UNITED STATES OF AMERICA 149 FERC ¶ 63,022
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc. Docket No. ER13-432-002

INITIAL DECISION

(Issued December 12, 2014)

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Glen Ortman, Esq., Adrienne E. Clair, Esq., and Randolph Hightower, Esq., on behalf of the Arkansas Public Service Commission

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Presley Reed Esq., Jennifer Morrissey, Esq., *Clinton Vince*, Esq., and *Emma Hand*, Esq., on behalf of Council of the City of New Orleans

Debra Roby, Esq., Melissa A. Alfano, Esq., and Alan Robbins, Esq., on behalf of Public Utility Commission of Texas;

James R. Keegan, Esq. and Kyle J. Hayes, Esq., and on behalf of the Federal Energy Regulatory Commission Trial Staff

MICHAEL J. CIANCI, JR., Presiding Administrative Law Judge

I. Background

1. On November 20, 2012, pursuant to section 205 of the Federal Power Act (FPA), Entergy Services, Inc. (Entergy or ESI), as agent for and on behalf of the Entergy Operating Companies, filed certain amendments to the Entergy System Agreement (System Agreement). In its December 18, 2013 Order, which set the subject matter related to the proceeding before the undersigned for hearing, the Commission accepted

the amendments, as modified, subject to a further compliance filing and subject to the outcome of Docket No. ER14-73-000, and suspended them for a nominal period, to become effective December 19, 2013, as requested, subject to refund. Pertinent to this case, the Commission also established hearing and settlement judge procedures regarding the allocation of proceeds from a settlement between Entergy Arkansas (or EAI) and Union Pacific Corporation (Union Pacific or UP).[1]

2. The Entergy System Agreement is an agreement among ESI and the six Operating Company subsidiaries of Entergy Corporation that has provided the basis for planning and operating the Operating Companies' generation and bulk transmission facilities on a coordinated, single-system basis since 1951. The System Agreement is a Commission-approved tariff that currently requires that the Operating Companies' generation and transmission facilities be operated as a single, integrated system. The System Agreement allocates among the participating Operating Companies the benefits and costs of coordinated operation of those Operating Companies' generation and bulk transmission facilities. The System Agreement is appended by seven service schedules that provide the basis of compensation for the use of the facilities and for the supply of capacity and energy between Operating Companies: Service Schedules MSS-1, MSS-2, MSS-3, MSS-4, MSS-5, MSS-6, and MSS-7.

3. The System Agreement provides in section 1.01 that "any Company may terminate its participation in this Agreement by ninety-six (96) months written notice to

[1] In May of 2005, two derailments occurred on a rail line used jointly by UP and BNSF Railway Company to transport coal from the Powder River Basin in Wyoming. The derailments led to the discovery of unstable track structure and continued disruption of transportation service on the line while the line was repaired. Both UP and BNSF declared force majeure on affected transportation contracts. Although BNSF lifted its force majeure on June 3, 2005, UP's continued through November 23, 2005, and UP did not begin meeting the coal delivery requirements of its transportation agreement with EAI until part-way through 2006. (Ex. MC-1, at 5-6). On December 19, 2005, Entergy Arkansas notified the other Entergy Operating Companies of its intent to withdraw from the System Agreement effective December 18, 2013. *See Entergy Services, Inc.*, 145 FERC ¶ 61,247 (2014). On April 7, 2008, Entergy on behalf of Entergy Arkansas and the other Entergy Operating Companies reached a settlement with Union Pacific Railroad which resolved a lawsuit between Entergy and the Union Pacific regarding these under-deliveries of coal by Union Pacific between May 2005 and June 2006, relating to the two power plants operated by Entergy (White Bluff and the Independence Steam Electric Station).

the other Companies." The Commission noted that Entergy Arkansas had notified the other Operating Companies of its intent to withdraw from the System Agreement effective December 18, 2013. Entergy Mississippi gave the same notice on November 8, 2007, with its withdrawal to be effective on November 7, 2015.

4. By way of pertinent background relevant to the parties' relationships, in December 2006, in Docket No. EL07-25-000, the Louisiana Public Service Commission (LPSC) filed a complaint against Entergy seeking a remedy for the attempted withdrawal of Entergy Arkansas from the System Agreement. The Louisiana Commission sought a Commission order instituting a proceeding to determine whether, and on what terms, Entergy Arkansas might withdraw from the System Agreement. The Commission denied the relief requested in the complaint, observing that the System Agreement is silent as to the rights and obligations of a departing member, and thus arguably could be interpreted as imposing no obligations on a departing member and providing no rights to remaining members. The Commission nevertheless concluded that such a major change to this type of highly integrated system arrangement, which has existed for over 50 years, cannot be viewed in a vacuum. The Commission held that it must determine that the System Agreement will remain just and reasonable for remaining members (Entergy Louisiana or ELI, Entergy New Orleans or ENO, Entergy Mississippi or EMI and Entergy Gulf States or EGS), and likewise whether any new Entergy Arkansas jurisdictional wholesale arrangements will be just and reasonable, as a result of Entergy Arkansas withdrawing from the arrangement.

5. The Commission, however, concluded that parties might seek to address such issues in the interim but also that it was premature for the Commission to address such issues then. The Commission therefore called for such issues to be addressed at the time that Entergy makes a section 205 filing to reflect Entergy Arkansas' withdrawal from the System Agreement.

6. By Order dated November 19, 2009, the Commission had accepted Entergy Arkansas' and Entergy Mississippi's subsequently filed Notices of Cancellation. The Commission found that the System Agreement allowed Operating Companies to exit upon 96 months' written notice, without any further conditions on withdrawal beyond the 96-month notice requirement. The Commission also found that the System Agreement contains no provisions that require withdrawing Operating Companies to pay an exit fee or to otherwise compensate remaining Operating Companies. Finally, the Commission found that the System Agreement places no continuing obligation on the withdrawing Operating Companies with respect to either the sharing of capacity or the payment of rough production cost equalization payments ordered pursuant to Opinion Nos. 480 and 480-A.

7. In the Withdrawal Order, however, the Commission noted that Entergy must ensure that any future operating arrangement is just and reasonable, and encouraged

Entergy to make an FPA section 205 filing with successor arrangements as soon as possible. In its subsequent Order on rehearing, the Commission noted that "[t]he withdrawal of one or more members from Entergy would be a significant change to the Entergy system such that the Commission would need to review any successor arrangement to ensure that it is just and reasonable," and that "[a]ny legitimate concerns regarding the structure of the post-withdrawal Entergy system will be addressed by the Commission when considering Entergy's filing on transition measures." The Commission also stated that two discrete matters involving allocation of costs related to network upgrades used to benefit the Ouachita Generating Station and the allocation of the Union Pacific Settlement (the subject matter in this case) would be more appropriately raised in a future proceeding regarding the structure of the post-withdrawal Entergy system. The Commission further noted that The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) had previously affirmed these findings and stated that the Commission "must still review the post-withdrawal arrangements to ensure that they are just, reasonable, and not unduly discriminatory."

8. Moreover, the Commission stated that in April 2011, Entergy and the Midwest (now Midcontinent) Independent Transmission System Operator, Inc. (MISO) announced a proposal for the Operating Companies to join MISO effective December 19, 2013. In December 2011, Entergy and ITC Holdings Corp. (ITC) announced a plan for Entergy to transfer control of its 69-kV or higher transmission assets to new ITC subsidiaries (New ITC Operating Companies) (Entergy-ITC Transaction). On December 13, 2013, Entergy and ITC filed a notice of termination of the Entergy-ITC Transaction. On the same day, ITC and the New ITC Operating Companies filed a motion to withdraw certain filings related to the Entergy-ITC Transaction.

9. Furthermore, in its December 18, 2013 Order the Commission observed by way of background that on November 20, 2012, Entergy had filed under FPA section 205 a successor arrangement, as the Commission encouraged it to do in the Withdrawal Order. Entergy proposed amendments to the System Agreement to remove all references to Entergy Arkansas (Withdrawal Amendments) and amendments to allocate costs that the Operating Companies would incur in MISO between the remaining Operating Companies, noting Entergy had requested that the Amendments be accepted without suspension or hearing, effective December 19, 2013.

10. Prior to filing, the Commission noted that Entergy had engaged in an Alternative Dispute Resolution (ADR) process at the Commission with retail regulators. Entergy stated that ADR participants examined proposed changes to the System Agreement to allocate MISO costs to the Operating Companies following their integration into MISO, and had requested "feedback/input or alternative proposals" from the ADR participants. Other issues, such as the withdrawal of more Operating Companies from the System Agreement and the possibility of other major revisions to the System Agreement, including its termination, were apparently not addressed in the ADR process.

11. In its December 18, 2013 Order the Commission further observed that Entergy's filing explained that the MISO Cost Allocation Amendments would be used to reassign among the Operating Companies fifty-six MISO costs and credits that correspond to the implementation of MISO's Day-Ahead and Real-Time Energy and Operating Reserve Markets and Financial Transmission Rights (FTR) Market. The 5fifty-six MISO costs and credits correspond to six general areas:

a. energy losses reflected in the marginal loss component of MISO's Locational Marginal Prices (LMPs);

b. ancillary services charges to load that use those services and credits to generation that provides them;

c. uplift charges to load for the service of generation availability and credits to generation units that make themselves available;

d. congestion costs assessed to load and paid to generators that are reflected in MISO's LMPs;

e. joint account energy purchases and sales to satisfy the needs of one or more Operating Companies at MISO LMPs; and

f. MISO administrative costs relating to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff).

12. The Commission stated that the first five sets of MISO Cost Allocation Amendments are reflected in amendments to Service Schedules MSS-3 and MSS-5 of the System Agreement, which governs, inter alia, energy exchange transactions among the Operating Companies. The final set of Amendments addressing MISO administrative charges is allocated through the addition of a new Service Schedule MSS-8. Several additional minor Amendments were noted to be made to other service schedules in the System Agreement.

13. The Commission also stated that Entergy made additional commitments in an answer with respect to sharing information with retail regulators and making future filings with the Commission. These commitments included: providing the retail regulators of the Operating Companies copies of the Entergy Intra-System Bill every six months that show the allocation of the MISO charges and credits to all of the Operating Companies participating in the System Agreement; making a filing with the Commission under section 205 of the FPA regarding Entergy Texas' subsequent notice of cancellation to terminate participation in the System Agreement; and at least six months prior to the end of a two-year transition period, submitting an additional filing under section 205 of

the FPA that addresses the allocation of MISO charges and credits among the Operating Companies. Entergy's answer also modified certain aspects of its proposed MISO Cost Allocation Amendments.

14. Notice of Entergy's filing was published in the Federal Register, 77 Fed. Reg. 71,406 (2012), with interventions and protests due on or before January 22, 2013.

15. Notices of intervention were filed by the Council of the City of New Orleans, the Arkansas Public Service Commission, the Public Utility Commission of Texas, the Louisiana Public Service Commission, and the Mississippi Public Service Commission. Timely motions to intervene were filed by the Arkansas Electric Cooperative Corporation, Calpine Corporation, East Texas Cooperatives, ITC, and NRG Companies. The Mississippi Delta Energy Agency, Clarksdale Public Utilities and Public Service Commission of Yazoo City (jointly), PJM Interconnection L.L.C. (PJM), and the Louisiana Energy Users Group also filed motions to intervene out-of-time.

16. The Entergy Retail Regulators, whose members include the Texas Commission, the Louisiana Commission, and the New Orleans Council, filed initial comments. The Louisiana Commission and the New Orleans Council filed separate protests. The Texas Commission filed a protest, request for hearing, and motion to consolidate this docket with Docket No. ER12-2693-000 on January 22, 2013, as corrected on January 28, 2013. The Mississippi Commission filed comments.

