143 FERC ¶ 61,299
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Entergy Arkansas, Inc. Docket No. ER13-1317-000

ORDER ACCEPTING AGREEMENTS AS MODIFIED

(Issued June 28, 2013)

1. On April 22, 2013, Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies[1] submitted for filing five separate Agreements Regarding Apportionment of Reserved Source Points and Division of Proceeds (Agreements) between Entergy Arkansas and the five other Operating Companies (Counterparty Operating Companies). The Agreements provide for an apportionment of Reserved Source Points as permitted under applicable terms of the Midwest Independent Transmission System Operator, Inc.'s (MISO)[2] Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). The Agreements are accepted for filing, as modified and subject to a future compliance filing, effective June 28, 2013.

I. Background

2. The Energy Policy Act of 2005 added section 217(b)(4)[3] to the Federal Power Act, requiring the Commission to, *inter alia*, enable load serving entities to secure firm

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

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

[3] 16 U.S.C. § 824q(b)(4) (2006).

transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned to meet, long-term power supply needs. The Commission implemented these legislative requirements in Order Nos. 681 and 681-A.[4] These orders give transmission organizations flexibility to propose designs for long-term firm transmission rights that reflect regional preferences and accommodate regional market designs.[5]

3. On May 17, 2007, the Commission conditionally accepted MISO's Tariff provisions implementing Order No. 681 by establishing entitlements to, and the nomination and allocation of, Long Term Transmission Rights (LTTR) in the form of Auction Revenue Rights (ARR).[6] ARRs are financial instruments establishing entitlements to a share of the revenues generated in MISO's annual auction of Financial Transmission Rights. LTTRs are long-term variants of ARRs, with annual rollover rights of at least 10 years.[7] The entitlements, called ARR Entitlements, are predicated on historical firm transmission usage, including transmission service pertaining to non-carved-out Grandfathered Agreements, and rights to eligible generation resources, which are denominated Reserved Source Points (RSP). Failure to secure adequate LTTRs or ARRs would leave a load serving entity without sufficient congestion hedges and expose it to congestion costs under MISO's market design.

4. MISO's Tariff currently requires long-term supply arrangements for a resource to qualify as a RSP that can be the basis for an entitlement to LTTRs. The supply arrangement must take the form of resource ownership, or contractual right to the resource's output for at least five years and a minimum historical capacity factor of 50 percent.[8] As required by Order No. 681, LTTRs can also be allocated in MISO based

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

[5] *Id.* PP 2 and 323.

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

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

[8] *See* Tariff, Module C, § 43.2.1 (0.0.0). The Tariff also caps the LTTRs that a load serving entity can nominate at a level of reasonable need for LTTRs, which is linked to Baseload Usage, defined in the Tariff as 50 percent of Peak Usage. The RSPs comprise a Peak Reserved Source Set, which includes a subset called the Baseload

on direct participant funding of network upgrades that add incremental transmission capacity.[9] In addition, LTTR nominations that are not allocated (i.e., that are curtailed) in Stage 1A of the MISO ARR allocation process can be allocated in a restoration phase if made possible by the expiration or requested termination of other LTTRs, or by the assignment of non-nominated LTTR entitlements ("counterflow" LTTRs). Such "counterflow" LTTRs are used to render feasible nominated LTTR entitlements.[10] MISO notes that its Commission-approved approach prioritizes long-term supply arrangements in determining eligibility for LTTRs.

5. In March 2013, the Commission accepted a proposal by MISO to amend its Tariff to allow supplemental rules for the allocation of LTTRs (MISO Supplemental Rules).[11] The MISO Supplemental Rules were designed in part to enable Entergy region load serving entities to qualify for more LTTRs given the prevalence of qualifying facilities (QFs), short-term purchases, and a lack of counterflow resources, which in combination would otherwise resort in an LTTR shortfall for load serving entities.

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

Reserved Source Set, consisting of RSPs with a minimum capacity factor of 50 percent, and in each of which a Market Participant has a minimum 5-year ownership or contractual interest at any point of an appropriate reference period, called the reference year.

[9] Tariff, Module C, § 46.1 (0.0.0).

[10] *See* Tariff, Module C, § 43.2.5 (0.0.0).

[11] *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,236 (2013) (MISO Supplemental Rules Proceeding Order).

7. The Commission noted that to the extent that load serving entities have concerns regarding their allocations of LTTRs, MISO made clear that it will work with these parties to assess their concerns regarding LTTR entitlement gaps. The Commission further noted that MISO remains bound by the Commission's statements in Order Nos. 681 and 681-A regarding its obligations to meet the reasonable LTTR needs of eligible load serving entities and we accepted MISO's Tariff revisions as a means toward that end.

8. Entergy states that the instant filing is needed because the MISO Supplemental Rules will not result in adequate congestion hedges for the Counterparty Operating Companies. It states that upon integration, while each Counterparty Operating Company will be able to nominate LTTRs equal to 50 percent of its peak load (the cap under the MISO Tariff) pursuant to the Supplemental Rules, they will be unable to do so from baseload and "baseload-like"[12] units alone. Entergy explains that absent the Agreements, the Counterparty Operating Companies will not be able to reach that level of LTTR nominations unless they nominate from "legacy" and steam generating units. It states that Entergy's legacy and steam units are not baseload units; they run at capacity factors well under 50 percent and are typically used for flexible capability and local support.

9. Entergy states that upon Entergy's anticipated integration into MISO in 2013, Entergy Arkansas will have a surplus of baseload generating units that are eligible to be nominated for LTTRs, while the Counterparty Operating Parties will have a shortfall of such generating units and be unable to nominate LTTRs equal to 50 percent of their peak load using baseload and "baseload-like" units to qualify for sufficient LTTRs.

10. Entergy states that, while qualifying under the second MISO Supplemental Rule described above, the nomination of units that are not baseload or "baseload-like" is problematic for two reasons:

- First, low capacity factor, high heat rate units are not a good source for a baseload energy hedge. Entergy states that the ARRs that would result provide neither a hedge for actual baseload energy deliveries (because the units do not run at baseload levels), nor would they serve as a hedge from a source point that could be an efficient source of baseload energy, such as a combined cycle gas turbine.

- Second, many Entergy legacy and steam units are located in load pockets. An RSP from a generating unit in a load pocket with a low capacity factor runs a substantial

[12] Entergy explains that "baseload-like units" include combined cycle gas turbine units, which Entergy states are baseload-like in that they would have been baseload resources were it not for the significant level of short-term purchases made by the Entergy Operating Companies from independent power producers, including qualifying facilities. Transmittal at 2 & n.2.

risk of creating an unfunded negative liability. That is, the FTR that results from the ARR may well be negative because the Locational Marginal Price (LMP) at the unit is likely, at least in some hours, to be higher than the LMP at the Operating Company's ARR Zone (its load zone). Entergy states that the FTR holder will be charged for congestion in those hours and that the FTR charges will be unfunded because the unit has a low capacity factor, and thus cannot be expected to provide sufficient congestion revenues from its operation to offset any negative obligations from the FTRs.

11. Entergy states that given the Counterparty Operating Companies are more than 500 MW short of baseload and baseload-like RSPs and Entergy Arkansas has a surplus of equivalent size, the Agreements propose to reallocate baseload and baseload-like RSPs from Entergy Arkansas to the Counterparty Operating Companies.

12. Entergy states that the Agreements reflect a careful balancing of interests of Entergy Arkansas (and its customers) and the Counterparty Operating Companies (and their customers). Entergy states that the apportionment of baseload RSPs from Entergy Arkansas to the Counterparty Operating Companies will help ensure that each Counterparty Operating Company will have baseload or "baseload-like" resources available to nominate LTTRs at or near the cap that the MISO rules permit. In return for agreeing to an apportionment of RSPs to the other Operating Companies, Entergy states that Entergy Arkansas will receive a just and reasonable share of the resulting revenues. Entergy states that the apportionment of RSPs and the division of revenues under the Agreements are inextricably intertwined and should be considered as a package.

