agreement. As the Commission explained, transmission owners have the discretion to propose tariff revisions, even in the absence of a specific Commission rule or directive to do so.¹⁰ In

⁴ *Id.* at 2-3, 6-9.

⁵ 16 U.S.C. § 824d (2012).

⁶ Rehearing Request at 3-5.

⁷ The MISO BA Agreement delineates the responsibilities between MISO and LBAs within MISO relating to the implementation of the MISO Tariff. *See* April 26 Order, 155 FERC ¶ 61,096 at P 3.

⁸ April 26 Order, 155 FERC ¶ 61,096 at P 31.

⁹ Rehearing Request at 4.

¹⁰ April 26 Order, 155 FERC ¶ 61,096 at P 31 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229, at P 168 (2015); *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)).

this vein, the MISO BA Agreement appears to contemplate agreements “such as the proposed LBA Agreements” by including a provision expressly permitting LBAs to delegate their responsibilities.¹¹ While Occidental is correct that the LBA Agreements do not directly delegate LBA responsibilities, they do address information and activities required from customers in order for the LBA to meet its LBA responsibilities. If an LBA may delegate fully its responsibilities under the MISO BA Agreement, it stands to reason that it may also take the intermediate action of entering into agreements needed to ensure that it can meet those responsibilities.

5. Occidental further argues that the mere fact that an LBA may enter into these types of agreements does not demonstrate that the actual LBA Agreements filed by Entergy are just and reasonable.¹² While that is correct, the Commission did not base its finding on the mere fact that Entergy was permitted to propose the LBA Agreements. Like any proponent of tariff revisions under section 205 of the FPA, Entergy was required to demonstrate that its proposal was just and reasonable.

6. Here, Entergy’s July 16, 2015 response to the deficiency letter (Deficiency Letter Response) explained that the MISO Tariff and Business Practice Manuals, MISO BA Agreement, and North American Electric Reliability Corporation (NERC) Reliability Standards impose various operational, metering, and communications obligations on entities operating in the MISO balancing authority, but do not directly require embedded entities within the Entergy LBA areas to coordinate with Entergy LBAs with respect to operational and metering issues or to communicate all of the information the Entergy LBAs need to carry out their LBA administrative functions.¹³

7. As the Commission found in the April 26 Order, the LBA Agreements “close the loop” to ensure coordination and coverage of the necessary LBA requirements,¹⁴ and thus

¹¹ *Id.* Section 4.3.3 of the MISO BA Agreement clarifies that nothing in the agreements “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].”

¹² Rehearing Request at 4.

¹³ Deficiency Letter Response at 4.

¹⁴ April 26 Order, 155 FERC ¶ 61,096 at P 32 (finding 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”).

“Entergy has demonstrated that the LBA Agreements will assist in ensuring reliable operations of the [Entergy LBAs].”¹⁵ Occidental revives from its initial pleadings the argument that the LBA Agreements are not necessary because the coordination and communication of operational and metering information is already covered under the MISO Tariff rules and NERC Reliability Standards.¹⁶ We disagree. As the Commission found in the April 26 Order, the obligation for each LBA to know the status of all resources, generation, and transmission available for use within its LBA area “is independent of the obligations placed on embedded entities by the MISO Tariff and Business Practice Manuals, as well as the NERC Reliability Standards.”¹⁷ Occidental dismisses this point as “irrelevant,” but fails to explain why it is unreasonable for Entergy to use the LBA Agreements to ensure a nexus between the embedded entities’ actions and the LBAs’ administrative duties. Accordingly, we affirm the April 26 Order’s finding that the LBA Agreements provide “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.”¹⁸

B. Cost Causation

8. In the April 26 Order, the Commission found that Entergy’s revised residual load cost allocation methodology includes the ability to directly assign residual load costs. Accordingly, the methodology would ensure that, where possible, the entity responsible for residual load costs would be the entity charged for those costs. The Commission thus accepted the proposed allocation, subject to Entergy submitting a compliance filing with revised LBA Agreements reflecting this proposal.¹⁹ Occidental seeks rehearing of this determination, alleging that Entergy has not guaranteed that it will be able to assign residual load costs to the responsible counterparties and thus its methodology is unjust and unreasonable.²⁰

¹⁵ *Id.* P 19.

¹⁶ Rehearing Request at 5. *See also* Occidental February 28, 2014 Protest at 7; Occidental August 6, 2015 Protest to Deficiency Letter Response at 3.

¹⁷ April 26 Order, 155 FERC ¶ 61,096 at P 32.