17. The Arkansas Commission filed a reply in opposition to the initial comments of the Entergy Retail Regulators, and the Entergy Retail Regulators filed an answer thereto. Separately, the Arkansas Commission filed an answer to other protests, and the New Orleans Council filed a response on February 21, 2013. The Mississippi Commission filed an answer to the New Orleans Council's answer. The New Orleans Council also filed, on February 6, 2013, a response to comments, protest and request for hearing.

18. On March 12, 2013, Entergy filed an answer to protests and comments; the Louisiana Commission and the New Orleans Council subsequently filed answers to Entergy's answer; and the Arkansas Commission filed an answer to the Louisiana Commission's answer. On March 22, 2012, the Texas Commission filed a motion to consolidate this docket with Docket No. ER13-948-000, and a further protest. On April 8, 2013, the Arkansas Commission filed an answer to certain protests in this and five other dockets. On April 23, 2013, the New Orleans Council filed a motion to lodge the United States Solicitor General's Brief for Respondent in Opposition filed with the United States Supreme Court in Case No. 12-852, explaining why the Louisiana Commission's petition for a writ of certiorari of the District of Columbia Court of Appeals' denial of its appeal of the Withdrawal Order, should be denied.

19. The Commission noted some protestors suggested that this proceeding should be consolidated with other Entergy matters involving the Entergy-ITC Transaction or Entergy's integration into MISO. The Texas Commission requested that proceedings be consolidated with Docket No. ER12-2693-000, which concerns Entergy's filing to cancel Service Schedule MSS-2 (Transmission Equalization) upon closing of the Entergy-ITC Transaction. It stated that it is inappropriate for Entergy to seek to have the proposed termination of Service Schedule MSS-2 considered independently of the extensive amendments to the System Agreement in Docket No. ER13-432-000 given the interplay among the System Agreement schedules and common issues. The Texas Commission contended that presentation of proposed Amendments to the System Agreement in isolation of the many other arrangements pending in other dockets or yet to be proposed improperly called upon the Commission to view the System Agreement in isolation. The Louisiana Commission contended that it was improper for the Commission to consider the issue of the Ouachita Generating Station in other proceedings, namely, Docket Nos. ER13-769-000 and ER13-770-000.

20. The Arkansas Commission on April 8, 2013, filed an answer to the Texas Commission's March 22, 2013 motion to consolidate and protest opposing consolidation because, it contended the proceedings did not involve common issues of law and fact, the parties' interests were likely different in each of the proceedings, and consolidation would not promote administrative efficiency and would unduly burden parties with interest in only discrete issues in different proceedings.

21. The Commission found in its December 18, 2013 Order that pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

22. The Commission further held that pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission would grant the late-filed motions to intervene of the Mississippi Delta Energy Agency, Clarksdale Public Utilities and Public Service Commission of Yazoo City, PJM Interconnection L.L.C., and the Louisiana Energy Users Group given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

23. The Commission accepted all parties' answers and the New Orleans Council's motion to lodge.

24. The Commission denied requests to consolidate the proceeding with others before the Commission, noting that on June 20, 2013, the Commission issued an order in Docket No. ER12-2693-000 accepting Entergy's tariff revisions to delete Service Schedule MSS-2 and to make certain conforming changes to the System Agreement to remove

references to transmission operations in the System Agreement upon closing of the Entergy-ITC Transaction. Accordingly, the Commission found the requests to consolidate to be moot.

25. The Commission stated also that it had recently issued an order setting for hearing and settlement judge procedures Entergy's filings in Docket Nos. ER13-769-000 and ER13-770-000, which addressed a reallocation of transmission upgrade costs associated with the Ouachita Generating Station from Entergy Louisiana and Entergy Mississippi to Entergy Arkansas. The Commission noted that on June 20, 2013, it also issued an order in Docket Nos. ER13-948-000, ER13-782-000, and ER12-2681-000 accepting certain tariff provisions related to the Entergy-ITC Transaction and setting other issues for hearing and establishing settlement judge procedures. It stated that it was Commission policy to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency, and observed that it did no believe consolidating the proceeding with the proceedings in Docket Nos. ER13-769-000 and ER13-770-000 and Docket Nos. ER13-948-000, ER13-782-000, and ER12-2681-000 would achieve greater administrative efficiency because the issues being set for hearing in each proceeding did not present common issues of law and fact.

26. Then the Commission addressed protests to Entergy's filing arguing that Entergy's revisions are too narrow in scope, and that the Commission should order a hearing to address the potential for wider revisions to the System Agreement, and in general rejected these protests, but pertinent to this case before the undersigned found that the record is insufficient to make a determination on the Union Pacific Settlement issue, and so set that matter for hearing and settlement judge procedures, where settlement proceedings were ultimately unsuccessful.

27. The Commission in its December 18, 2013 Order addressed further issues not at issue or pertinent to the UP settlement issue but by way of background include those issues raised in protests and related filings. Regarding the specific Amendments to the System Agreement that Entergy proposed to reflect the exit of Entergy Arkansas from the System Agreement and the entry of Entergy into MISO, including the additional commitments made by Entergy in its answer, the Commission found that Entergy's proposed Withdrawal Amendments and MISO Cost Allocation Amendments, as modified in certain respects, were just and reasonable, and accepted them for filing effective December 19, 2013. The Commission ordered a compliance filing to provide more details regarding certain aspects of the MISO Cost Allocation Amendments and to provide the Amendments in accordance with e-Tariff requirements.

28. Additionally, the Commission accepted Entergy's commitment to make further filings in the future regarding the allocation of MISO charges and credits among the Operating Companies.

29. The Commission observed that the parties disagreed as to whether Entergy must demonstrate only that its Amendments to the System Agreement are just and reasonable or whether changed circumstances such as Entergy's integration into MISO, the withdrawal of Operating Companies from the System Agreement, and the Entergy-ITC transaction, required a much wider de novo examination of the System Agreement in light of such developments and a showing by Entergy that the System Agreement as a whole remains just and reasonable.

30. The Commission stated that some protestors contended that the Commission and the D.C. Circuit stated or implied that there would be an ample scope to the Commission's examination of Entergy's successor arrangements to determine whether the System Agreement remained just and reasonable.

31. The Commission stated that the nature of the expanded scope of scrutiny sought by the protestors varied. The Louisiana Commission for example described integration into MISO as a fundamental change in the operation of the Entergy System that requires an overhaul in the terms of the System Agreement – not just the addition of billing provisions to ensure that MISO charges are assessed to ultimate ratepayers. It contended that Entergy failed to address outdated provisions in the System Agreement that no longer correspond to operational realities, such as inaccurate listing of parties, outdated fuel plans, and a lack of Regional Transmission Organizations (RTOs). It also contended that the Commission should require that Entergy file a System Agreement that addresses the planning and operation of the System in the MISO environment, including how Entergy will nominate and bid resources into the MISO market, whether the FTRs of some Operating Companies may be sacrificed for the greater good of the System, a statement that Entergy may not act to enrich Entergy affiliates at the expense of consumers, whether the System can require Operating Companies to incur counter-flow costs for the benefit of other Operating Companies, and similar issues, and then hold a hearing on the reasonableness of Entergy's approach.

32. The New Orleans Council stated that Entergy's filing is too limited in scope, does not address issues that are crucial to ratepayers, and that Entergy has failed to demonstrate that its filing is a just and reasonable successor to the agreement that preceded Entergy Arkansas' withdrawal from the System Agreement.

33. The Texas Commission asserted that Entergy was attempting to significantly patchwork a System Agreement that neither fits, nor is any longer needed, in the context of a centralized market structure such as MISO. It contended further that the System Agreement was obsolete and should be transitioned out. The Texas Commission contended that the burden should be upon Entergy to demonstrate it is just and reasonable for the System Agreement to continue upon Entergy's integration into MISO and claimed that Entergy's filing has failed to do so. The Texas Commission also contended that the

extensive Amendments that Entergy filed are evidence that the System Agreement does not work in the MISO context.

34. The Entergy Retail Regulators and the Mississippi Commission contended that Entergy's filing introduced many complexities but failed to sufficiently address them and that such issues cannot adequately be resolved absent a hearing. The protestors stated that the ADR process was inadequate and that Entergy declined to expand the scope of the ADR process to include issues of interest to them. The Louisiana Commission claimed that Entergy declined to discuss the continued viability of the System Agreement, its Service Schedules, hold harmless provisions, responsibility for costs stranded by the withdrawal of Entergy Arkansas, and other issues raised by the Entergy Retail Regulators.

35. The New Orleans Council asserted that the Solicitor General's brief reinforced the position expressed by the New Orleans Council and other parties that the proceeding is the appropriate forum for the Commission to fulfill its commitment to carefully review the justness and reasonableness of post-withdrawal arrangements.

36. In its answer, Entergy disagreed that its filing was too narrow in scope. It stated that the Commission and the courts do not permit the just and reasonable standard to compel a utility to justify unchanged elements in a rate filing, nor did the Commission so obligate Entergy in the Withdrawal Order. Entergy argued that the protestors were improperly attempting to convert an examination of Entergy's filing under FPA section 205 to a comprehensive examination of the System Agreement or to an FPA section 206 proceeding, contrary to Commission precedent. It contended further that under analogous Natural Gas Act provisions, the just and reasonable standard cannot be used to compel a utility to justify unchanged elements in a rate filing. It stated that the Texas Commission's suggestion that it should be required to show that the MISO Tariff would not be just and reasonable as applied to the Operating Companies on their own, without the overlay of the System Agreement, misconstrued the burden of proof under section 205 of the FPA and failed to meet the Commission's standards for when an evidentiary hearing is required. Entergy also stated that the Commission has rejected contentions that an applicant's rate proposal must demonstrate it is the best proposal and, rather, the Commission would reject alternative rate proposals, including cost allocation methodologies, put forth by intervenors where the utility's proposal has been shown to be just and reasonable.

37. Entergy agreed with protestors that the scope of the ADR process remained focused on amendments necessary to integrate into MISO, but stated that this was done to maximize the chances for consensus on those changes.

38. The Commission noted further that the Texas Commission contended that Entergy in its answer erroneously claimed it did not have to justify unchanged elements in its rate

filing, whereas the Commission ruled differently in the Withdrawal Order, wherein it stated that Entergy must ensure that "any future operating arrangement" is just and reasonable.

39. Protestors further contended that the deletion of references to Entergy Arkansas was insufficient to address deeper cost allocation issues raised by pending and possible Operating Company withdrawals from the System Agreement. The Entergy Retail Regulators also raised several issues that they contended should be addressed in the proceeding, including issues related to stranded costs as the result of Entergy Arkansas' withdrawal, and other implications for the continuation of System Agreement Service Schedules that MISO membership would present.

40. Protestors also contended that Entergy's filing failed to address the impact of Entergy Mississippi's pending withdrawal from the System Agreement and Entergy Texas' intent to withdraw from the System Agreement on an accelerated basis. The Louisiana Commission stated that Entergy's filing does not address the withdrawal of Entergy Arkansas and Entergy Mississippi at all, except to remove Entergy Arkansas as a signatory to the Agreement, and thus failed to comply with the Commission's directives. The Commission in its December 18, 2013 Order addressed these additional protested issues and position of the protestors in great detail, as well as issues pertaining to integration into MISO.

41. Of particular note to the case before the undersigned, the Commission addressed the UP settlement observing that the Union Pacific Settlement, which was reached in 2008, resolved a lawsuit between EAI and Union Pacific regarding under-deliveries of coal by Union Pacific to two power plants in Arkansas between May 2005 and June 2006. The plants were operated by Entergy Arkansas, which owns a little over a third of the plants' output; stating that the rest is owned by a consortium that included Entergy Mississippi, Arkansas Electric Cooperative Corporation and Arkansas municipalities. Entergy Louisiana and Entergy New Orleans purchased a portion of the plants' output from Entergy Arkansas under a Commission-accepted life-of-unit cost-based power purchase agreement. In the Withdrawal Order proceeding, the Louisiana Commission expressed concerns as to whether, given that the settlement was between Entergy Arkansas and Union Pacific, other Operating Companies would continue to receive an allocation of the proceeds from that settlement after Entergy Arkansas departed from the System Agreement.