13. Entergy requests an effective date for the Agreements of June 28, 2013 and represents this will allow for registration of the allocated RSPs by MISO's July 26, 2013 deadline for annual RSP registration.[13]

II. The Agreements

A. Apportionment of RSPs

14. Entergy states that the Agreements provide for an apportionment between Entergy Arkansas and each of the Counterparty Operating Companies of some of the RSPs associated with baseload generating capacity at Unit 1 of the Independence Steam Electric Station (ISES Unit 1), Unit 1 of the White Bluff Electric Station (White Bluff Unit 1) and Unit 2 of the White Bluff Steam Electric Station (White Bluff Unit 2), which are baseload resources partially owned by Entergy Arkansas. The Agreements also provide for the division of revenues associated with the RSPs that are apportioned under the Agreements. Each Agreement specifies the number of MWs of RSPs associated with ISES Unit 1, White Bluff Unit 1, and White Bluff Unit 2 that are being apportioned

[13] Entergy June 4, 2013 Answer at 2 n.3.

between Entergy Arkansas and the applicable Counterparty Operating Company.[14] The amount of MWs apportioned between each Operating Company is as follows:

Unit	**Entergy Operating Company**					
	Entergy Arkansas	**Entergy Mississippi**	**Entergy Louisiana**	**Entergy New Orleans**	**Entergy Gulf States Louisiana**	**Entergy Texas**
ISES Unit 1	(119)	5	21	2	27	64
White Bluff Unit 1	(210)	10	38	4	46	112
White Bluff Unit 2	(218)	10	39	4	48	117
Total	(547)	25	98	10	121	293

15. Entergy states that the total number of MWs of RSPs apportioned under the Agreements is less than five percent of the 11,000 MW of the Operating Companies' total Stage 1A RSPs and less than 2.5 percent of the Operating Companies' total Stage 1 RSPs. Entergy states that the balance of the RSPs are apportioned based on which Operating Company has ownership or contractual rights in the applicable resources.[15]

16. Entergy states that it calculated the MWs of RSPs apportioned from each of the three Entergy Arkansas baseload resources by multiplying the number of MWs of RSPs to be apportioned under the Agreements (i.e., the Entergy Arkansas surplus RSPs) by the ratio of (1) Entergy Arkansas' entitlement in the applicable resource to (2) Entergy Arkansas' total entitlements in ISES Unit 1, White Bluff Unit 1 and White Bluff Unit 2. Entergy states that the MW amount from each resource was then apportioned among each of the Counterparty Operating Companies based on the ratio of the applicable Counterparty Operating Company's shortfall in baseload and "baseload-like" resources to the total shortfall in such resources of the Counterparty Operating Companies.[16]

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[14] Agreements, at § 3.1.

[15] Transmittal at 9.

[16] *Id*.

B. Division of Revenues

17. The Agreements require each Counterparty Operating Company to convert apportioned RSPs to ARR entitlements, request allocations of FTRs associated with apportioned RSPs, nominate applicable ARR entitlements associated with apportioned RSPs, convert ARRs to FTRs in MISO's annual FTR auction, and exercise any rollover rights available for LTTRs associated with apportioned RSPs.[17]

18. The Agreements provide Entergy Arkansas with a share of the revenues associated with the apportioned RSPs. Entergy states that while Entergy Arkansas has an excess of resources available for ARR nomination in Stage 1A of MISO's allocation process, Entergy Arkansas is short of resources in Stage 1B of the process and the apportionment of RSPs described above further increases this shortfall. Thus, in return for agreeing to the apportionment, the Agreements provide for Entergy Arkansas to receive a share of the revenues associated with the apportioned RSPs.

19. The Agreements describe the division of revenues under three different scenarios. Under the first, a Counterparty Operating Company is able to convert all of the apportioned RSPs to financial transmission rights (FTR). Entergy states that under the first scenario, the intent of the Agreements is to provide Entergy Arkansas with a portion of the revenues in proportion to the value of an FTR from the apportioned RSP to Entergy Arkansas' ARR zone. The Agreements aim to provide the Counterparty Operating Companies with a portion of the revenues in proportion to the equivalent of an FTR from Entergy Arkansas' ARR revenue zone to the Counterparty Operating Company's ARR zone. In case of FTR underfunding, the Agreements reduce the shares of revenues in like proportion to the apportionment of revenues for the applicable FTR. If the value of an FTR from the Apportioned RSP to Entergy Arkansas' ARR Zone is negative, Entergy Arkansas will be required to pay to the Counterparty Operating Company an amount calculated in accordance with the formulas under the Agreement.

20. A second scenario involves instances where the Counterparty Operating Company does not receive all of the ARRs that it nominated from the apportioned RSPs in Stage 1 of the ARR allocation process, and thus does not receive FTRs for the full MW amount of an apportioned RSP. Under this scenario, the Agreements divide the revenues in proportion to the payments that MISO would have made to the Counterparty Operating Company had the apportioned RSPs resulted in ARRs. According to the Agreements, payments to Entergy Arkansas will never exceed the FTR revenue due from MISO. If the value of the FTR from the apportioned RSP to Entergy Arkansas' ARR zone is negative, Entergy Arkansas will make a payment to the Counterparty Operating Company in accordance with the formulas in the Agreements.

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[17] *See* Agreements, §§ 4.1, 4.2, 4.3, 4.4, 4.5.

21. The third scenario will apply where the Counterparty Operating Company receives a nominated LTTR, but MISO deems those LTTRs infeasible in a given annual allocation process. In the third scenario, if an LTTR is no longer feasible in subsequent annual allocation processes that occur after the initial allocation under MISO rules, MISO allocates an infeasible ARR in place of the LTTR. Infeasible ARRs cannot be converted to FTRs, but can receive compensation based on the results of MISO's annual FTR auction. The Agreements provide for Entergy Arkansas to receive part of this compensation. The amounts due to Entergy Arkansas and the Counterparty Operating Company are computed using a ratio of (1) the differences in averages prices between the Entergy Arkansas ARR zone and the apportioned RSP in the three rounds of the annual FTR auction, and (2) the differences in average prices at the Counterparty Operating Company ARR zone and the apportioned RSP.

22. The Agreements provide that the standard of review for changes unilaterally proposed by a party or the Commission, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review.[18]

III. Notice of Filing and Responsive Pleadings

23. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 25,261 (2013), with interventions and protests due on or before May 13, 2013. The Commission subsequently extended the comment period from May 13, 2013 through May 20, 2013. Entergy then amended its filing in an answer dated June 4, 2013, and the Commission issued a notice resetting the filing date of the proceeding to that date.

24. Timely motions to intervene or notices of intervention were filed by the Council of the City of New Orleans, Louisiana (New Orleans Council); Arkansas Public Service Commission (Arkansas Commission); Louisiana Public Service Commission (Louisiana Commission); South Mississippi Electric Power Association; MISO; Arkansas Electric Cooperative Corporation; and Arkansas Cities.[19] The New Orleans Council, Arkansas Commission, and Louisiana Commission filed comments or protests.

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[18] Agreements, § 8.6 (citing *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n. v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. District No. 1 of Snohmish County*, 554 U.S. 527 (2008), and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010)).

[19] Arkansas Cities includes the Conway Corporation; the West Memphis Utilities Commission; the City of Osceola, Arkansas; the City of Benton, Arkansas; and the City of Prescott, Arkansas.

25. An untimely motion to intervene and protest was filed by the Public Utility Commission of Texas (Texas Commission).

26. The Arkansas Commission filed an answer. Entergy filed an answer to the New Orleans Council and Arkansas Commission comments and a separate answer to the Texas Commission protest. The Texas Commission filed an answer to Entergy's answer. The New Orleans Council filed an answer to Entergy's and the Arkansas Commission's answers. The Arkansas Commission filed an answer to the New Orleans Council's answer.

27. In its comments, the Louisiana Commission states that it supports Entergy's request for approval of the Agreements, subject to reservations. The Louisiana Commission states that the MISO Supplemental Rules do not fully and adequately protect the Counterparty Operating Companies from congestion charges for two reasons. First, individual Counterparty Operating Companies lack sufficient baseload capacity to nominate LTTRs due to the historical joint planning of the Entergy system mandated under the System Agreement. Second, high levels of QF puts, particularly in Entergy Louisiana's and Entergy Gulf States Louisiana's service territories, have led to reduced capacity factors for certain generating units.[20]

28. The Louisiana Commission states that the Agreements are intended to utilize existing MISO tariff provisions that allow an Operating Company owner of a generator qualifying as a RSP to consent to apportionment of those RSPs to other Operating Companies.[21] The Louisiana Commission states that the Agreements should provide the opportunity for the Counterparty Operating Companies to be in a better position than they would be absent those Agreements.[22] It states that while it supports Commission approval of the Agreements, its support of the application is provisional, largely because it has not been provided any analysis to evaluate the impact of the proposal, and whether it will solve the ARR/FTR/LTTR problem as it is intended to do.[23]

29. New Orleans Council states that it supports in concept Entergy's proposal to apportion certain Entergy Arkansas-associated RSPs to the Counterparty Operating Companies, as Entergy New Orleans and other Counterparty Operating Companies need those RSPs to be able to make up a portion of the ARR/FTR shortfall anticipated as a result of joining MISO as market participants and load serving entities.