¹⁸ *Id.*

¹⁹ *Id.* Entergy’s compliance filings are currently pending in Docket No. ER14-693-005, *et al.*

²⁰ Rehearing Request at 6.

9. We reject Occidental's claims and continue to find that the residual load cost allocation methodology is consistent with the Commission's principle of cost causation, which requires that "all approved rates reflect to some degree the costs actually caused by the customer who must pay them."²¹ As explained in the April 26 Order, Entergy's proposal – as refined in the Deficiency Letter Response – more closely aligns with this principle because: (1) where possible, residual load costs will be directly assigned to the entity that caused the costs; and (2) Entergy Arkansas and Entergy Louisiana will no longer be responsible for the entire cost of the residual load, when such costs are caused by all of the embedded entities in their LBA areas.²² As Entergy notes in its Deficiency Letter Response, it is not possible to track all of the minute variations and deviations necessary to directly assign all residual load to the individual embedded entities responsible for the costs.²³ But, contrary to Occidental's assertions, this does not render Entergy's proposal unjust and reasonable; the cost causation policy does not require such "exacting precision."²⁴

10. In addition, Occidental's conclusion that the LBA Agreements will permit Entergy to allocate residual load costs contrary to cost causation principles and Commission precedent because "[t]here are no guarantees under the LBA Agreements that Entergy will find it 'possible' to directly assign any of the Residual Load costs"²⁵ is both premature and speculative. In the Deficiency Letter Response, Entergy stated that it updated the proposed LBA Agreements to include the ability to directly assign residual load responsibility where it has the means to associate the actions of a particular counterparty to some or all of the residual load assigned to the LBA.²⁶ In the April 26

²¹ *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 237 (D.C. Cir. 2013) (internal quotation omitted). See also *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

²² April 26 Order, 155 FERC ¶ 61,096 at PP 57-58.

²³ Deficiency Letter Response at 10-11.

²⁴ *Midwest ISO Transmission Owners v. FERC*, 373 F.3d at 1369. See *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) ("FERC is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly").

²⁵ Rehearing Request at 6.

²⁶ Deficiency Letter Response at 13.

Order, the Commission accepted Entergy's proposal, subject to Entergy submitting the revised LBA Agreements reflecting this revision and based on this representation.²⁷ While Occidental has provided no reason to question Entergy's intentions, we nonetheless clarify that we expect Entergy to use good faith efforts to identify and allocate residual load costs that are appropriate for direct assignment. Should Occidental believe that Entergy is not acting in good faith to identify and directly assign residual load costs to embedded entities, it may raise this concern in a complaint under section 206 of the FPA.²⁸

11. Occidental further contends that the Commission erred in deeming the LBA Agreements an improvement over the proposed unaccounted for energy allocation that the Commission found to be insufficiently supported in *Midwest Indep. Transmission Sys. Operator, Inc.*²⁹ In *MISO*, the Commission expressed concern that, by lumping together all of the errors contributing to the costs without allocating them to the entities actually responsible, MISO's proposal could serve as a disincentive for balancing authority areas to improve their metering facilities.³⁰ According to Occidental, the LBA Agreements could create the same disincentive because Entergy may still allocate residual load costs *pro rata* under the LBA Agreements to the extent that it cannot directly assign the costs.³¹ Again, we find Occidental's concerns to be speculative and unjustified. We accept Entergy's commitment in the Deficiency Letter Response to work with counterparties to identify and address the causes of meter errors and data irregularities, and believe that this proposal, combined with the potential for direct assignment of costs, provides an appropriate incentive to improve metering facilities and reduce residual load.³²

C. Consistency with MISO Tariff

12. Occidental argues that permitting the Entergy LBAs to allocate the cost of residual load to all of the embedded entities within their LBA areas contradicts MISO's Tariff,

²⁷ April 26 Order, 155 FERC ¶ 61,096 at PP 57-59.

²⁸ 16 U.S.C. § 824e (2012).

²⁹ 115 FERC ¶ 61,006 (2006) (*MISO*).

³⁰ *Id.* P 23.

³¹ Rehearing Request at 7.