42. In the Withdrawal Rehearing Order, the Commission specifically noted that the Louisiana Commission should raise its concerns with the post-withdrawal allocation of the Ouachita Generating Station transmission upgrade costs and the benefits of the Union Pacific Settlement in a future proceeding regarding the structure of the post-withdrawal Entergy system. In September 2011, the Louisiana Commission filed a complaint in Docket No. EL11-63-000 seeking a remedy for these two matters. In the Commission's

subsequent Order, it again found these issues to be prematurely raised with respect to Entergy and Entergy Arkansas' post-withdrawal obligations and directed the Louisiana Commission to raise any such concerns in the future proceeding regarding the structure of the post-withdrawal Entergy system.

43. The Commission in its December 18, 2013 Order notes that Entergy did not address the Union Pacific Settlement in its original filing. In its protest, the Louisiana Commission attached as Attachment D its complaint filed in Docket No. EL11-63-000 regarding the Ouachita and Union Pacific issues. In its attached complaint, the Louisiana Commission contended that failing to recognize the post-2012 benefits flowing from the settlement between Entergy Arkansas and Union Pacific of a contractual dispute over the delivery of coal supplies in the "rough equalization" calculation in Service Schedule MSS-3 of the Entergy System Agreement, or another remedy, was unjust, unreasonable and unduly discriminatory. It stated that the Settlement Agreement was executed in April 2008 and relates to inadequate coal deliveries in 2005 and 2006 that increased the production costs of all of the Operating Companies. It contended that because of the Entergy Arkansas withdrawal from the System Agreement, a large portion of the settlement benefits will flow only to Entergy Arkansas ratepayers, although all the Operating Companies incurred the damages. It requested that the Commission should now set these issues for hearing.

44. In its answer, Entergy stated that any issues regarding the allocation of transmission upgrade costs for the Ouachita Generating Station should be addressed in Docket Nos. ER13-769-000 and ER13-770-000. It noted that the Louisiana Commission, which requested that this issue be addressed in this proceeding, had already filed a protest in those dockets.

45. With respect to the Union Pacific Settlement, Entergy stated that the Louisiana Commission has not attempted to provide any justification for a hearing on the Union Pacific matter beyond simply attaching its prior complaint to the protest it filed in this docket. Entergy requested that the Commission reject the Louisiana Commission's claims based upon its earlier finding that the System Agreement does not include any provision for prospective transfers of benefits from Entergy Arkansas to other Operating Companies following Entergy Arkansas' withdrawal from the System Agreement. Entergy stated that future rail transportation costs should be treated no differently than any other production cost components after Entergy Arkansas withdraws from the System Agreement in December 2013. Entergy argued that the Louisiana Commission's arguments on the Union Pacific Settlement have no basis because once Entergy Arkansas withdraws from the System Agreement, there will not be any Commission-jurisdictional service applicable to use as a mechanism to transfer Entergy Arkansas' portion of the Union Pacific Settlement benefits to other Operating Companies.

46. In its answer to Entergy's answer, the Louisiana Commission stated that a pending Union Pacific Settlement issue in Docket No. ER08-1056 was settled by referring it to the Entergy System Withdrawal proceeding, in a settlement approved by the Commission. The Louisiana Commission stated further that no basis exists to overrule the settlement by now refusing to hear the issue. It stated that the Union Pacific Settlement issue involves whether bandwidth rates were just and reasonable in 2007 and other years when Entergy Arkansas was in the System Agreement, not afterward and states that, therefore, a holding regarding post-withdrawal obligations cannot be a basis to dispose of that issue.

47. In its December 18, 2013 Order the Commission denied the requests for a hearing to reopen the System Agreement for a wider review. The Commission found that Entergy's proposed Amendments, as modified, were just and reasonable. Based on this determination, it found that the System Agreement itself remains just and reasonable following the departure of Entergy Arkansas, and upon the pending integration of Entergy into MISO. The Commission also found that the raised issue of the proposed withdrawal of Entergy Texas was outside the scope of this proceeding, which was intended to reflect revisions to the System Agreement to address the exit of Entergy Arkansas and Entergy's entry into MISO, noting that Entergy Texas' proposal to withdraw from the System Agreement, and Entergy's related proposal to change the withdrawal notice provision of the System Agreement, are pending before the Commission elsewhere. The Commission also found that issues raised relating to State authority over Entergy were also outside the scope of this proceeding and that nothing in their disposition of Entergy's filing will interfere with the exercise of state regulatory commission jurisdiction over Entergy.

48. With respect to the Ouachita network upgrade cost issue the Commission noted that a recently issued order sets for hearing and settlement judge procedures a filing by Entergy to reallocate network upgrade costs paid by two Operating Companies to Entergy Arkansas in proportion to Entergy Arkansas' two-thirds ownership in the Ouachita Generating Station. The Commission found that proceeding will address concerns raised in the instant proceeding as to the transmission upgrade costs.

49. With respect to the Union Pacific Settlement, the subject matter in this case, the Commission found that the claims raised by the Louisiana Commission raise issues of material fact that could not be resolved based on the record before them, and that are more appropriately addressed in the hearing and settlement judge procedures. The Commission held that their preliminary analysis indicates that, with respect to the Union Pacific Settlement, Entergy's proposed amendments have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, the Commission accepted Entergy's proposed amendments for filing, suspend them for a nominal period, make them effective

December 19, 2013, subject to refund, and set the Union Pacific Settlement issue for hearing and settlement judge procedures.

50. Settlement proceedings were unsuccessful and the Chief Judge appointed the undersigned as Presiding Judge on February 3, 2014. The undersigned held a pre-hearing conference on February 12, 2014 and issued a procedural scheduling Order on that same day to govern this case. The parties also submitted a motion for adoption of a protective order in this case to govern and protect financial and industry sensitive materials, which the undersigned adopted.

51. On August 29, 2014, the undersigned denied the parties' joint request to conduct the entire hearing under seal. Accordingly, certain sessions during the hearing were necessarily held under seal when discussions of privileged materials and testimonials became necessary. The hearing commenced on September 9, 2014 and ended on September 12, 2014. Ten witnesses provided testimony and 287 exhibits were admitted into evidence, many of which have confidential status. All confidential exhibits were admitted under seal. Additionally, the undersigned admitted six ALJ Exhibits into evidence, which reflect copies of the parties' exhibits lists, and which describe and identify in detail the exhibits admitted by number and description, in compliance with 18 C.F.R. Sec. 385.508, Rule 508, Rules of Practice and Procedure. These written exhibits lists provide sufficient identification for purposes of admission pursuant to 18 C.F.R. Sec. 508; Rule 508. The undersigned also subsequently granted the parties' joint motion for corrections to the hearing transcript on November 6, 2014.[2]

[2] Confidential sessions were held during the hearing and certain testimonials and exhibits were filed pursuant to a protective order executed by the parties. These documents are claimed to contain sensitive financial information. The UP settlement itself was filed under seal and is claimed as confidential as well. The confidential exhibits offered into evidence by the parties and admitted by the undersigned, are marked accordingly and filed under seal. The factual summary and summary of the hearing cross-examination contained in this Initial Decision relate only to the public information admitted in this proceeding, although certain citations to the record cite to confidential information, but which is not disclosed in this opinion. The parties attempted to declassify the extent of the confidential information while at the hearing, and this action is reflected in the record, making an otherwise more transparent record. The transcript indicates when public and confidential sessions were held, and the majority of the hearing was held in public sessions. The undersigned has separately filed an Attachment A to a confidential Initial Decision which reflects the actual amount of monies found to be the just and reasonable, and not unduly discriminatory and non-preferential, allocation and remedy which is appropriate in this matter, and which accurately reflect the findings by the undersigned. In all other respects, the public version Initial Decision, which does not contain the Attachment A, is identical to the confidential version.

II. Issues

52. The parties stipulated to the following three issues in this case, with Entergy and APSC only, additionally seeking inclusion of a fourth issue, as follows below.

> 1. What is the amount of the settlement benefits, if any, expected to be realized by Entergy Arkansas, Inc. ("EAI") after December 18, 2013 from the 2008 settlement agreement between ESI, EAI *et al*. and Union Pacific Railroad Company ("2008 Settlement") for damages resulting from an alleged contractual breach in 2005 and 2006?
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> 2. Is it appropriate for EAI to retain that amount from the 2008 Settlement?
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> 3. If no:
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>   3a. How should that amount be allocated among the Entergy Operating Companies?
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>   3b. What are the just and reasonable terms and conditions to implement such allocation?
>
> Entergy Services, Inc. and the Arkansas Public Service Commission also support inclusion of the following as a separately stated issue; while the Louisiana Public Service Commission, the Public Utility Commission of Texas and the Mississippi Public Service Commission oppose its inclusion as a separately stated issue:
>
> 4. Does the Commission have legal authority to order a sharing of the value of the benefits of the 2008 Settlement that accrue after December 18, 2013?

53. The undersigned in general accepts the joint stipulated first three issues offered by the parties. Regarding the fourth additional non-stipulated issue, the undersigned will not formally address this issue. The undersigned does not believe the Commission ordered this issue be decided in this proceeding. The Commission has frowned upon the inclusion of issues not ordered to be determined by the Commission, no matter how tangentially relevant to the proceeding at hand. This has led to reversal of ALJ decisions.[3] Moreover, the fourth issue pertains to the Commission's ultimate authority and calls for a mere legal conclusion without a factual determination. Presumably, the Commission inherently answered this issue in its December 18, 2013 Order when it ordered this case to hearing, otherwise, the Commission would have found it had no authority to hear and decide this case at that time.[4]

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[3] *Transcon Gas Pipeline Corp.*, 130 FERC ¶ 61,043 (2010)

[4] The undersigned otherwise finds the arguments of Entergy and the APSC are not persuasive on this issue, in any event. Clearly, the Commission's jurisdiction attaches to

III. Summary of Relevant (Pre-filed) Testimony

A. Direct Testimony

1. Stephen J. Baron on behalf of Louisiana Public Service Commission

54. Stephen J. Baron is the President and a Principal of Kennedy and Associates, a firm of utility rate, planning, and economic consultants in Atlanta, Georgia. His business address is

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and relates back to the System Agreement. The UP settlement proceeds are part of the post-withdrawal arrangements the Commission discussed in its Order setting this case for hearing. As noted by Staff, the Commission accepted ESI's proposed System Agreement amendments in the instant proceeding, subject to refund and subject to the outcome of this hearing, pertaining to the UP settlement. The issue of whether a provision requiring such a payment is an open issue and is squarely before the Commission, as it declared in its December 18, 2013 Order. (Staff RB, at 28-29). Moreover, the UP settlement matter was before the Commission in Docket No. ER08-1056, and was settled by the parties who all agreed to defer it to the "EAI Withdrawal proceeding," which settlement and deferral was approved by the Commission. *See Entergy Services, Inc.*, 128 FERC ¶ 61,181 (2009). The 2009 settlement per se called for the parties to address the UP settlement issue before the Commission at a later date. That later date is the hearing held in this matter by the undersigned as directed by the Commission's December 18, 2013 Order. The Commission reserved its authority to mandate a sharing of excess settlement proceeds among the EOCs. (MPSC PRE-HR BR, at 2; PUCT PRE-HR BR, at 2; Staff PRE-HR BR, at 22). Moreover, Staff's position that had Entergy opposed the Commission's authority to hear the UP settlement issue it should have and in fact, was required to file a petition for rehearing, which it failed to do, thus barring Entergy from challenging the matter at this late date. (Staff PRE-HR BR, at 22-23; Staff RB, at 28-29). This argument, as well as the other arguments raised by Staff, including the citation to persuasive authority that the Commission in any event, has broad authority to fashion remedies and provide equitable relief, is well founded in law and precedent, and negates the arguments raised by Entergy and the APSC that the Commission lacks authority to take action in this case. (Staff PRE HR BR, at 23). The Commission timely exercised its suspension authority and otherwise preserved its authority to resolve the UP issues on the merits, therefore no further on-going transaction under a "new filed rate" is required, as argued by ESI and the APSC, and the Commission has authority to order refunds in cases where underlying transactions have been terminated. *La. Power & Light Co.,* 49 FERC ¶ 61,060, at 61,239, n.7 (1989); on reh'g., 57 FERC ¶ 61,101 (1991). (MPSC IB, at 20). In any event, the undersigned observes that the MPSC also argues that if deemed required, an on-going transaction exists under the MSS-4 rates; *see* Docket 13-1508, et al.; *Entergy Arkansas, Inc.*; 145 FERC ¶ 61,216 (2013).