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[20] Louisiana Commission Comments at 2.

[21] *Id.* at 1.

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

[23] *Id*. at 3.

30. New Orleans Council contends, however, that several aspects of the RSP proposal make it unjust and unreasonable as filed.[24] First, New Orleans Council states that Entergy's proposal will result in the allocation of inferior ARRs/FTRs to the Counterparty Operating Companies that will not provide congestion hedging comparable to that of other MISO load serving entities. New Orleans Council states that the Counterparty Operating Companies will not, under the Agreements as drafted, be entitled to receive the full congestion revenue associated with those FTRs because the Agreements require Entergy New Orleans and the other Counterparty Operating Companies to pay a share of the congestion revenues to Entergy Arkansas.[25]

31. Second, New Orleans Council states that the Agreements are unnecessary. It states that pursuant to Order Nos. 681 and 681-A, MISO can develop, or the Commission can direct MISO to provide, an adequate ARR allocation for the Counterparty Operating Companies, including Entergy New Orleans, without the use of the Agreements. New Orleans Council states that the MISO Tariff contains no obligation to pay a load serving entity for the use of surplus RSPs.[26]

32. To the extent the Commission is inclined to accept the Agreements, New Orleans Council asserts that certain terms and conditions should be removed because they are inaccurate and not just and reasonable. New Orleans Council states that Entergy has incorrectly characterized the Agreements as post-withdrawal, successor arrangements necessitated by Entergy Arkansas' withdrawal from the Entergy System Agreement. New Orleans Council states that it was Entergy's decision to create separate ARR zones for its Operating Companies upon joining MISO that triggered the need for ARR allocations between the Operating Companies, rather than Entergy Arkansas' departure from the System Agreement.[27]

33. Accordingly, New Orleans Council states that the Commission should require removal of all references to the Agreements as "successor arrangements" or "post-withdrawal agreements" as they are not components of the successor arrangements contemplated by the Commission's order accepting notices of cancellation. It also contends that the Commission should direct Entergy to remove the *Mobile-Sierra* standard of review for any modification or amendments to the agreements because, based on Commission precedent addressing affiliate agreements (i.e., lacking in arm-length

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[24] New Orleans Council Comments at 1-2.

[25] *Id*. at 2.

[26] *Id*.

[27] *Id*.

dealing), the appropriate standard is the just and reasonable standard of review, not the *Mobile-Sierra* standard.[28]

34. Lastly, New Orleans Council states that it is concerned that even with the Agreements' RSP reallocations, MISO's ARR allocation process will not result in Entergy New Orleans receiving a just and reasonable allocation of ARRs, including LTTRs. If so, New Orleans Council states that Entergy New Orleans, and consequently its ratepayers, will not be adequately hedged against congestion costs. New Orleans Council states that due to Entergy New Orleans' unique reliance on the majority of its generation from less-congested areas, unhedged congestion costs will have a significant effect on Entergy New Orleans ratepayers.[29]

35. New Orleans Council states that it requested, but has not received, a study from Entergy that demonstrates that Entergy New Orleans will receive adequate congestion revenue from the allocation of ARR/FTRs to offset congestion costs.[30]

36. The Arkansas Commission states that the Agreements should be accepted by the Commission with certain modifications.[31] The first of these is related to the fact that the term of the Agreements is open-ended, and there is no date of termination. Instead, the Agreements are subject to termination upon mutual agreement of Entergy Arkansas and the Counterparty Operating Company, or when the counterparty no longer has obligations for nominations of allocated RSPs and related ARRs prior to, during, and after the First Annual ARR period, and payment obligations for granted ARRs converted to FTRs. The Arkansas Commission states that Entergy Arkansas has no unilateral right to terminate the Agreement once it is placed in effect.[32]

37. The Arkansas Commission states that, given the future dollar impact of the Agreements on Entergy Arkansas and its Arkansas customers is unknown, it is not possible at this time to know with sufficient certainty that the Agreements as proposed

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[28] *Id*. at 2-3 (citing *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp*., 350 U.S. 332 (1956) and *Federal Power Comm'n. v. Sierra Pac. Power Co*., 350 U.S. 348 (1956) (the "*Mobile-Sierra*" doctrine), as clarified in *Morgan Stanley Capital Grp., Inc. v. Pub. Util. District No. 1 of Snohmish County*, 554 U.S. 527 (2008), and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010)).

[29] *Id*. at 17-18.

[30] *Id*. at 17.

[31] Arkansas Commission Comments at 1.

[32] *Id*. at 5.

will not result in higher costs to Arkansas ratepayers than would be the case in the absence of the Agreements. In order to provide the needed assurance, the Arkansas Commission requests the following two conditions to the Commission's approval of Entergy's filing: (1) the Agreements should include an initial term of five years from the effective date of June 21, 2013, subject to renewal for succeeding five year periods upon the mutual agreement of the parties and (2) the Agreements should include a triennial review to determine whether, in actual practice and application, the Agreements are producing their intended hedge against congestion charges to Entergy Arkansas and the counterparties. The Arkansas Commission also states that there should be a "reopener" provision to afford the parties to the Agreements an opportunity to revise the terms of the Agreements to better achieve the desired result or, failing agreement on revised terms, a right to terminate the Agreements at the end of the initial term of five years. The Arkansas Commission states that Entergy Arkansas should be required to initiate the triennial review by providing a historical analysis that would include, among other things, the resultant hedges against MISO congestion charges for Entergy Arkansas' load and those of the counterparties, impacts of FTR underfunding, ARR infeasibility, reaching the ceiling of MISO FTR payments on Entergy Arkansas apportionment revenues, a summary of revenues received by the parties under each Agreement, and to the extent possible an estimate of future congestion and revenues under the Agreements.[33]

38. The Arkansas Commission also seeks an addition to section 4.6(b)(i) of the Agreements. It states that this section gives Entergy Arkansas the right to waive its right to compensation under Article V (Payment Obligations) of the Agreements associated with a portion or all of the Entergy Arkansas-apportioned RSPs. The Arkansas Commission states that the intent of the proposed addition to this provision is to ensure that Entergy Arkansas, upon giving timely notice, will not be obligated to pay its respective Counterparty Operating Company if the Marginal Cost Component (MCC) at the Entergy Arkansas zone is less than the MCC at the applicable RSP. The Arkansas Commission states that to clarify this point, it proposes to add the italicized words below to the proposed section 4.6(b)(i) text:

> (i) At least 30 days prior to an Annual ARR Allocation following the Effective Date, EAI [Entergy Arkansas] may provide written notice to [the respective Counterparty Company] that EAI waives its right to compensation under Article V associated with a portion or all of the Apportioned RSPs. If such written notice is provided, *(a)* [the Counterparty Company] shall not be obligated to comply with the requirements of Sections 4.2 through 4.5 or
> Article V hereof related to the Apportioned RSPs to which such notice applies *and (b)EAI shall not be obligated to comply with the requirements of Section 5.5 hereof related to the Apportioned RSPs to which such notice applies*. Any such

[33] *Id*. at 7-8.

> notice provided by EAI shall apply to the remaining term of this Agreement and shall be irrevocable.

Arkansas Commission states it expects that Entergy will not oppose the addition of this clarifying text.[34]

39. The Texas Commission states that it understands that the proposed Agreements may be beneficial to Entergy Texas and the other Entergy Operating Companies and that it is not opposed to the concept underlying Entergy's filing in this docket. It states, however, that Entergy did not submit sufficient information for the Texas Commission, other stakeholders, or the Commission to make an informed judgment regarding the justness and reasonableness of the Agreements' specific terms and conditions. The Texas Commission states that a technical conference would offer all interested parties the opportunity for a timely and cost-effective resolution to the issues raised in this proceeding. The Texas Commission therefore requests that the Commission set the matter for hearing but hold the hearing in abeyance, so that the parties can attempt an amicable resolution with aid of a technical conference followed by settlement efforts.[35]

40. With respect to the factual sufficiency of the filings, the Texas Commission states that the filing is not clear about all the effects the Agreements will have on the Entergy Operating Companies and their retail customers. For example, the Texas Commission states that the filing is silent on the effects of counterflow ARRs that MISO may assign. The Texas Commission states that if MISO assigns a counterflow ARR to a Counterparty Operating Company and the Counterparty Operating Company must make a payment to MISO, it presumes that Entergy Texas may have liability to MISO. However, the Texas Commission states that the filing does not discuss or support the extent and impact of such potential liabilities, making it impossible to assess the degree of risk that the proposed agreement imposes on Entergy Texas. The Texas Commission states as a result that it is not possible to assess whether the compensation provisions of the Agreements strike a fair balance.[36]

41. The Texas Commission also argues that Entergy should submit information related to the effect of retiring generation. It states that should Entergy Arkansas decide to take one of the specified generating units out of service while the Agreements are effective, it is not clear how the Counterparty Operating Company would be compensated. The Texas Commission states that Entergy should be required to modify the contract to

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

[35] Texas Commission Protest at 1-2.