³² *See* Deficiency Letter Response at 12.

under which Entergy Louisiana and Entergy Arkansas would bear these costs alone.³³ While the MISO Tariff allocates residual load to one market participant for purposes of settlement, we do not interpret the Tariff as prohibiting Entergy from entering into agreements to recover these costs, consistent with Commission precedent and cost causation.³⁴ Both the MISO Tariff's assignment of residual load for settlement purposes to the market participant for the LBA area and Entergy's original proposal to assign these costs on a *pro rata* basis result from the same limitation – the fact that the multitude of small, individual inputs giving rise to residual load cannot all be measured and tracked for direct assignment.³⁵ By implementing direct assignment to the extent possible, the LBA Agreements more closely align with the principle that costs should be borne by the entities that cause them. Thus, we continue to find that Entergy's proposal, as revised in accordance with the Deficiency Letter Response, is a reasonable means to allocate residual load costs.

13. We also reject Occidental's assertion that the Commission's holding in *MISO* precludes the acceptance of Entergy's proposal in this proceeding.³⁶ In *MISO*, the Commission rejected MISO's 2006 proposal, in part, for the very reason that it failed to allocate residual load to the entities that caused it, but stated that this rejection was without prejudice to MISO revising the proposal to address its concerns.³⁷ As the Commission found in the April 26 Order, Entergy's current proposal "ensures that, where possible, the entity that caused the Residual Load is the entity that pays for it."³⁸ We continue to find that it is consistent with both principles of cost causation and the

³³ Rehearing Request at 7-8 (citing MISO, FERC Electric Tariff, Module C, § 35.0.0, Market Participant Obligations (38.2.5) ("The Transmission Provider will, for Settlement purposes apply any calculated Residual Load in each Local Balancing Authority to the withdrawal data for the Load Zone applicable to the Residual Load in that Local Balancing Authority.")).

³⁴ As noted in the April 26 Order, we interpret section 4.3.2 of the LBA Agreements to prohibit Entergy from billing counterparties for any costs that Entergy already bills and recovers under the MISO Tariff. April 26 Order, 155 FERC ¶ 61,096 at P 69.

³⁵ See Deficiency Letter Response at 10-11.

³⁶ Rehearing Request at 8.

³⁷ *MISO*, 115 FERC ¶ 61,006 at PP 23-24.

³⁸ April 26 Order, 155 FERC ¶ 61,096 at P 57.

Commission's reasoning in *MISO* that Entergy Louisiana and Entergy Arkansas should not be required to bear the entire cost of residual loads, which are caused by the accumulated actions of all embedded entities within their LBA areas.³⁹

D. Undue Discrimination or Preference

14. Finally, we also reject Occidental's assertion that the LBA Agreements result in unduly discriminatory treatment for the counterparties of such agreements, while providing an undue preference to Entergy Louisiana and Entergy Arkansas.⁴⁰

15. As an initial matter, Occidental did not directly raise this argument in its initial protest, two supplemental protests, or protest of the Deficiency Letter Response. Although Occidental argued in its supplemental protest that entities in the Entergy LBA areas that were not parties to an LBA Agreement would not be allocated responsibility for contributions to residual load, while the counterparties to the LBA Agreements would be allocated such cost responsibility, Occidental made this point to support its argument that the LBA Agreements violated principles of cost causation, as addressed above, and did not assert undue discrimination or undue preference.⁴¹ As a rule, we reject requests for rehearing that raise a novel issue, unless the issue could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances.⁴² In any event, as discussed

³⁹ *See id.* P 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 [Entergy Electric System] LBA Areas, regardless of which entities own and maintain the meters, because such costs are caused by the accumulated action of all embedded entities within the LBA Areas, including the Entergy Operating Companies.”).

⁴⁰ Rehearing Request at 7-9.

⁴¹ Occidental May 1, 2014 Supplemental Protest at 3-4.

⁴² Rule 713(c)(3) of our Rules of Practice and Procedure states that any request for rehearing must “[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.” 18 C.F.R. § 385.713(c)(3) (2016). *See, e.g., Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 250 (2016) (explaining that novel issues raised on rehearing are rejected “because our regulations preclude other parties from responding to a request for rehearing and such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision”) (internal quotations omitted).

above, we confirm that MISO's Tariff does not prohibit LBAs such as the Entergy LBAs from entering into these kinds of agreements to recover costs not recovered elsewhere under the Tariff. We note that the Entergy LBAs still remain ultimately responsible for residual load costs allocated to them for purposes of MISO's Tariff. Accordingly, we do not find the LBA Agreements to be unduly discriminatory or preferential.⁴³

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴³ Additionally, to the extent that Occidental suggests that the LBA Agreements may be unduly discriminatory with respect to similarly-situated market participants in the Entergy LBA areas that have not been required to enter into LBA Agreements, we note that no such similarly-situated market participants have been identified in the record.