J. Kennedy and Associates, Inc. ("Kennedy and Associates"), 570 Colonial Park Drive, Suite 305, Roswell, Georgia 30075. (Ex. LC-1, at 1).

55. Mr. Baron graduated from the University of Florida in 1972 with a B.A. degree with high honors in Political Science and significant coursework in Mathematics and Computer Science. In 1974, he received a Master of Arts Degree in Economics, also from the University of Florida. His areas of specialization were econometrics, statistics, and public utility economics. His thesis concerned the development of an econometric model to forecast electricity sales in the State of Florida, for which he received a grant from the Public Utility Research Center of the University of Florida. In addition, he has advanced study and coursework in time series analysis and dynamic model building. (Ex. LC-1, at 2-3).

56. Mr. Baron has more than thirty years of experience in the electric utility industry in the areas of cost and rate analysis, forecasting, planning, and economic analysis. Following the completion of his graduate work in economics, he joined the staff of the Florida Public Service Commission in August of 1974 as a Rate Economist. His responsibilities included the analysis of rate cases for electric, telephone, and gas utilities, as well as the preparation of cross-examination material and the preparation of staff recommendations. (Ex. LC-1, at 3).

57. In December 1975, Mr. Baron joined the Utility Rate Consulting Division of Ebasco Services, Inc. as an Associate Consultant. In the seven years he worked for Ebasco he received successive promotions, ultimately to the position of Vice President of Energy Management Services of Ebasco Business Consulting Company. His responsibilities included the management of a staff of consultants engaged in providing services in the areas of econometric modeling, load and energy forecasting, production cost modeling, planning, cost-of-service analysis, cogeneration, and load management. (Ex. LC-1, at 3-4).

58. Mr. Baron joined the public accounting firm of Coopers & Lybrand in 1982 as a Manager of the Atlanta Office of the Utility Regulatory and Advisory Services Group. In this capacity he was responsible for the operation and management of the Atlanta office. His duties included the technical and administrative supervision of the staff, budgeting, recruiting, and marketing as well as project management on client engagements. At Coopers & Lybrand, he specialized in utility cost analysis, forecasting, load analysis, economic analysis, and planning. (Ex. LC-1, at 4).

59. In January 1984, Mr. Baron joined the consulting firm of Kennedy and Associates as a Vice President and Principal. He became President of the firm in January 1991. (Ex. LC-1, at 4). During the course of his career, Mr. Baron has provided consulting services to more than thirty utility, industrial, and Public Service Commission clients, including three international utility clients. (Ex. LC-1, at 4). Mr. Baron has presented numerous papers and published an article entitled "How to Rate Load Management Programs" in the March 1979 edition of "Electrical World." His article on "Standby Electric Rates" was published in the November 8, 1984 issue of "Public Utilities Fortnightly." In February of 1984, he completed a detailed

analysis entitled "Load Data Transfer Techniques" on behalf of the Electric Power Research Institute, which published the study. (Ex. LC-1, at 5).

60. Mr. Baron has presented testimony as an expert witness in Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming, the Federal Energy Regulatory Commission and in United States Bankruptcy Court. A list of his specific regulatory appearances can be found in Exhibit LC-2. (Ex. LC-1, at 5). Mr. Baron has significant experience in addressing issues associated with the Entergy System, its operating companies, the Entergy System Agreement ("ESA"), and proceedings involving the Entergy Open Access Transmission Tariff at the FERC. He filed an affidavit in the original Complaint case filed by the Louisiana Public Service Commission and the City of New Orleans in Docket No. EL01-88 and presented testimony in that proceeding, in which he supported the LPSC's contention that production costs among the Entergy operating companies were no longer in rough production cost equalization and that the Entergy System Agreement was not just and reasonable. In its decisions in that case (Opinion Nos. 480 and 480-A), the Commission found that production costs among the Entergy operating companies were no longer in rough production cost equalization. (Ex. LC-1, at 6).

61. The purpose of Mr. Baron's testimony is to demonstrate that the ESA as filed by ESI does not provide a just and reasonable allocation of the Union Pacific settlement benefits associated with damages that UP imposed on the Entergy System. It allows Entergy Arkansas, Inc. to retain a disproportionate amount of the settlement benefits after its December 18, 2013 withdrawal from the ESA and deprives three of the remaining Entergy Operating Companies, Entergy Gulf States, Inc., Entergy Texas, and Entergy Mississippi of their reasonable share of the settlement benefits. As a result, he opines EAI will receive UP settlement benefits to which it is not reasonably entitled based on its incurred damages. The Commission should not permit this EAI windfall to occur, but rather should require transition measures to fairly allocate the settlement benefits among the Operating Companies, in his opinion. (Ex. LC-1, at 8-9).

62. Mr. Baron states that there is no question that each of the Operating Companies were harmed by UP's failure to deliver coal to the White Bluff and ISES generating stations in 2005-2006. Entergy conceded this fact in a data response provided in this case. (Ex. LC-3). Mr. Baron claims to demonstrate that the System Agreement in effect in that time period required the Operating Companies to purchase power from EAI, and that power was priced higher than it otherwise would have been due to the disruption in coal deliveries. In addition, other Operating Companies, who would otherwise have purchased low cost coal energy from EAI through the MSS-3 Energy Exchange, were not able to do so because of curtailments in White Bluff and ISES generation due to the delivery disruptions. He opines the settlement proceeds are intended to compensate not only EAI, but these other Operating Companies for the harm they experienced. Yet, Entergy has not provided any post-withdrawal transition measure to ensure that damages incurred when the System Agreement was in effect are

properly compensated after EAI's withdrawal. These System damages will no longer be subject to the ESA mechanism that provided for a reasonable allocation of damage compensation from the UP settlement due to EAI's withdrawal. He asserts it would be unjust and unreasonable to deny the settlement proceeds to these Companies for damages that they incurred as a result of their participation in the System Agreement that was in effect in 2005-2006. A post-withdrawal transition arrangement is required in his opinion. (Ex. LC-1, at 9-10).

63. Mr. Baron presents the LPSC's methodology and analysis to calculate each Entergy Operating Company's share of the overall Entergy damages allegedly caused by UP's failure to deliver. He relies on Entergy's own contemporaneous calculation of the damages to the Entergy System (EAI, each of the other five Operating Companies and Entergy Power, Inc.), as presented by Entergy in court documents and in proceedings before the Arkansas Public Service Commission. (Ex. LC-1, at 10). Using each Operating Company's share of the damages as a percentage allocator, Mr. Baron then calculates each Company's share of the UP settlement benefits associated with damage compensation. For the total amount of such UP damage compensation, he relies on Entergy's own analysis, as presented to the APSC. (Ex. LC-1, at 11).

64. Finally, Mr. Baron's analysis attempts to show the amount of the UP damage compensation that each Operating Company has received as of the date of EAI's withdrawal from the ESA on December 18, 2013 and the remaining amount, if any, that each Company is reasonably entitled to as a result of its damages. This remaining amount represents the uncompensated damages that are at issue in this case, in his view. (Ex. LC-1, at 11).

65. Mr. Baron states that in Docket Nos. ER13-769-000 and ER13-770-000, Entergy filed two post-withdrawal Reimbursement Agreements between Entergy Arkansas, Inc., Entergy Louisiana, LLC, and Entergy Mississippi, Inc. that provide compensation to ELL and EMI by EAI for Ouachita related transmission upgrade costs. These agreements provide for payments by EAI to these other two Companies for costs that would not otherwise be recoverable from EAI as a result of its withdrawal from the ESA. (Ex. LC-1, at 12-13).

66. Mr. Baron further states that in the same manner, the Union Pacific benefits that continue to occur post-withdrawal also must be allocated in a just and reasonable manner. As a transition measure, a reasonable allocation of these post-withdrawal UP settlement benefits must be made to ensure just and reasonable post-withdrawal arrangements among the Companies, including EAI. (Ex. LC-1, at 13).

67. Mr. Baron asserts that based on Entergy's own damage analysis that was presented by Entergy in Arkansas court proceedings in 2007, Union Pacific's failure to deliver coal to EAI's White Bluff and Independence Steam Electric Station coal units, resulted in damages to the Entergy System. (Ex. LC-1, at 14).

68. Mr. Baron argues that a substantial portion of the total Entergy Operating Companies' damage amount was not incurred by EAI, but rather by EGSL, ETI, ELL, ENO and EMI as a result of either purchased power contracts ("PPAs") that entitled these other Companies to a cost based purchase of a block of WB and/or ISES capacity and energy, or through these other Companies' purchases of WB and ISES energy through the ESA MSS-3 exchange. He opines the LPSC has calculated that these other Operating Companies incurred damages, representing 69.1% of the total Entergy Operating Company damages. EAI incurred the remaining damages (30.9%). This reflects the fact that in 2005 and 2006, EAI had entered PPAs with other OPCos, and had previously sold a portion of ISES 2 to EMI and, absent the UP failure to deliver, would have otherwise sold a substantial portion of its entitlement to the WB and ISES energy to other OPCos through the ESA MSS-3 exchange. (Ex. LC-1, at 14-15).

69. Mr. Baron claims that based on Entergy's own analysis that was presented in testimony to the APSC in 2010, the settlement of the Union Pacific litigation resulted in UP settlement benefits to the Entergy Operating Companies (the Entergy System less the amount going to Entergy Power, Inc.). A substantial portion of the UP settlement benefits will not occur until after December 18, 2013. Yet Entergy, he argues, does not provide for a post-withdrawal transition measure to share those benefits with the other harmed and undercompensated Operating Companies. In his opinion, this deprives the remaining Operating Companies of their reasonable share of UP damage compensation for damages that these three Companies incurred in 2005 and 2006 when UP failed to deliver the contractually obligated coal. (Ex. LC-1, at 15-16).

70. Mr. Baron testifies further that the LPSC has calculated that EAI will retain a windfall of UP settlement benefits, over and above a reasonable share of such benefits based on EAI's damages. At the same time, EGSL, ETI and EMI will not obtain their reasonable shares of the UP settlement benefits under the ESA as filed without a transition measure to fairly apportion the benefits among EAI and the other Operating Companies. (Ex. LC-1, at 16).

2. Lane Kollen on behalf of Louisiana Public Service Commission

71. Mr. Kollen is a Vice President and Principal with J. Kennedy and Associates, Inc. Her business address is 570 Colonial Park Drive, Suite 305, Roswell, GA 30075. (Ex. LC-9, at 1). Mr. Kollen earned a Bachelor of Business Administration in Accounting degree and a Master of Business Administration degree, both from the University of Toledo. He also earned a Master of Arts degree from Luther Rice University. He is a Certified Public Accountant, with a practice license, a Certified Management Accountant, and a Chartered Global Management Accountant. He is a member of several professional organizations. (Ex. LC-9, at 1-2).