[36] *Id*. at 5-6.

require Entergy Arkansas to provide reasonable notice of any such retirement to Entergy Texas and the other Entergy Operating Companies. It states that Entergy also should explain how the RSPs will affect counterflow ARRs that MISO may assign and the Commission should direct Entergy to provide further information in this respect.[37]

42. The Texas Commission argues that the Commission should apply additional scrutiny when reviewing the justness and reasonableness of the Agreements because the Agreements are not the product of arm's-length negotiations given the parties are all owned by Entergy. Entergy claims that the Agreements provide a mechanism for the Entergy Operating Companies to receive collectively the same number of ARRs they would have if they were all a single zone within MISO. However, the Texas Commission states that Entergy explains that under the Agreements, the ARR and FTTR payments would be split between Entergy Arkansas and the Counterparty Operating Companies. The Texas Commission states that it is not clear from the filing whether the relative percentages split between Entergy Arkansas and the Counterparty Operating Companies are just and reasonable, nor is it clear that the relative percentages are the percentages that the parties would have reached if the negotiations were conducted at arm's length.[38]

43. The Texas Commission states that it has identified several concerns with provisions in the Agreements for Entergy to address.[39] The Texas Commission states that:

(1) the recitals to the Agreements do not specify that MISO includes MISO successors and assigns;

(2) section 2.2(a) states that the Agreement will terminate "if either Entergy Arkansas or Entergy Texas are not integrated into MISO by December 19, 2013." The Texas Commission states that the December 19 date should not be absolute, as whether or when the Entergy integration into MISO will occur remains to be determined. It notes that the Texas Commission order approving Entergy Texas' integration into MISO requires Entergy Texas to seek a new authorization if it does not integrate into MISO by December 31, 2013;

(3) it is not clear why the Agreements are contingent upon Entergy Arkansas' entry into MISO. It states that Entergy Arkansas is simply authorizing Entergy Texas to

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[37] *Id*. at 6.

[38] *Id*. at 6-7.

[39] *Id.* at 7-9.

register certain RSPs for ARRs and FTRs, and is expecting compensation in return; it is not clear whether or why Entergy Arkansas must itself integrate into MISO;

(4) Entergy Texas should be afforded the right to terminate its Agreement with Entergy Arkansas upon reasonable notice to Entergy Arkansas;

(5) under the terms of the proposed contract between Entergy Arkansas and Entergy Texas, the rights of these parties to terminate are not equivalent;

(6) section 4.4(b) of the Agreements requires Entergy Texas to take all steps reasonably necessary to convert all ARRs associated with Apportioned RSPs into FTRs. The Texas Commission states it prefers a provision requiring Entergy Texas not to adversely distinguish between the ARRs associated with Apportioned RSPs obtained under this Agreement and the ARRs it otherwise holds;

(7) section 4.6(b)(i) allows Entergy Arkansas to waive its right to be compensated by Entergy Texas, but it is unclear why Entergy Arkansas would ever want to waive its right to be compensated. The Texas Commission states that it presumes that this is designed to enable Entergy Arkansas to avoid certain potential liabilities, but adds that Entergy has not adequately explained this provision;

(8) section 4.6(b)(iii) allows Entergy Texas to terminate all or some of its Apportioned RSPs "following the fifth Annual ARR Allocation…" The Texas Commission states that it needs to understand why Entergy Texas may wish to so terminate and why such termination is not being permitted for the first five years;

(9) the rate and compensation formulae are complex and require additional explanation; and

(10) the Agreements should contain provisions requiring periodic evaluation of whether the Agreements are functioning as intended.[40]

44. Entergy filed an answer to New Orleans Council (Entergy June 4, 2013 Answer) and a separate answer to the Texas Commission (Entergy June 6, 2013 Answer). In its June 4, 2013 answer, Entergy states that the purpose of its filing is to accomplish a limited reapportionment among the Operating Companies of the ARR entitlements that will be distributed to individual operating companies in accordance with MISO's Tariff. Entergy states that the Operating Companies will receive ARR entitlements individually due to the need to facilitate their exit (or potential exit, as applicable) from the Entergy System Agreement. Entergy states that, given the limited scope of its filing and the

[40] *Id*. at 7-9.

Agreements, this proceeding should not be used as a platform to investigate the sufficiency of the MISO ARR allocation process.

45. With regard to New Orleans Council's comments, Entergy states that it is not clear how the Commission can, as New Orleans Council proposes, both conditionally accept the RSP proposal and, at the same time, reject the Agreements.[41] Entergy notes that under Order No. 681, MISO is obligated to make sufficient LTTRs available so that load serving entities can meet their reasonable needs. However, Entergy maintains that whether or not the MISO Tariff meets that standard is not at issue in this proceeding and states that if New Orleans Council believes that the MISO Tariff is inadequate, other avenues were and are available to raise its concerns.[42]

46. Entergy states that the proposed apportionment of RSPs provided under the Agreements is permitted under the MISO Tariff and will provide enhanced hedges for the Counterparty Operating Companies. Entergy states that the fact that its proposal is an enhancement to the hedges that would otherwise be available under the MISO Tariff does not mean that MISO provides inadequate LTTRs or congestion hedges. Entergy argues that New Orleans Council's concerns are with the process of ARR allocation under the MISO Tariff, and not with Entergy's filing. Entergy states that the Agreements are just and reasonable and should be approved.[43]

47. Entergy also states that the fact that the MISO Tariff does not require a payment between parties that agree to apportion RSPs between them does not provide a basis to reject the Agreements. Entergy states that the MISO Tariff properly treats revenue allocation associated with RSPs that are apportioned among parties as a commercial matter between those parties.[44]

48. Entergy further states that it does not believe that the Commission needs to find that the Agreements are successor arrangements in order to accept the Agreements for filing. Nonetheless, Entergy states that the Commission should reject New Orleans Council's argument that the Agreements are not part of the Operating Companies' successor arrangements and reject New Orleans Council's request that references to "successor arrangements" or "post-withdrawal agreements" be deleted from the Agreements. Entergy states that it chose to establish separate ARR Zones within MISO precisely because Entergy Arkansas and Entergy Mississippi are exiting the System

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[41] Entergy's June 4, 2013 Answer at 4.

[42] *Id*.

[43] *Id*. at 6.

[44] *Id*.

Agreement and other Operating Companies have the right to, and may, do the same. Entergy states that the Agreements would not be required absent such exits and potential exits, and they thus are properly viewed as part of the successor arrangements that will apply following Entergy Arkansas' and Entergy Mississippi's exit from the System Agreement.[45]

49. With regard to revenue sharing, Entergy states that because the revenues apportioned to Entergy Arkansas under the Agreements will be based on differences in the congestion component between Apportioned RSPs and the Entergy Arkansas ARR Zone, New Orleans Council appears to believe that the revenues apportioned to Entergy Arkansas under the Agreements will be small and that the Counterparty Operating Companies (such as Entergy New Orleans) thus will retain the majority of the revenues associated with the Apportioned RSPs. Entergy states that New Orleans Council nevertheless also argues that it is unjust and unreasonable for the Agreements to force Entergy New Orleans to share revenues associated with the Apportioned RSPs with Entergy Arkansas. Entergy states that given the opportunity cost to Entergy Arkansas of entering into the Agreements, it is just and reasonable for Entergy Arkansas to receive a share of the revenues associated with the Apportioned RSPs equivalent to what it would have received if it had nominated the Apportioned RSPs itself to its ARR Zone and had been allocated the resulting ARRs. Entergy states conversely that an outcome in which Entergy New Orleans received all the revenues associated with the Apportioned RSPs would not be just and reasonable.[46]

50. In response to the Arkansas Commission's request for clarification with regard to entitlement rights, Entergy states that it agrees that the Agreements are not intended to convey any rights to the capacity or energy from the generating units associated with the Apportioned RSPs. Entergy states that the Arkansas Commission's proposed clarification is consistent with the intent of the Agreements.[47]

51. In response to the Arkansas Commission's request that section 4.6(b)(i) be modified to make clear that any potential Entergy Arkansas payment obligation associated with an Apportioned RSP terminates if Entergy Arkansas provides notice that it is waiving its right to receive payments associated with that RSP, Entergy states that such clarification is consistent with the intent of the Agreements. Entergy states that it

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[45] *Id*. at 7.

[46] *Id*. at 7-8.

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

agrees to submit a compliance filing to amend section 4.6(b)(i) as proposed by the Arkansas Commission to clarify the operation of section 4.6(b)(i).[48]

52. Entergy states, however, that the Commission should reject the Arkansas Commission's proposal to change the term of the Agreements. Entergy states that each party has rights it may exercise in the event the Agreements do not provide value to that party or presents other issues. Entergy states that Entergy Arkansas can provide written notice that it waives its rights to payment associated with an Apportioned RSP (e.g., if it believes that it will be subject to payment obligations associated with that RSP) pursuant to section 4.6(b)(i). Entergy states that such notice will also terminate any potential Entergy Arkansas payment obligation associated with the RSP. Entergy states that a Counterparty Operating Company can seek to terminate its registration of an Apportioned RSP (1) if it is not granted an ARR for that RSP or (2) following the fifth Annual ARR Allocation after the effective date of the Agreement.[49] Further, Entergy states that under the Agreements, a Counterparty Operating Company never is obligated to make payments to Entergy Arkansas that exceed the revenues received by the Counterparty Operating Company from Apportioned RSPs.[50] Entergy states that the Agreements therefore provide reasonable protections to the parties while also recognizing that the Agreements are a component of the just and reasonable operating arrangements that will be put in effect following Entergy Arkansas' and Entergy Mississippi's withdrawal from the System Agreement. Entergy states that the Commission should not disturb that reasonable balance by changing the term of the Agreement. Further, Entergy states that there is no basis to require the triennial review proposed by the Arkansas Commission because each Operating Company will monitor operation of its Agreement to determine how best to exercise its rights and obligations under the Agreement. Entergy states that to the extent a retail regulator has questions regarding the operations of the Agreement, Entergy will work with the retail regulator to address those questions. Entergy maintains, however, that a formal requirement to implement a triennial review has not been justified and should be rejected.[51]

53. Entergy states that contrary to New Orleans Council's arguments, the apportionment of revenues under the Agreement is just and reasonable. It states that, even without the Agreements, Entergy Arkansas will be short of RSPs in Stage 1B of the MISO ARR allocation process. Entergy states that such shortage will increase as a result of the apportionment that is provided for under the Agreements. Entergy states that

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[48] *Id*. at 9.

[49] *Id*. at 10 (citing Agreement, §§ 4.6(b)(ii), 4.6(b)(iii)).

[50] *Id*. at 10.

[51] *Id*. at 10-11.

because the congestion revenues that an Operating Company receives, including those received under the Agreements, will be credited by the applicable Operating Company against costs that ultimately are paid by the Operating Company's customers, apportioning RSPs to another Operating Company with no receipt of revenue from those RSPs would result in an unjust and unreasonable increase in costs to Entergy Arkansas' customers in order to benefit the customers of the Counterparty Operating Companies.[52] Entergy states that Entergy Arkansas will receive from the Counterparty Operating Company revenues that generally track the amount of revenues Entergy Arkansas would have received had it not agreed to apportion ISES Unit 1, White Bluff Unit 1, and White Bluff Unit 2, but instead nominated and received FTRs from those resources to Entergy Arkansas' ARR Load Zone. Entergy states that the amount of revenues that will be divided between Entergy Arkansas and the Counterparty Operating Companies is therefore just and reasonable.[53]

54. Entergy rejects New Orleans Council's argument that the *Mobile-Sierra* presumption never applies to rates, terms, or conditions that are generally acceptable or that arose in circumstances other than arm's length negotiations. Entergy states that when *Mobile* and *Sierra* apply to the review of a contract, the Commission must presume that the contract meets the just and reasonable standard under the FPA and that presumption may be overcome only if the Commission concludes that the contract seriously harms the public interest. Entergy states that the Agreements are appropriately viewed as a component of the just and reasonable operating arrangements that will apply following Entergy Arkansas' and Entergy Mississippi's withdrawal from the System Agreement. Entergy further states that the Agreements reflect a careful balancing of the interests of Entergy Arkansas (and its customers) and the Counterparty Operating Companies (and their customers) within the context of establishing just and reasonable successor operating arrangements and ensuring a robust set of congestion hedges for the customers of the Counterparty Operating Companies. Entergy states that under these circumstances, it is reasonable to apply the *Mobile-Sierra* standard to any future attempts to amend the Agreements unilaterally.[54]

55. Lastly, Entergy states that New Orleans Council's arguments regarding the adequacy of congestion hedges are beyond the scope of this proceeding. Entergy states that the issue before the Commission is whether the Agreements are just and reasonable and that arguments that advocate that additional or different methods to allocate ARRs

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[52] *Id*. at 11-12.

[53] *Id*.

[54] *Id*. at 13-14.

should be developed, including increasing the availability of LTTRs above 50 percent of an LSE's peak load, are beyond the scope of this proceeding.[55]

56. Entergy states that the Texas Commission's request that the filing be set for hearing, settlement judge procedures and a technical conference should be rejected. Entergy states that a hearing is required only when a genuine issue of material fact is in dispute and states that no issues of material fact have been raised that would warrant a hearing. Entergy further states that it has responded to concerns raised by interveners, further eliminating any possible basis for a hearing. Entergy also states that there is no need for a technical conference to clarify matters related to Entergy's filing. Entergy states that such procedures could delay of acceptance of the Agreements, which it states would frustrate the purpose of the Agreements, which is registration of the RSPs apportioned under the Agreements on July 26, 2013, consistent with the MISO Tariff.[56]

57. Entergy argues that the Texas Commission's arguments regarding counterflow ARRs have no merit. Entergy states that the Texas Commission presumes that MISO could assign a counterflow ARR to a Counterparty Operating Company and the Counterparty Operating Company could be required to make a payment to MISO. Entergy states, however, under MISO's Tariff, MISO can assign a counterflow ARR to a Market Participant only if all of the following conditions are met: (1) the assignment is made in the Market Participant's Year 1 Annual ARR Allocation, (2) an RSP eligible for nomination in Stage 1A of the ARR allocation process is not nominated, and (3) that RSP is needed in order to restore a Stage 1A candidate ARR or LTTR that was curtailed.[57] Entergy states that under the terms of the Agreement, because the applicable Counterparty Operating Company must nominate the Apportioned RSPs in Stage 1A, (Agreement § 4.3(a)), the Counterparty Operating Companies cannot and will not be assigned counterflow ARRs associated with the Apportioned RSPs.

58. Entergy states that it is unclear what information the Texas Commission is requesting when it argues that Entergy should be required to explain how the RSPs will affect counterflow ARRs that MISO may assign. Entergy states that prior to its April 22 filing in this proceeding it provided Texas Commission staff with written documentation setting forth projections of the ARRs that will be allocated to Entergy Texas and the counterflow ARRs that will be assigned to Entergy Texas. Entergy states that these projections included scenarios with and without the Apportioned RSPs and provided analysis that represented the fullest extent of what Entergy Texas is in a position

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[55] *Id*. at 15-16.

[56] Entergy June 6, 2013 Answer at 4.