72. Mr. Kollen testified in Docket No. EL01-88, the proceeding in which the Commission issued Opinion Nos. 480 and 480-A, creating the Entergy System Agreement MSS-3 tariff Bandwidth Remedy, and in subsequent annual bandwidth proceedings. He also testified or submitted affidavits in various other proceedings to modify the bandwidth formula or cost inputs filed pursuant to Section 205 or 206 of the Federal Power Act. In addition, he testified in Docket No. ER03-753, the proceeding in which the present Entergy System Agreement MSS-4 tariff was adopted and in various other Entergy System Agreement proceedings. Further, he testified in Docket No. ER10-2001 proceeding, in which Entergy sought to change Entergy Arkansas' FERC-jurisdictional depreciation rates based on a settlement in a rate proceeding before the Arkansas Public Service Commission. Finally, he testified in Docket No. R11-2161, in which Entergy sought to change Entergy Texas' FERC-jurisdictional depreciation rates based on a settlement in a rate proceeding before the Public Utility Commission of Texas. (Ex. LC-9, at 2-3).

73. The purpose of Mr. Kollen's testimony is to provide a description of Union Pacific Railroad Company's failure to meet its contractual obligations for the transportation of coal from the Powder River Basin in Wyoming to the Independence and White Bluff coal-fired power plants operated and partially owned by Entergy Arkansas in 2005 and 2006; the costs that this failure imposed on all of the Entergy Operating Companies during this time frame and in subsequent months; the litigation that ensued between EAI, ESI, and UP; the resolution of this litigation and Entergy's claim for damage compensation through a "Mutual Release and Settlement Agreement. (Ex. LC-9, at 3).

74. Mr. Kollen also states that since its withdrawal from the Entergy System Agreement on December 18, 2013, EAI has withheld and retained for its customers a portion of the other Operating Companies' respective shares of the UP settlement benefits that EAI will continue to receive after its withdrawal from the System Agreement. These benefits belong to the other Operating Companies and their customers who were damaged by UP's actions from April 2005 through December 2006 through increased fuel and purchased power costs, in his opinion. He believes EAI's withdrawal from the Entergy System Agreement should not result in a reallocation of these settlement benefits to EAI and its customers from the other Operating Companies and their customers. (Ex. LC-9, at 4).

75. Mr. Kollen states further that EAI and ESI and UP were parties to a coal transportation contract. (Ex. LC-9, at 4). Mr. Kollen testifies that reductions in coal forced EAI to curtail the operation and output of the Independence and White Bluff power plants; incur additional costs to purchase replacement coal from other sources as well as pay UP to transport the replacement coal at rates greater than the rates set forth in its contract with UP; and incur additional costs to purchase replacement energy from third parties at costs greater than the cost to generate at the plants, thus driving up the costs of fuel and purchased power for EAI, the co-owners of the plants, and the other

Operating Companies that were counterparties to purchased power agreements with EAI for portions of the output of these plants. (Ex. LC-9, at 5).

76. Mr. Kollen explains that in addition to the direct effects on EAI, the co-owners, and the counterparties to the PPAs, the other Operating Companies incurred increased fuel and purchased power costs for replacement fuel and purchased power as they ramped up their own more expensive generation, paid more for their purchases through the Energy Exchange, and purchased additional power at greater prices from third parties. (Ex. LC-9, at 6).

77. According to Mr. Kollen, UP claimed that its failure to deliver the required tons was due to numerous so-called "force majeure" events and filed a lawsuit in the Circuit Court of Pulaski County, Arkansas Sixth Division seeking a declaration that its claims of force majeure were valid. If UP had been successful in such claims, it would have eliminated or mitigated its liability for the increased costs incurred by EAI, the co-owners, and the other Operating Companies. (Ex. LC-9, at 6).

78. Mr. Kollen goes on to explains that in response to the UP lawsuit, Entergy filed a counterclaim with the Court seeking damages for breach of contract based on UP's failure to deliver sufficient tonnages of coal. In support of its claimed damages, Entergy retained numerous experts who prepared and filed expert reports with the court describing UP's actions and the damages that those actions caused. In April 2008, after extensive discovery, expert reports, and rulings by the Court, the parties settled the lawsuit prior to the commencement of trial and entered into the Settlement Agreement. The Settlement Agreement provided Entergy compensation for the damages that were incurred by the Entergy System and the co-owners. Entergy estimated the economic value of the settlement in proceedings before the APSC established, in part, to consider EAI's "failure" to properly manage its coal inventories at the Independence and White Bluff plants. (Ex. LC-9, at 6-7).

79. Mr. Kollen provides testimony regarding the UP litigation; asserting the claims that Entergy asserted before the Court affected not only EAI, but also the other Operating Companies; and the Settlement Agreement entered into by the parties to the litigation before the Court. (Ex. LC-9, at 7-8). Mr. Kollen opines that in its counterclaim, Entergy sought damages for the harm caused to all the Entergy Operating Companies, not only EAI. (Ex. LC-9, at 8).

3. Collin Cain on behalf of Mississippi Public Service Commission

80. Mr. Cain is a Principal with Bates White, LLC. His business address is 1300 Eye Street N.W., Suite 600, Washington, DC 20005. (Ex. MC-1, at 1). Mr. Cain has a B.A. in Economics and Political Science from the University of Toronto and a Masters' degree in Economics from the London School of Economics. He has more

than 15 years of experience in power sector economic analysis, including damages estimation, power supply procurement evaluation, asset valuation and cost benefit analysis. He has conducted forensic analysis and testified on the conduct and application of forecasts, market evaluation, and risk assessment by contract counterparties. Prior to joining Bates White, he was a consultant in the energy practice of NERA economic consulting in New York and Washington, DC. (Ex. MC-1, at 1).

81. Mr. Cain has submitted testimony on behalf of the Mississippi Public Service Commission in FERC Docket ER12-1384-001, *et al.*, regarding the appropriate allocation of plant abandonment costs associated with the planned re-powering of Entergy Louisiana's Little Gypsy Generating Station No. 3. He also submitted testimony on behalf of Constellation Energy Commodities Group, Inc. in Docket No. EL07-47-000, regarding the conduct of the Illinois electricity supply auction. (Ex. MC-1, at 1-2).

82. Mr. Cain evaluated proposed changes to cost allocation methods in the Entergy production cost sharing mechanism in support of testimony in FERC Docket No. ER07-682-000. (Ex. MC-1, at 2).

83. For the MPSC, Mr. Cain conducted an evaluation of Entergy's proposal to join the Midwest Independent System Operator regional transmission organization. He co-authored the report to the MPSC addressing the costs and benefits of Entergy Mississippi joining MISO compared to the costs and benefits of joining the Southwest Power Pool. (Ex. MC-1, at 2).

84. Also for the MPSC, Mr. Cain evaluated Entergy's proposal to transfer ownership of its transmission assets to ITC Holdings Corp. (Ex. MC-1, at 2). Mr. Cain submitted testimony on behalf of Oglethorpe Power Corporation in an arbitration proceeding regarding a counterparty's valuation of coal supply contracts associated with a long-term power purchase and sale agreement. (Ex. MC-1, at 2). Mr. Cain conducted an independent evaluation of the economic viability of the environmental compliance retrofit of the La Cgyne coal-fired generation facility, and testified before the Kansas Corporation Commission on behalf that Commission's staff. (Ex. MC-1, at 3). In assignments for multiple clients Mr. Cain has developed models to evaluate coal plant costs for evaluating environmental retrofits, asset sales and power supply offers. (Ex. MC-1, at 3).

85. Mr. Cain testifies in this case that Entergy Arkansas, Inc. and Entergy Services, Inc. negotiated a settlement in 2008 on behalf of EAI and the other Entergy Operating Companies with Union Pacific Railroad Company that provided compensation for financial damages associated with a rail service disruption in 2005. The service disruption reduced coal deliveries to, and consequently limited electric generation at,

White Bluff Steam Electric Station and Independence Steam Electric Station. (Ex. MC-1, at 4).

86. Mr. Cain testifies that as a consequence of Entergy negotiating compensatory transportation rates that extended beyond EAI's exit from the ESA, a portion of the compensation that was properly owed to EMI would instead be captured by EAI. He further testifies that the Commission should condition the completion of its approval of the Entergy System Agreement revisions filed in Docket No. ER13-432-000, regarding the provision of an appropriate remedy that will affect the restoration of this amount to EMI, rather than allowing EAI to retain excess compensation from the negotiated settlement, beyond its withdrawal date from the ESA. (Ex. MC-1, at 4).

87. Mr. Cain has reviewed the data and other discovery responses in this docket, including testimony and exhibits submitted previously in proceedings before the Arkansas Public Service Commission related to the 2008 Settlement. (Ex. MC-1, at 5). Mr. Cain states that in May of 2005, two derailments occurred on a rail line used jointly by UP and BNSF Railway Company to transport coal from the Powder River Basin in Wyoming. The derailments led to the discovery of unstable track structure and continued disruption of transportation service on the line while the line was repaired. Both UP and BNSF declared force majeure on affected transportation contracts. Although BNSF lifted its force majeure on June 3, 2005, UP's continued through November 23, 2005, and UP did not begin meeting the coal delivery requirements of its transportation agreement with EAI until part-way through 2006. (Ex. MC-1, at 5).

88. Mr. Cain states that to address the decreased coal deliveries at White Bluff and ISES, EAI purchased additional coal from Colorado and other sources. EIA also ran White Bluff and ISES at lower output during off-peak hours, effectively conserving the restricted deliveries of coal in order to maintain higher generation output during peak load periods. At times, the Entergy System also made purchases of replacement power to make up for reduced peak period generation at the affected coal plants. (Ex. MC-1, at 5-6).

89. Mr. Cain testifies further that Entergy sued UP, seeking compensation for damages associated with the need to buy more costly coal transportation, to buy coal from alternative sources that could be delivered over different routes, to generate power from more expensive resources, and to purchase replacement power. Entergy ultimately negotiated and agreed to the 2008 Settlement to resolve its claims. (Ex. MC-1, at 6).

90. Mr. Cain asserts that as a consequence of Entergy negotiating a settlement that extended beyond Entergy Arkansas' withdrawal from the Entergy System Agreement, a

portion of the compensation for damages incurred by Entergy Mississippi would be captured improperly by Entergy Arkansas, in his view. (Ex. MC-1).

91. Mr. Cain describes the events leading to the negotiated 2008 Settlement between Energy and Union Pacific, the damages claimed by Entergy, the terms of the 2008 Settlement, and the manner in which benefits from that settlement flow to the Entergy Operating Companies. Mr. Cain testifies that further in addition to damages and settlement benefits that directly follow plant ownership shares, a significant portion of the claimed damages and the 2008 Settlement benefits follow energy from White Bluff and ISES sold by EAI through the Entergy Energy Exchange. This was recognized by Entergy, and the possibility that the corresponding portion of its damage claim might be rejected by a jury in court litigation contributed to Entergy's decision to negotiate and agree to the 2008 Settlement. However, because the terms of the settlement extended beyond EAI's December 2013 exit from the ESA, the portion of settlement benefits flowing to EMI (and other Entergy Operating Companies) through the Entergy Energy Exchange stopped and, in the absence of a remedy, will be captured instead by EAI, improperly increasing EAI's share, and reducing EMI's share, of negotiated settlement benefits, in his opinion. (Ex. MC-1, at 15-17).

92. Mr. Cain provides an estimate of the amount of compensation properly owed to EMI, but prospectively captured by EAI. Mr. Cain further testifies that the Commission should condition the completion of its approval of the Entergy System Agreement revisions filed in Docket No. ER13-432-000, on the provision of an appropriate remedy that will affect the restoration of this amount to EMI, rather than allowing EAI to retain excess compensation from the negotiated settlement beyond its withdrawal from the ESA. (Ex. MC-1C,at 16; MC-3C).

B. Answering Testimony

1. Bruce M. Louiselle on behalf of Entergy Services. Inc.

93. Mr. Louiselle is President of ECONAT, Inc. His business address is 1491 Chain Bridge Road, Suite 300, McLean, VA 22101. (Ex. ESI-1, at 1). Mr. Louiselle graduated from George Washington University with a Bachelor of Arts degree in Economics. He was awarded the Juris Doctor degree with honors in 1970 by the National Law Center of George Washington University. He is a member of the Virginia State Bar Association and the Order of the Coif. He was a professorial lecturer at the George Washington University School of Government and Business Administration, teaching Public Utility Economics. In 1966, he joined Kosh, Glassman Associates, Inc., which subsequently became known as Kosh, Louiselle, Lurito and Associates, Inc., of which he was President until 1985. (Ex. ESI-1, at 1).

94. Since 1966, Mr. Louiselle has been engaged in providing consulting services, specializing in public utility economics, finance and accounting. During that time, he has been responsible for many reports, memoranda, direct testimony and exhibits relating to these areas. (Ex. ESI-1, at 1-2). Mr. Louiselle also has been one of the lecturers at the at the NARUC-sponsored Regulatory Studies Program at Michigan State University, and the Public Utility Seminar sponsored by the Canadian Bar Association. (Ex. ESI-1, at 2).

95. The purpose of Mr. Louiselle's Answering Testimony is to discuss and respond to the testimony of Stephen Baron, who testifies on behalf of the Louisiana Public Service Commission and the testimony of Collin Cain, who testifies on behalf of the Mississippi Public Service Commission. (Ex. ESI-1, at 2).

96. Mr. Louiselle states that the parties have agreed to a Preliminary Joint Statement of Issues. According to Mr. Louiselle, basically, the agreed-to issues are threefold: first, what is the amount of benefits, if any, that are expected to be realized by EAI after its departure from the Entergy System Agreement, i.e., after December 18, 2013 as a result of the Union Pacific Railroad Settlement; second, is it appropriate for EAI to retain those benefits; and third, if not, how should they be allocated among the Operating Companies and by what just and reasonable terms. (Ex. ESI-1, at 2-3).

97. Mr. Louiselle testifies further that in his opinion, the position of the Louisiana Commission, as set forth in the testimony of Stephen Baron is not just and reasonable because the Entergy System Agreement does not contain any provision for the allocation of post-EAI departure UP Settlement benefits. Thus, the threshold issue in his opinion is whether the currently-effective System Agreement is just and reasonable if the estimated UP benefits, including those that may obtain post-EAI departure, are not re-allocated among the remaining Operating Companies. (Ex. ESI-1, at 3).

98. Mr. Louiselle includes in his testimony, a short description of the Entergy System Agreement that, along with its Service Schedules, which is he notes, a FERC-approved tariff. As such, it constitutes in his opinion the "filed rate." (Ex. ESI-1, at 3).

99. Mr. Louiselle also provides an overview of the dispute with UP that gave rise to what has been referred to as the "UP Settlement" and ultimately what has given rise to this proceeding. He summarizes his understanding of the damages that were alleged to have resulted from that dispute, as well as the benefits that allegedly have been and will be received as a result of the UP Settlement. (Ex. ESI-1, at 3).

100. Mr. Louiselle discusses the implications of the System Agreement and the MSS-4 replacement tariff necessitated by the exit of EAI on the allocation of damages resulting from UP's failure to deliver contracted-for quantities of coal, as well as on the allocation of whatever benefits result from the UP Settlement. In that connection, he discusses generally how the System Agreement allocates benefits and burdens and how the

Commission's Opinion Nos. 480 and 480-A, requiring a "Bandwidth" calculation, serve as a "backstop" to those allocations. (Ex. ESI-1,at 4).

101. Mr. Louiselle maintains that the Operating Companies are not always entitled to be made whole for adverse consequences resulting from all adverse events. With these principles in mind, he discusses Mr. Baron's calculations and recommendation that EAI should make a payment to certain other Operating Companies without specifying how that is to be accomplished (what Mr. Baron refers to as "transition measures"). In other words, he discusses how in his opinion Mr. Baron's conclusion that the existing System Agreement, the one without Entergy Arkansas, Inc. as a participant, cannot be considered just and reasonable. (Ex. ESI-1, at 4).

102. It is Mr. Louiselle's opinion that Mr. Baron's proposal for an EAI post-exit payment to certain other Operating Companies is not just and reasonable for the following reasons:

a. The EAI post-exit payment is contrary to the allocation of costs and benefits pursuant to the System Agreement and the MSS-4 Replacement tariff, the filed rates in existence during the period when the benefits were received or will be received by each Operating Company; and would constitute a re-allocation of benefits previously allocated pursuant to the System Agreement;

b. The EAI post-exit payment recommended by Mr. Baron is not necessary to compensate the Operating Companies for damages they may have incurred as a result of UP's breach;

c. In fact, the EAI post-exit payment would be a windfall to any other Operating Company in his view; and

d. The EAI post-exit payment would be a penalty imposed on EAI simply and solely as a result of it exiting the System Agreement.

103. Therefore, it is Mr. Louiselle's opinion that the currently effective System Agreement is just and reasonable without requiring EAI to make any post-exit payment incident to the UP Settlement and, that EAI has no continuing obligation to allocate settlement benefits to the other EOCs.
(Ex. ESI-1, at 4-5).

2. Chris E. Barrilleaux on behalf of Entergy Services, Inc.

104. Mr. Barrilleaux's business address is 639 Loyola Avenue, New Orleans, Louisiana 70113. He is employed by Entergy Services, Inc. His job title is Manager, Fuel and Special Riders Division. (Ex. ESI-14, at 1). Mr. Barrilleaux has a Master of Business

Administration degree from the A.B. Freeman School of Business at Tulane University and a Bachelor of Science degree in Accounting from the University of New Orleans. He is a Certified Public Accountant licensed to practice in Louisiana. He is a member of the American Institute of Certified Public Accountants, Institute of Management Accountants, and Society of Louisiana Certified Public Accountants. He has been employed by subsidiaries of Entergy Corporation for approximately 27 years and has held various positions in the Accounting organization. Prior to his employment with the Entergy Companies, he was employed by the New Orleans Metropolitan Convention and Visitors Bureau, Inc. (formerly known as the Greater New Orleans Tourist & Convention Commission, Inc.) in a key accounting position. (Ex. ESI-14, at 1-2).

105. During Mr. Barrilleaux's tenure as the Manager, Utility Operations Accounting (2 years), he was responsible for the accounting of fuel costs (oil, gas, coal, and nuclear) for the Entergy Operating Companies. This responsibility included accounting for fuel and purchased power costs in compliance with the Federal Energy Regulatory Commission's Uniform System of Accounts and Generally Accepted Accounting Principles and classifying those fuel and purchased power costs as eligible or non-eligible for recovery through the Entergy Operating Companies' respective fuel mechanisms. As Jurisdictional Finance Director for ETI (8 years), Mr. Barrilleaux was responsible for reviewing the calculation of ETI's fixed fuel factor rate, and monitoring monthly fuel costs and the deferred fuel over/under recovery balance. In his current role as Manager, Fuel and Special Riders, he is responsible for the preparation and submission of exact recovery clause filings with regulatory commissions, including fuel and purchased power cost recovery mechanisms. (Ex. ESI-14, at 2).

106. Mr. Barrilleaux's testimony explains how the increased costs associated with Union Pacific Railroad's failure to meet contractual obligations for delivery of coal were passed along to the Entergy Operating Companies' end-use customers. He also explains how the same occurred for whatever benefits result from the UP Settlement. Finally, he discusses Mr. Baron's assertion that EAI will receive a "windfall" if any remaining benefits associated with the UP Settlement are not reallocated among the Entergy Operating Companies. (Ex. ESI-14 at 3).

107. Mr. Barrilleaux testifies that each of the Entergy Operating Companies has a rate schedule that allows either current recovery in billings to end-use customers or deferral of fuel and purchased power energy costs until such costs are billed to end-use customers. (Ex. ESI-14, at 3).

108. According to Mr. Barrilleaux, Mr. Michael Emmert prepared a report on behalf of EAI and ESI setting forth the following categories of damages: Replacement Coal Purchases (coal supply from alternative sources); Lost Generation Power Purchases (off-peak blocks of replacement power purchased at wholesale when generation was curtailed at the White Bluff and Independence plants); and Lost Opportunity/Financing Costs –

(lost use of monies used to fund Replacement Coal Purchases and Lost Generation Power Purchases that would have otherwise been used to meet the Operating Companies' other business needs). (Ex. ESI-14, at 4-5).

109. Mr. Barrilleaux further testifies that the cost of coal commodity, coal transportation, and purchased energy is treated as fuel expense eligible for recovery through each of these rate mechanisms. As such, the Lost Generation Power Purchases and Replacement Coal Purchases were passed on to end-use customers via the respective Operating Companies' fuel clause. However, the Lost Opportunity/Financing Costs are not the type of costs eligible for recovery via the fuel clause. (Ex. ESI-14, at 5).

110. Mr. Barrilleaux states that in the first instance, EAI was responsible for procuring coal supply for the White Bluff and Independence plants. As EAI acquired higher cost alternative sources of coal supply for those plants, that higher cost was incorporated into the cost of coal inventory. The cost of inventory was booked as an expense to FERC Account 501 – Fuel as the coal was consumed to generate electricity. EAI and EMI then passed through their fuel clauses a share of that FERC Account 501 expense proportionate to the energy from their respective ownership shares of those plants used to serve their end-use customers. (Ex. ESI-14, at 5-6).

111. Mr. Barrilleaux states that to the extent EAI or EMI did not need energy from those plants to serve their customers, energy was allocated to the Energy Exchange per the terms of Service Schedule MSS-3 of the Entergy System Agreement. The associated coal costs recorded by EAI and EMI in FERC Account 501 were then included in the formula rate (Service Schedule MSS-3) used to determine the cost of energy taken from the Exchange. The Operating Company that was allocated energy from the Exchange to serve its end-use customers recorded the associated cost in FERC Account 555 – Purchased Power as energy expense, which expense was then passed on to end-use customers through a fuel clause. (Ex. ESI-14, at 6).

112. Mr. Barrilleaux opines that EAI also sold portions of its allocated share of White Bluff and Independence power to other Operating Companies pursuant to Service Schedule MSS-4. The cost of coal consumed and booked by EAI to FERC Account 501 was included in the energy charge to the buying Operating Company per Section 30.08(b) of the Entergy System Agreement. The buying Operating Company recorded that energy cost to FERC Account 555 and passed it on to end-use customers through its fuel clause. (Ex. ESI-14, at 6).

113. Mr. Barrilleaux asserts further that the block purchases of replacement power were allocated on a responsibility ratio basis among the Operating Companies as Joint Account Purchases per the terms of the Entergy System Agreement, and the associated energy costs were charged to the Operating Companies. Those energy costs were booked to

FERC Account 555, which costs were recovered from end-use customers through the Operating Companies' fuel clauses. (Ex. ESI-14, at 7).

114. According to Mr. Barrilleaux, Mr. Emmert described the Lost Opportunity/Financing Costs as: The increased monthly cash outflow that Entergy experienced because of the UP under-deliveries limited Entergy's opportunities to use those funds to generate additional earnings, reduce expenses of operations, or create increased value for Entergy through other business activities. The loss of the use of funds, often called 'lost opportunity cost' or the 'time value of money', is a financial loss that Entergy suffered as a direct result of the increased monthly costs incurred to respond to the UP under-deliveries. (Ex. ESI-14, at 7-8).

115. He determined that EAI's weighted average cost of capital (i.e., the cost of debt and equity) was representative of the cost of the financial loss. The cost of capital is used to calculate fixed base rates charged to end-use customers and is not eligible for pass-through recovery via the Operating Companies' fuel clauses. Thus, the incremental financing cost that resulted in a financial loss, as determined by Mr. Emmert, would have been borne by shareholders, not end use customers, in his view. (Ex. ESI-14, at 7-8).

116. Mr. Barrilleaux opines further that based on his experience, a "windfall" in the context of utility rates refers to a situation where shareholders retain monetary benefits that should have otherwise gone to customers. He testifies that EAI will not receive a windfall as a result of its termination of its participation in the Entergy System Agreement, as he views things. (Ex. ESI-14, at 10).