[57] *Id*. at 6 (citing MISO Tariff, Module C § 43.2.5).

reasonably to provide at this time. Entergy states that the Texas Commission's arguments for additional explanation should be rejected.[58]

59. In response to the Texas Commission's arguments that the compensation provisions have not been justified, Entergy states that its filing explains that the formulas in the Agreements are designed so that Entergy Arkansas will receive from the Counterparty Operating Company revenues that generally track the amount of revenues that Entergy Arkansas would have otherwise received had Entergy Arkansas not agreed to the apportionment of RSPs, in which case it would have been able to nominate ARRs from the RSPs to Entergy Arkansas' ARR Load Zone. Entergy states that the basic intent is to provide Entergy Arkansas with the equivalent of a FTR from the Apportioned RSP to Entergy Arkansas' ARR Zone, and to provide the Counterparty Operating Company with the equivalent of an FTR from Entergy Arkansas' ARR Zone to the Counterparty Operating Company's ARR Zone. Entergy states that it has fully explained the basis for and intent of the revenue allocation under the Agreements.[59]

60. Entergy states that the standard here is not whether the apportionment of revenues under the Agreements matches an apportionment that would apply under a hypothetical agreement among non-affiliates. Entergy states that the issue is whether the apportionment is just and reasonable (and not unduly discriminatory or preferential). Entergy states that that standard is satisfied. Entergy states that even without the Agreements, Entergy Arkansas will be short of RSPs in Stage 1B of the MISO ARR allocation process and that this shortage will increase as a result of the apportionment that is provided for under the Agreements. Entergy states that the division of revenues under the Agreements appropriately reflects the opportunity cost to Entergy Arkansas as a result of agreeing to apportion RSPs. Because the congestion revenues received by an Operating Company, including those received under the Agreements, will be credited by the applicable Operating Company against costs that ultimately are paid by the Operating Company's customers, the division of revenues under the Agreements will help ensure that each Operating Company's customers are treated in a just and reasonable manner.[60] As to the complexity of the formulas that will be used to allocate revenues, Entergy states that it explained in extensive detail the way revenues will be allocated under the Agreements. Entergy states that it explained, among other things, that the Agreements address the potential scenarios that may arise and explained how the formulas operate in each scenario, including examples of their operation. Entergy states there is no basis to

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[58] *Id*. at 6-7.

[59] *Id*. at 7.

[60] *Id*. at 8.

find that the Agreements' formulas and their operation have not been fully justified and explained.[61]

61. With regard to information relating to the effect of retiring generation, Entergy states that under the MISO Tariff, a generating resource remains an RSP even after it is retired unless the Market Participant that registered the RSP (in this case, the Counterparty Operating Company) seeks to remove the resource from its source set.[62] Entergy states that, if ISES Unit 1, White Bluff Unit 1, or White Bluff Unit 2 is retired, the Counterparty Operating Company will have the option to maintain the RSP associated with the retired unit, or it may request to terminate the RSP. Entergy states that under these circumstances requiring compensation and notice from Entergy Arkansas with respect to a retiring generating unit is not warranted.[63]

62. In response to the Texas Commission's concern that the Recitals to the Agreements do not specify that MISO includes MISO's successors and assigns, Entergy states that it does not oppose including such a reference in the Agreements as part of the compliance filing it agreed to make in its June 4 Answer. Entergy also states that it does not oppose extending the termination date under section 2.2(a) to December 31, 2013. It states that if both parties to an Agreement are not integrated into MISO by that date, the parties will consider whether that Agreement should be amended or extended in light of the then-current circumstances, and re-file the Agreement as appropriate.[64]

63. In response to the Texas Commission's assertion that it is not apparent why the Agreements are contingent upon Entergy Arkansas' integration into MISO, Entergy states that it developed the structure of the Agreements consistent with the Texas Commission's order and Entergy's plan that all the Operating Companies will integrate into MISO. Entergy states that the apportionment of the RSPs under the Agreement, and the revenue division, are premised on all the Operating Companies' integrating into MISO. Entergy states that, if Entergy Arkansas does not integrate into MISO, the Agreements will need to be reconsidered.[65]

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[61] *Id*.

[62] *Id*. at 9 (citing MISO Tariff, Module C § 46.6.4.3).

[63] *Id*. at 9.

[64] *Id*. at 9-10.

[65] *Id*. at 10.

64. With regard to the Texas Commission's concerns regarding termination rights under the Agreements, Entergy states that each party has rights that it may exercise in the event the Agreement does not provide value to that party or presents other issues.

65. In its answer, the Arkansas Commission states that the Commission should reject New Orleans Council's requested conditions in their entirety because they would eviscerate the voluntary arrangements made to balance the needs of the Counterparty Operating Companies and Entergy Arkansas with respect to congestion cost hedges.[66] The Arkansas Commission states that Entergy Arkansas' ratepayers should not be left financially exposed as a result of Entergy Arkansas making its RSPs available to assist the Counterparty Operating Companies in hedging against congestion costs, and that a split of revenues from allocated RSPs between Entergy Arkansas and the Counterparty Operating Companies is therefore just and reasonable. It states that New Orleans Council incorrectly asserts that the Agreements are not necessary and that Entergy Arkansas should or could be required to apportion to the other Operating Companies the RSPs associated with Entergy Arkansas' baseload generating capacity. Finally, the Arkansas Commission states that the Commission should reject New Orleans Council's suggestion that unless Entergy and MISO can provide evidence that Entergy New Orleans will receive an undefined "adequate congestion revenue" to hedge its congestion costs, the Agreements are unjust and unreasonable.[67]

66. The Arkansas Commission states that it understands and shares the concerns over the ability of the Operating Companies to hedge against congestion costs upon integration into MISO. The Arkansas Commission states that such concerns have motivated the Entergy retail regulators to condition their approval of the Operating Companies' integration into MISO on the Operating Companies receiving a reasonable level of ARRs. However, the Arkansas Commission states that those concerns simply cannot be remedied with absolute certainty in advance of the Operating Companies' integration into MISO. Instead, it states that what can be achieved is an attempt at measures to make RSPs available to all of the Counterparty Operating Companies so that they can seek LTTRs sufficient to hedge their load against congestion costs, while balancing the interests of Entergy Arkansas and its ratepayers in making sure they are no worse off as a result of the RSP apportionment. The Arkansas Commission states that Entergy has demonstrated that the Agreements are just and reasonable and that the Texas Commission's request for further procedures is not warranted here, nor is it feasible given the impending deadlines and timing for the Operating Companies' integration into MISO. The Arkansas Commission requests that the Commission reject the Texas Commission's request for further procedures. The Arkansas Commission requests that the Commission

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[66] Arkansas Commission Answer at 2.

[67] *Id*. at 2-3.

reject the Agreements outright if it does not believe that they are just and reasonable, rather than subject the parties to further procedures which may delay the Operating Companies from meeting their conditions for integration into MISO.[68]

67. The Texas Commission responds to Entergy's answer by stating that while it remains concerned about the lack of record support for the Agreements, it no longer opposes acceptance of the proposed Agreements. Accordingly, the Texas Commission states that it withdraws its request for a technical conference and request for hearing and settlement judge procedures at this time.[69] However, the Texas Commission states that acceptance of the Agreements for filing at this time, and the Entergy Operating Companies' execution thereof, should be without prejudice to further examination and possible adjustment of the Agreements in the future based upon actual knowledge and experience with the Agreements. The Texas Commission states that more meaningful evaluation of these agreements can be conducted after the immediate time pressures for registration of RSPs with MISO no longer demand immediate adoption of the Agreements, and after all interested stakeholders gain actual knowledge and experience with actual ARR allocations and FTR acquisitions, congestion pricing effects, and the operation and effects of these Agreements, among other consequences of Entergy's anticipated participation in MISO. Therefore, the Texas Commission states that it is expressly reserving all of its rights to unilaterally file to propose that the Commission revisit or amend the Agreements.

68. Regarding potential changes to the proposed Agreements, the Texas Commission states that the Commission should require Entergy to amend them as Entergy proposes in its June 6 answer. The Texas Commission states that the Arkansas Commission and others have proposed various changes. The Texas Commission states that it is not expressing support or even acquiescence in any other such changes. The Texas Commission states that the Commission must either not open up the contracts at this time, or it must do so fully and with procedural opportunity to allow all parties to address every proposed change that they are inclined to address.[70]

69. In its answer, New Orleans Council asks the Commission to accept the proposal to allocate RSPs to the Counterparty Operating Companies, reject the Agreements as unnecessary (including any obligation to pay Entergy Arkansas for the RSPs), and not conclude that Entergy's proposal to apportion some RSPs from Entergy Arkansas to the Counterparty Operating Companies in exchange for those Counterparty Operating Companies paying Entergy Arkansas a portion of any congestion revenue results in an

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[68] *Id*. at 3.

[69] Texas Commission Answer at 1-2.

[70] *Id*. at 6.

adequate overall ARR allocation to Entergy New Orleans.[71] It claims that apportioned ARRs would be inferior to Stage 1A ARR allocations of all other MISO load serving entities in MISO because payments to Entergy Arkansas will result in congestion revenues being by definition less than the equivalent of 50 percent of peak load while allowing Entergy Arkansas to receive revenue as though it received Stage 1A ARRs in excess of the 50 percent peak cap.[72] New Orleans Council states that Entergy's and the Arkansas Commission's Answers fail to cite case law that rebuts New Orleans Council's assertions that the *Mobile-Sierra* standard of review is inappropriate in the Agreements.

IV. Commission Determination

A. Procedural Matters

70. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

71. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the late-filed motion to intervene submitted by the Texas Commission, given its interest in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

72. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

73. We will accept the Agreements with certain modifications, subject to a compliance filing. In the MISO Supplemental Rules Proceeding Order, the Commission sought to assure the ability of load serving entities in the Entergy region, as well as elsewhere in MISO, to obtain sufficient LTTRs by accepting Supplemental Rules proposed by MISO. The Commission noted that the Supplemental Rules would expand load serving entities' ability to qualify for, and potentially to receive, LTTR entitlements based upon nomination of eligible resources up to 50 percent of peak load.

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[71] New Orleans Council June 14, 2013 Answer at 3.

[72] *Id.* at 6.

74. Entergy's Agreements in the instant proceeding are designed to address a particular circumstance in which Entergy generation units that might otherwise qualify for nomination for LTTRs in MISO under the Supplemental Rules would nonetheless not be valuable to load serving entities as congestion hedges because they would cause the load serving entities, the Counterparty Operating Companies, to potentially incur an other-than-positive ARR value under MISO's market rules. The Agreements further address an imbalance in the value of resources held by Entergy Arkansas and the Counterparty Operating Companies, by allocating Entergy Arkansas RSPs to the Counterparty Operating Companies. They provide for allocation of some revenues from those RSPs to Entergy Arkansas to recognize that the Agreements would otherwise cause Entergy Arkansas to incur opportunity costs from lost revenues that it could otherwise have realized and that such allocations could cause Entergy Arkansas to incur certain costs that it would not otherwise be obligated to incur.

75. We find that the instant Agreements represent a just and reasonable approach to enhance the value of LTTRs available to certain load serving entities, the Counterparty Operating Companies, upon their integration into MISO. We find that the Agreements reflect a careful balancing of interests to apportion RSPs to the Counterparty Operating Companies in order to provide an enhancement to the value of LTTRs that would otherwise be available under the MISO Tariff, while dividing revenues from allocated RSPs between Entergy Arkansas and the Counterparty Operating Companies in a just and reasonable manner.

76. In the System Agreement Withdrawal Order, as affirmed by the D.C. Circuit, we noted that the Operating Companies retain ownership of their generation under the System Agreement and we rejected other claims against Operating Companies withdrawing from the System Agreement by those remaining within it.[73] Therefore, without a contractual arrangement such as the Agreements, the Counterparty Operating Companies would have no right to Entergy Arkansas' RSPs.

77. We reject New Orleans Council's assertions that the Agreements are not necessary or just and reasonable because the Counterparty Operating Companies are entitled to have their reasonable needs for LTTRs satisfied under Order Nos. 681 and 681-A. The adequacy of whether the reasonable needs for LTTRs will be satisfied was addressed in the Supplemental Rules Proceeding. We find the New Orleans Council's challenge on this point to be outside the scope of this proceeding. For similar reasons, we reject New

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[73] *See Entergy Servs., Inc*., 129 FERC ¶ 61,143 at PP 60-62 (2009) (System Agreement Withdrawal Order), *reh'g denied*, 134 FERC ¶ 61,075 (2011) (Withdrawal Rehearing Order), *aff'd sub. nom Council of the City of New Orleans v. FERC*, 692 F.3d 172, 175 (D.C. Cir. 2012), *petition for cert. filed sub nom. Louisiana Pub. Serv. Comm'n v. FERC* (U.S. Jan. 9, 2013) (No. 12-852).

Orleans Council's request that we direct Entergy and MISO to provide evidence that Entergy New Orleans will receive adequate LTTR revenues to hedge its congestion costs.

78. We find that it is just and reasonable for the Counterparty Operating Companies to enter into the Agreements to help ensure that their LTTR needs, which the protestors acknowledge are of great importance to the Counterparty Operating Companies and their retail customers, are met. We find that the Agreements address a particular circumstance, namely, as Entergy states, the possibility that Counterparty Operating Companies would be deemed to have sufficient RSPs to nominate to receive ARRs, yet such RSPs would, because they are legacy and steam units that are not baseload or "baseload-like" units, create an unfunded negative obligation if the Counterparty Operating Companies use them as source points for ARR nominations.

79. Further, we find that the Agreements' provisions for sharing revenues from allocated RSPs with Entergy Arkansas are just and reasonable as payment of consideration to assure a right of access to such RSPs and resulting LTTRs. We reject New Orleans Council's assertion that the Agreements will result in Counterparty Operating Companies receiving ARRs/FTRs that are "inferior" because they include a sharing of revenues with Entergy Arkansas. We agree that Entergy has structured the Agreements to place Entergy Arkansas in a position no worse off than it would have been without the Agreements. Given that, as discussed above, Entergy Arkansas has no obligation to share its RSPs with the Counterparty Operating Companies, we find this to be just and reasonable. We agree with Entergy that while the MISO Tariff does not require a payment between parties that agree to apportion RSPs between them, neither does it prohibit one.

80. Both New Orleans Council and, to the extent not removed by its later answer withdrawing its opposition to acceptance of the Agreements, the Texas Commission challenge the reasonableness of the precise allocation of assigned RSP revenues between Entergy Arkansas and the Counterparty Operating Companies. Entergy explains that pursuant to the Agreements, the Counterparty Operating Companies will nominate ARRs from the apportioned RSPs to their own ARR zone. Payment from MISO to the Counterparty Operating Company will then be divided so that the share of revenues due to Entergy Arkansas will be in proportion to the value of an FTR between the apportioned RSP and Entergy Arkansas' ARR zone. The share of revenues retained by the Counterparty Operating Companies would be in proportion to the value of an FTR between Entergy Arkansas' ARR zone and the Counterparty Operating Companies' ARR zone. Entergy represents that Entergy Arkansas will receive from the Counterparty Operating Company RSP revenues that generally track the amounts of revenues Entergy Arkansas would have received had it not agreed to apportion RSPs from ISES Unit 1, White Bluff Unit 1, and White Bluff Unit 2, but instead nominated and received FTRs from those resources to Entergy Arkansas' Load Zone. We find this to be just and reasonable because it will result in the share of revenues that Entergy Arkansas would

receive from the apportioned RSPs reasonably tracking the revenues that Entergy Arkansas would have received without the apportionment of the RSPs.

81. We reject various arguments by the Texas Commission and New Orleans Council that Entergy has not provided a sufficient factual basis to accept the Agreements. We disagree with the Texas Commission's assertion that Entergy provided insufficient detail regarding its formulas or how they would function, given that Entergy provided a lengthy explanation of these matters in its transmittal with hypothetical examples demonstrating how the formulas would operate in three different scenarios. We also disagree with the Texas Commission that Entergy must support its filing with testimony or affidavits. There is no Commission requirement for such documents to support this type of filing. Further, we note that the division of revenues will be based on MISO settlement statements and publicly available data, and all the revenues received by an Operating Company through the operation of the Agreements will be credited by the applicable Operating Company against costs ultimately borne by the Operating Company's customers.

82. New Orleans Council, for its part, asks us to accept the reallocation of RSPs but reject as unsupported the Agreements. As explained above, without the Agreements, there is no basis for reallocation of Entergy Arkansas' RSPs to the Counterparty Operating Companies.

83. Pursuant to a Texas Commission request, Entergy agrees to amend its proposal to specify that reference to MISO in the Agreements includes successors and assigns. Entergy also agrees to extend from December 19, 2013 to December 31, 2013 the deadline by which Entergy Arkansas and the applicable Counterparty Operating Company must be MISO members to accommodate a Texas Commission proceeding deadline. We accept these modifications to the Agreements and direct Entergy to embody them and other revisions we accept or order herein in a compliance filing of the amended Agreements.