3. Thomas D. Crowley on behalf of Entergy Services, Inc.

117. Mr. Crowley is an economist and President of the economic consulting firm of L.E. Peabody & Associates, Inc. He is a graduate of the University of Maine, from which he obtained a Bachelor of Science degree in Economics. He served three years in the United States Army. Since 1971, he has been employed by L.E. Peabody & Associates, Inc. He is a member of the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association. His business address is 1501 Duke Street, Suite 200, Alexandria, Virginia 22314-3449. (Ex. ESI-15, at 1).

118. Over the last 43 years Mr. Crowley has advised clients, including electric utility companies, on a wide variety of issues, including economic, marketing, transportation, fuel supply and fuel management problems. He has been involved in the negotiation of over 100 coal transportation agreements, as well as provided consultation relating to the administration of economic, operational, and logistical aspects of those agreements. In the course of providing those duties, he has obtained an intimate familiarity with the

economic and operating aspects of the two major western railroads, the BNSF Railway Company and Union Pacific Railroad Company. This familiarity includes detailed knowledge of railroad operations and market conditions relating to the principal supply regions they serve, including the Southern Powder River Basin coal fields located in Campbell and Converse Counties, Wyoming. (Ex. ESI-15, at 1-2).

119. Mr. Crowley has previously testified on behalf of Alamito Company in FERC Docket No. ER79-97-002 regarding the negotiation of coal transportation rates for the Tucson Electric Power Company. He also filed rebuttal testimony in that same docket. (Ex. ESI-15, at 2).

120. Mr. Crowley also previously testified on the value of coal transportation agreements on several occasions, including testimony before this Commission, state regulatory commissions, State and Federal courts, and Arbitration proceedings. (Ex. ESI-15, at 3). He has testified about railroad market conditions for coal transportation in a variety of forums, including, state regulatory commissions, State and Federal courts, and Arbitration proceedings. (Ex. ESI-15, at 3).

121. Mr. Crowley first submitted testimony concerning the estimated value of the UP Settlement to the Arkansas Public Service Commission in APSC Docket No. 05-116-U on October 16, 2008. The purpose of that testimony was two-fold. First, he addressed the issue of whether EAI's inventory levels were in compliance with APSC's inventory standard during the relevant review period (2005 and 2006). Second, he explained the economic analysis that he conducted to assign an estimated value to the April 2008 settlement reached with UP in connection with its litigation of service-related disputes in *Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company*, Case No. CV2006-2711 (Circuit Court of Pulaski County, Arkansas). A copy of his initial valuation is attached as Exhibit ESI-17C. He later submitted an updated estimated valuation of the UP Settlement in APSC Docket No. 08-165-U on July 16, 2010. A copy of his 2010 valuation is attached as Exhibit ESI-18C. (Ex. ESI-15, at 4).

122. Mr. Crowley was also one of the expert witnesses who provided testimony on behalf of EAI in that litigation. In that role, he prepared expert reports relating to a variety of issues, including calculation of delivery shortfalls, transportation logistics, and coal inventory practices. (Ex. ESI-15, at 4-5).

123. The purpose of Mr. Crowley's testimony in this proceeding is to respond to the Direct Testimony submitted by Collin Cain on behalf of the Mississippi Service Commission, Stephen J. Baron on behalf of the Louisiana Public Service Commission and Lane Kollen on behalf of the Louisiana Public Service Commission. In particular, Mr. Crowley addresses the conclusions offered by Mr. Cain, Mr. Baron and Mr. Kollen as they relate to the value of the UP Settlement for the post-January 2014 period, and whether, and to what extent, there is any residual value to that settlement. Based on

Mr. Crowley's review of their testimony, he understands that these three witnesses have concluded that EAI will retain any some benefits achieved through the UP settlement because of EAI's withdrawal from the Entergy System Agreement on December 18, 2013. (Ex. ESI-15, at 2-3).

124. Mr. Crowley does not agree with that conclusion. He provides a detailed explanation of the estimated value that he attributes to the UP settlement. Specifically, Mr. Crowley provides an explanation of the methodology he utilized in 2008 to estimate the value of the UP Settlement for purposes of Arkansas Public Service Commission Docket No. 05-116-U. (Ex. ESI-15, at summary).

125. Mr. Crowley then responds to their suggestion that it is appropriate to rely upon an updated valuation to the 2008 valuation that Mr. Crowley prepared on July 16, 2010 in connection with APSC Docket No. 8-165-U. (Ex. ESI-15, at summary).

4. Dr. S. Keith Berry on behalf of Arkansas Public Service Commission

126. Dr. Berry's business address is 1600 Washington Avenue, Hendrix College, Conway, Arkansas, 72032. (Ex. AC-1, at 1). Dr. Berry's academic affiliation is Professor of Economics and Business at Hendrix College in Conway, Arkansas. He is also a principal in the firm of Economic and Financial Consulting Group, Inc. (Ex. AC-1, at 1).

127. Dr. Berry received his B.A. in mathematics from Hendrix College, and his Ph.D. in economics from Vanderbilt University. He was an instructor in statistics at Vanderbilt in 1976-77 and was an instructor/assistant professor at Hendrix College from 1977-79. In July 1979, he joined the Staff of the Arkansas Public Service Commission as Manager of the Finance Section. The primary responsibility of that Section was the preparation and presentation of testimony concerning the cost of capital in utility rate cases. He assumed the duties of Manager of both the Finance and Rate Sections of the APSC in July 1980. He was promoted to Director of Research and Policy Development in September 1986. Beginning in September 1989, he returned to teaching at Hendrix College. (Ex. AC-1, at 1-2).

128. Dr. Berry has submitted testimony in more than seventy different proceedings before public service commissions or other regulatory agencies, including testimony or affidavits before this Commission in Docket Nos. EL09-61-000, ER03-583, ER03-753, EL01-88-000, EL00-66-000, EC99-18-000, EC98-40-000, ER98-2770-000, ER98-2786-000, ER95-53-000, ER95-1042-000, EL94-13-000, EL94-7-000, ER94-898-000, ER92-341-000, EL92-35-000, EC92-21-000, EL92-36-000, EL90-16-000, ER90-16-000, ER89-678-000, EL86-58-000, EL86-59-000, and RM-80-36-000. In particular, he testified in Entergy Services, Inc.'s previous bandwidth filings pursuant to Service Schedule MSS-3 of the Entergy System Agreement in FERC Docket Nos. ER07-956-000, ER08-1056-

000, and ER09-1224-000, and filed testimony in bandwidth-related Docket Nos. EL08-51-000, ER10-2001, EL10-55-000, and ER12-1384. (Ex. AC-1, at 2).

129. Dr. Berry's publications include articles in the *American Economic Review*, *Journal of Regulatory Economics*, *Land Economics*, the *Energy Journal* (coauthor), the *Journal of Economics and Business*, *The Quarterly Review of Economics and Business*, *The Financial Review*, the *Eastern Economic Journal*, *Managerial and Decision Economics*, *Public Choice*, and the *Review of Industrial Organization*. He has made presentations concerning utility regulation and the cost of capital at the National Association of Regulatory Utility Commissioners, Advanced Studies Program, the Eastern NARUC Utility Rate Seminar, the Western NARUC Utility Rate Seminar, the National Conference of Regulatory Utility Commission Engineers, and the Annual Conference of the Institute of Public Utilities. While on the Staff of the Arkansas Commission, he served on the NARUC Subcommittee on Electricity and the Research Advisory Committee of the National Regulatory Research Institute (Deputy Chairman, 1988-89). He is currently a member of the American Economic Association and the Southern Economic Association. A copy of his *Curriculum Vita* is provided in Exhibit AC-2. (Ex. AC-1, at 3).

130. The purpose of Dr. Berry's testimony is to respond to the testimony of Louisiana Public Service Commission witness Stephen J. Baron (Exhibit LC-1) and the testimony of Mississippi Public Service Commission witness Collin Cain (Exhibit MC-1). Both witnesses recommend that Entergy Arkansas, Inc. make a lump sum payment to some of the other Entergy Operating Companies to reflect and transfer alleged benefits that Entergy received from the Union Pacific Settlement. (Ex. AC-1, at 4).

131. Dr. Berry testifies that his overall recommendation is that the Commission not require EAI to make allegedly compensatory payments to the other Entergy Operating Companies for UP Settlement benefits. (Ex. AC-1, at 4). For background, Dr. Berry briefly describes the origins of the alleged UP damages from the alleged failure of Union Pacific railroad to deliver coal to the White Bluff and Independence plants. He also describes the benefits from the settlement in 2008 between UP and Entergy concerning the associated litigation. (Ex. AC-1, at 4-5).

132. Dr. Berry purports to discuss Mr. Baron's and Mr. Cain's erroneous recommendations that EAI pay an "exit" fee following its Commission-approved withdrawal from the Entergy System Agreement on December 18, 2013. Clearly, after EAI's exit there is no further requirement (contractual or other), in his view, for payments or receipts between EAI and the other EOCs. He also attempts to show that Mr. Baron's and Mr. Cain's recommendations are inconsistent with previous FERC orders, rough production cost equalization, and the Bandwidth Remedy under the System Agreement. (Ex. AC-1, at 5-6).

133. Dr. Berry testifies further that the analytical framework Mr. Baron used for calculation of alleged UP Settlement benefits expressly assumes that each EOC is owed benefits by EAI that exceed the damages that such EOC incurred as a result of the UP failure to deliver coal. Notably, Mr. Baron is not seeking hold-harmless protection for Louisiana ratepayers; in reality, he is seeking much more than damages from the consequences of UP's failure to deliver coal, in his opinion. (Ex. AC-1, at 6).

134. Dr. Berry also testifies that Mr. Baron made an error in his allocations of damages among the EOCs. His error over-estimated the other EOCs' overall share of UP damages, in his view. As a consequence, in the context of his analytical framework, he over-estimated EAI's alleged excess benefits. Correcting for that one error reduces his estimate of compensation (in a lump sum payment) to be made by EAI to the other EOCs, as he sees it. (Ex. AC-1, at 7).

135. According to Dr. Berry, the Bandwidth Remedy payments and receipts in any given year reflect the Commission's determination that all production costs should be roughly equalized, and are roughly equalized. Consequently, he opines that the effects of UP damages and UP Settlement benefits are already implicitly considered in the Bandwidth calculations. To include these UP Bandwidth effects in calculations of any EAI payments in this Docket would, in effect, reverse portions of the Bandwidth calculations for Bandwidth test years. (Ex. AC-1, at 8).

5. John K. Sammon on behalf of Commission Trial Staff

136. Mr. Sammon's business address is 888 First Street, N.E., Washington, D.C. 20426. He is employed as an Energy Industry Analyst in the Office of Administrative Litigation at the Federal Energy Regulatory Commission. (Ex. S-1, at 1).

137. Mr. Sammon graduated from City College of New York with a Bachelor of Engineering degree in January 1972. From January to August 1972, he attended the Bernard Baruch Graduate School of Business Administration. He graduated from the George Mason University School of Law in 1991 and was licensed to practice law by the State of Virginia in 1991. He has been employed by the Federal Energy Regulatory Commission, and its predecessor, the Federal Power Commission, since December 1973. His current responsibilities include technical analyses of electric rate matters in proceedings set for hearing before this Commission. (Ex. S-1, at 1-2). Exhibit S-2 is a list of Mr. Sammon's prior testimony before the Commission. (Ex. S-1, at 2).

138. Mr. Sammon testifies that Entergy Arkansas withdrew from the Entergy System Agreement on December 18, 2013. On November 20, 2012, Entergy as agent for the Operating Companies filed amendments to the System Agreement to reflect this changed Agreement and to reflect the simultaneous integration of each of the remaining Operating Companies into the Midcontinent Independent System Operator, regional transmission

organization. In the order accepting and suspending Entergy's proposed amendments to the System Agreement, the Commission set for hearing the issue regarding the allocation of Entergy Arkansas' post-System withdrawal "proceeds" from the 2008 Union Pacific Settlement. *Entergy Services, Inc.,* 145 FERC ¶ 61,247 P 120 (2013) (Hearing Order). (Ex. S-1, at 2).