84. We agree with Entergy that there is no basis for Entergy to be required to submit information relating to the effect of retiring generation given that under the MISO tariff, a generating resource remains an RSP even after it is retired unless the market participant that registered it seeks to remove the resource from the source set.[74] We also agree with Entergy that the Agreements' requirement in section 4.4(b) requiring Counterparty Operating Companies to take all steps reasonably necessary to convert ARRs to FTRs is just and reasonable, given this conversion allows Entergy Arkansas to receive amounts consistent with what it would have received absent the Agreements which, as noted above, is the overarching premise of the Agreements' proposed revenue split between

[74] *See* MISO Tariff, Module C § 43.6.4.3.

Entergy Arkansas and the Counterparty Operating Companies. This same logic supports allowing Entergy Arkansas to waive compensation from Counterparty Operating Companies under the Agreements; namely, waiving a right to compensation will place Entergy Arkansas in the same position as if it had retained the RSP and chosen not to nominate the RSP in Stage 1B of the MISO ARR allocation process, a right it would have under MISO market rules.

85. The Texas Commission also expresses concerns that MISO could assign counterflow ARRs that could result in a Counterparty Operating Company liability to MISO. However, as Entergy notes, under the terms of the MISO Tariff such assignments will only be made if an RSP eligible for nomination in Stage 1A of the ARR allocation process is *not* nominated, whereas the Agreements require Counterparty Operating Companies to nominate the apportioned RSPs.[75] We find other concerns expressed by the Texas Commission regarding the effect of RSP assignments upon counterflow ARRs assigned by MISO to be vague and unsupported.

86. We find New Orleans Council's objection to Entergy's reference to the Agreements as post-withdrawal successor arrangements to raise an issue that is irrelevant to a determination of whether the Agreements are just and reasonable.

87. The Texas Commission and the Arkansas Commission suggest termination provisions should be added to the Agreements, while the Arkansas Commission also calls for the addition of a term provision. We find that the lack of a stated term does not render the Agreements unjust and unreasonable. With respect to the right to terminate the Agreements, we find the Agreements do provide Entergy Arkansas and the Counterparty Operating Companies the ability to terminate under certain circumstances, including (1) failure to integrate into MISO by December 2013; (2) upon mutual written agreement of the parties; or (3) upon evidence that a Counterparty Operating Company no longer has obligations under section 4.2 through 4.4 of the Agreement, which relate to Counterparty Operating Company obligations to nominate ARR Entitlements, request FTRs associated with allocated RSPs, convert ARRs to FTRs, and exercise rollover rights available for LTTRs associated with apportioned RSPs, as well as payment obligations under the Agreements.[76]

88. Both the Arkansas Commission and the Texas Commission also call for periodic evaluations of the results of the Agreements, while Entergy recommends instead that it only agree to work with retail regulators to address their questions. We find that all parties agree that the revenue allocations resulting from the Agreements, as well as the extent of hedging provided through the Agreements, are of vital interest to the Operating

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[75] *See* MISO Tariff, Module C § 43.2.5.

[76] Agreements, § 2.2.

Companies as well as to wholesale and retail ratepayers. Accordingly, we will require Entergy to file with the Commission an informational filing providing analysis of the allocation of RSPs through the Agreements, resulting ARRs and FTRs, and the results of payments between Entergy Arkansas and the Counterparty Operating Companies on an annual basis following MISO's annual ARR Allocations. This informational filing should also include data requested by the Arkansas Commission, including: hedges against MISO congestion charges for the Operating Companies' load, impacts of FTR underfunding, ARR infeasibility, reaching the ceiling of MISO FTR payments on Entergy Arkansas apportionment revenues, a summary of revenues received by the parties under each Agreement, and estimates of possible future congestion and revenue under the Agreements.[77]

89. We find the Arkansas Commission's proposed clarification that the Agreements do not convey an entitlement right to Counterparty Operating Companies of Entergy Arkansas generation plants, to which Entergy agreed, to be consistent with our statements above. We also find just and reasonable the Arkansas Commission's proposed clarification, agreed to by Entergy, that section 4.6(b)(i) of the Agreements be modified to make clear that any potential Entergy Arkansas payment obligation associated with an apportioned RSP terminates if Entergy Arkansas provides notice it is waiving its right to receive payments associated with that RSP. We find this consistent with the Agreements' intent to ensure that Entergy Arkansas and its ratepayers are not made worse off than they would be without the Agreements, which we generally agreed is just and reasonable above.

90. We agree with New Orleans Council that it is inappropriate to apply a *Mobile-Sierra* "public interest" standard of review in the circumstances presented here. Therefore, we require modification of section 8.6 of the Agreements that seek to bind the Commission and third parties to the *Mobile-Sierra* "public interest" standard of review.

91. The Commission has recently discussed applicability of the *Mobile-Sierra* "public interest" presumption, stating:

> The *Mobile-Sierra* "public interest" presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's

[77] Arkansas Commission Comments at 8.

> length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. The former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption; the latter constitute tariff rates, terms, or conditions to which the *Mobile-Sierra* presumption does not apply, although the Commission may exercise its discretion to apply the heightened *Mobile-Sierra* standard.[78]

92. Entergy acknowledges that the Agreements were negotiated among Entergy affiliates. For this reason, the Agreements do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. In turn, the Agreements do not embody "contract rates, terms, or conditions that *necessarily* qualify for a *Mobile-Sierra* presumption."[79]

93. As we have stated recently, in the context of reviewing settlements that do not involve "contract rates," the Commission has discretion as to whether to approve a request to impose on itself or third parties the more rigorous application of the statutory "just and reasonable" standard of review that is often characterized as the *Mobile-Sierra* "public interest" standard of review.[80] The Commission also stated in these orders that it will not approve imposition of that more rigorous application of the statutory "just and reasonable" standard of review on future changes to an agreement sought by the Commission or non-settling third parties, absent compelling circumstances such as were found to exist in *Devon Power*. We find that the circumstances presented here do not satisfy that test. Thus, we find it unjust and unreasonable to impose the more rigorous application of the statutory "just and reasonable" standard of review in the instant proceeding with respect to future changes to the Agreements sought by the Commission acting *sua sponte* or at the request of a non-settling third party.

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[78] *Panhandle Eastern Pipe Line Company, LP*, 143 FERC ¶ 61,04,1 at P 84 (2013).

[79] *Id.*

[80] *See, e.g.*, *MidAmerican Energy Co.*, 138 FERC ¶ 61,028 (2012) (citing *Devon Power LLC*, 134 FERC ¶ 61,208, *order on reh'g*, 137 FERC ¶ 61,073 (2011) (*Devon Power*), *affirmed*, *New England Power Generators Ass'n, Inc. v. FERC*, D.C. Cir. No. 11-1422 (Feb. 15, 2013)); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011); *High Island Offshore System, LLC*, 135 FERC ¶ 61,105, at P 24 (2011)).

The Commission orders:

(A) The Commission accepts Entergy's Agreements, as modified, to be effective June 28, 2013, as requested.

(B) Entergy is directed to file within 30 days of this order the revisions to the Agreements as directed by the Commission, as discussed in the body of this order.

(C) Entergy is directed to submit an informational filing on an annual basis following MISO's annual ARR Allocations, as discussed in the body of this order.

By the Commission. Commissioner Norris is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Arkansas, Inc. Docket No. ER13-1317-000

(Issued June 28, 2013)

NORRIS, Commissioner, *concurring*:

I concur in the outcome of this order, which conditionally accepts five agreements between Entergy Arkansas and the other Entergy Operating Companies that provide for an apportionment of Reserved Source Points under applicable terms of the MISO tariff. The Commission accepts these agreements subject to Entergy modifying the agreements to no longer bind the Commission and third parties to the public interest standard of review. I agree with the order that the agreements are not the kind of contract rates to which the public interest presumption would apply. However, while the D.C. Circuit has determined that the Commission may exercise discretion under the Federal Power Act to apply the public interest standard where the *Mobile-Sierra* presumption does not apply,[1] I continue to disagree, as a policy matter, that the Commission should exercise such discretion.[2]

I believe the Commission can exercise its respect for rate certainty and stability and recognize the value of settlements, while protecting the rights of third parties and without sacrificing a future Commission's ability to review rates that may no longer be just and reasonable due to a change in circumstances. Therefore, I disagree with the analysis in this order of whether the Commission should permit the application of the public interest standard to future changes to the rates in the tariff.

For these reasons, I respectfully concur.

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John R. Norris, Commissioner

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[1] *New England Power Generators Ass'n, Inc. v. FERC*, No. 11-1422, at 10-12 (D.C. Cir Feb. 15, 2013).

[2] *Devon Power LLC*, 134 FERC ¶ 61,208 (2011), *Norris, dissenting in part*.