139. Mr. Sammon addresses the main issues reflected in the Preliminary Joint Stipulation of Issues, filed April 11, 2014 in this proceeding. He addresses the amount of the benefits associated with the 2008 Union Pacific Railroad Company settlement that EAI may realize after its December 18, 2013 withdrawal from the System Agreement. He also addresses whether it is appropriate for Entergy Arkansas to retain those benefits or whether it should be required to share those benefits with the other Entergy Operating Companies that remain participants the System Agreement.

140. He also addresses how any such sharing amount should be allocated among the remaining Operating Companies should the Commission decide that benefits to be shared by Entergy Arkansas after December 18, 2013. He responds to the direct testimony filed by the Louisiana Public Service Commission and the Mississippi Public Service Commission in this proceeding on April 25, 2014, and he is responsible for responding to the Answering testimony filed by Entergy and the Arkansas Public Service Commission on June 6, 2014. He notes that the direct and answering testimony of Staff witness Adrian Kimbrough is being submitted simultaneously with his and provides a calculation of the Union Pacific Settlement benefits and associated damages for each Operating Company and what amounts, if any, should be paid by Entergy Arkansas after December 18, 2013. (Ex. S-1, at 2-3).

141. Mr. Sammon testifies further that the Commission approved Entergy Arkansas's withdrawal from the System Agreement effective December 18, 2013. No "exit fee" or specific payment obligation was imposed as a condition of withdrawal. As a result, he testifies Staff takes no position on whether Entergy Arkansas should be required to make further payments in accordance with the System Agreement after December 18, 2013. If the result of this proceeding, however, is that the Commission determines that requiring Entergy Arkansas to compensate the other Entergy Operating Companies for Settlement benefits it may receive after it withdrew from the System Agreement is not a prohibited "exit fee," and that some payment should be made, then Mr. Sammon recommends that Entergy Arkansas should share these post-withdrawal benefits with the other Operating Companies to the extent of the damages they suffered in the incident that led to the Union Pacific Settlement. He recommends that this be done through the methodology advocated by MPSC witness Cain but that any such payment be limited as described by Staff witness Kimbrough. (Ex. S-1, at 4). Mr. Sammon is sponsoring Exhibit S-1, which is his direct testimony, the previously mentioned Exhibit S-2, and supporting Exhibits S-3 through S-14. (Ex. S-1, at 4).

6. Adrian Kimbrough on behalf of Commission Trial Staff

142. Mr. Kimbrough's business address is 888 First Street, N.E., Washington, D.C. 20426. He is employed by the Federal Energy Regulatory Commission as an Energy Industry Analyst in the Office of Administrative Litigation. (Ex. S-15, at 1).

143. From October 2001 to October 2006, Mr. Kimbrough served in the United States Marine Corps as a Cryptologic Linguist, specializing in intelligence collection and analysis, and as a Mobile Electronic Warfare Support Systems tactical expert, specializing in advanced cyber and telecommunications operations. (Ex. S-15, at 1). In December 2010, Mr. Kimbrough graduated with Distinction from the University of California, Berkeley with a Bachelor of Arts degree in Political Science. (Ex. S-15, at 1).

144. In December 2012, Mr. Kimbrough assumed his present position at the Commission. From December 2012 to the present, his responsibilities have included examining cost-of-service, rate design, and contract issues set for hearing before the Commission and assisting in the settlement of cases. Since being employed at the FERC, he has received technical training on cost allocation and rate design, rate of return, rate case auditing, FERC jurisdiction, power system fundamentals, financial transactions within power markets, and RTOs/ISOs operations and governance. (Ex. S-15, at 2).

145. Mr. Kimbrough previously filed direct and answering testimony on behalf of the Commission Trial Staff in Consumers Energy Company, Docket No. ER10-2156-004. (Ex. S-15, at 2).

146. Mr. Kimbrough outlines the issues the parties to this proceeding agreed to address. Mr. Kimbrough states his testimony is meant to address Issues 1 and 3a. (Ex. S-15, at 3). Based on Mr. Kimbrough's analysis, he concludes that Entergy Arkansas will not receive settlement benefits after December 18, 2013 and, therefore, cannot reallocate any settlement benefits to the Operating Companies. (Ex. S-15, at 3). This is based upon and his reliance upon Mr. Crowley's 2014 value assessment.[5]

147. Mr. Kimbrough does not take a position as to whether Entergy Arkansas should make payments to other Operating Companies. However, if the Commission finds that Entergy Arkansas will continue to receive settlement benefits after December 18, 2013 and require that Entergy Arkansas make payments to the other Operating Companies, he recommends that any such payment be limited to damage compensation for Entergy Gulf States Louisiana, up to a total that represents the amount Entergy Arkansas would have

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[5] The undersigned as set forth more fully below rejects the Crowley 2014 valuation assessment study, which Mr. Kimbrough relies upon therefore Mr. Kimbrough's opinions have very little probative value in this Initial Decision.

redistributed through the Entergy energy exchange had it still been a part of the Entergy System Agreement. The calculation for this amount is addressed in the companion testimony filed by Commission Trial Staff witness John Sammon. (Ex. S-15, at 3-4).

148. In preparing his testimony for this proceeding, Mr. Kimbrough reviewed the testimonies and discovery responses submitted by Entergy Services, Inc., the Louisiana Public Service Commission, the Mississippi Public Service Commission, and the Arkansas Public Service Commission. (Ex. S-15, at 4). Mr. Kimbrough is sponsoring Exhibit Nos. S-15 through S-18. (Ex. S-15, at 4).

C. Cross-Answering Testimony

1. Mr. Louiselle

149. Mr. Louiselle's Cross Answering Testimony discusses and responds to the testimony of Adrian Kimbrough and John Sammon on behalf of the FERC Trial Staff and Dr. Keith Berry on behalf of the Arkansas Public Service Commission. Mr. Louiselle also discusses an error in the damage calculations on which he relied along with the Trial Staff, APSC and LPSC witnesses, and he explains the extent to which all parties have overstated the level of damages to the Operating Companies due to the correction of that error. (Ex. ESI-23, at 1).

150. In Mr. Louiselle's opinion, Mr. Kimbrough did not provide any rationale for his recommendations. Rather, his testimony was limited to Issues 1 and 3a of the Preliminary Joint Statement of Issues, submitted by the parties. He then referenced Mr. Sammon's testimony as providing "the appropriateness of redistributing the UP benefits, and a potential remedy for redistributing benefits if the Commission determines that any remain to be recovered after December 18, 2013." (Ex. ESI-23, at 3).

151. Mr. Louiselle states that he is not aware of any prior instance before the Commission or elsewhere where it has been contended, as Staff here contends, that customers are entitled to be compensated for damages that did not result from conduct or an event found to be imprudent. (Ex. ESI-23, at 4).

152. Mr. Louiselle states that Mr. Sammon's position is basically the same position taken by the Louisiana Commission in Docket No. ER09-636 wherein the Louisiana Commission claimed that allowing EAI to exit the System Agreement without requiring some form of an exit fee would be unjust, unreasonable, and unduly discriminatory. In its Complaint and Protest, the LPSC alleged that such an exit fee was appropriate and necessary in large part as a result of a fifty-year history of system-wide planning or as Mr. Sammon put it, "single system planning." In its Order Denying Requests for Rehearing, the Commission made certain findings that are appropriate to the issue at hand, to wit, Mr. Sammon's contention that the fifty-year history of the System

Agreement somehow requires the Commission to pretend that EAI, after its exit, is still part of Service Schedule MSS-3, at least as concerns the allocation of post-EAI exit UP Settlement benefits. In that Order, the Commission determined: ". . . the withdrawing companies [do not] have any continuing obligations to the remaining companies under the System Agreement." (Ex. ESI-23, at 8).

153. Mr. Louiselle states further that there previously never has been an "uncompensated damage" test or a make-whole test. Yet, Mr. Sammon's recommendation, in Mr. Louiselle's opinion, depends critically on imposing one, in his view. (Ex. ESI-23, at 11).

154. Mr. Louiselle testifies that, as a result of the corrected coal damage calculation, he has recalculated the estimated damages with and without lost opportunity costs using the corrected replacement coal costs. (Ex. ESI-23, at 21). Mr. Louiselle contends that whether measured by comparison to the estimated damages excluding the Lost Opportunity costs or the estimated damages including the Lost Opportunity costs, the benefits Mr. Baron estimates to have been received by the Operating Companies, in his view, were larger than the damages. (Ex. ESI-23, at 22).

155. Mr. Louiselle concludes, under any view of Mr. Baron's analysis, the Operating Companies already have received benefits from the UP Settlement in excess of the damages they allegedly incurred, and they were made whole in that regard prior to EAI's withdrawal from the System Agreement. (Ex. ESI-23, at 22).

2. Mr. Crowley

156. Mr. Crowley's Cross-Answering Testimony responds to the Direct and Answering Testimony submitted on June 27, 2014 by Commission Trial Staff Witness John Sammon. Mr. Crowley states that both Mr. Sammon, and Commission Trial Staff Witness Adrian Kimbrough offered testimony relating to the valuations of the settlement with Union Pacific Railroad Company that Mr. Crowley discussed in his June 6, 2014 Answering Testimony, and both concluded that his 2014 valuation was the most reliable estimate of the value of the UP Settlement with respect to the issues in this proceeding. (Ex. ESI-31, at 1).

157. Mr. Crowley responds to Mr. Sammon's concern with his 2014 valuation and confirms that his 2014 valuation presents the best estimate of the value of the UP Settlement for this proceeding. (Ex. ESI-31, at 2).

158. Mr. Crowley notes further that all three of his valuations are reliable for the period and purpose that they were prepared. It is his current opinion that the 2014 valuation is the correct valuation to utilize to determine whether, and to what extent, the UP Settlement has any remaining value after January 1, 2014. As Mr. Sammon notes, the

purpose of Mr. Crowley's 2008 valuation was to estimate the value of the UP Settlement on a prospective basis as of the 2008 point in time. This valuation was prepared in the context of a consideration of whether it was prudent for EAI to settle the UP litigation on those terms. The 2008 valuation looks at what was known by the settling party at the time it entered the settlement, which is exactly what Mr. Crowley did in his 2008 valuation. The 2010 valuation was also prepared in the context of the prudence investigation by the Arkansas Public Service Commission. Mr. Crowley applied that additional information to the 2010 valuation in order to update the initial valuation. It is important to note that the 2010 valuation, like the 2008 valuation, was still largely a prospective estimate of the value of the benefits of the UP Settlement as of the 2010 point in time. (Ex. ESI-31, at 12-13).[6]

159. Finally, Mr. Crowley testifies that his 2014 valuation was prepared for purposes of this proceeding and is intended to estimate the remaining value, if any, of the UP Settlement for the January 1, 2014 point in time. Mr. Crowley maintains that all parties agree that his 2010 valuation is preferable to his 2008 valuation because it incorporates more current and more EAI-specific data. For the same reasons, his 2014 valuation is more reliable than his 2010 valuation for purposes of this proceeding, in his view. (Ex. ESI-31, at 13).

3. Dr. Berry

160. Dr. Berry's Cross-Answering testimony responds to the Direct and Answering Testimony of FERC Staff witnesses Adrian Kimbrough and John Sammon (Exhibits S-15 and S-1, respectively), and to Entergy witness Thomas Crowley Answering Testimony and Exhibits. (Ex. AC-18, at 1).

161. Dr. Berry agrees with Staff that EAI should not be required to make any payment to the other Entergy EOCs. However, with regard to Staff's conditional alternative position, Dr. Berry does not agree with Staff for many of the reasons that he discussed in his Answering Testimony in this proceeding. (Ex. AC-1). However, if the Commission were to employ Staff's model and endorse its approach, two corrections should be made to Mr. Kimbrough's damage estimates. First the estimates should reflect Entergy's Response to LPSC 1-7, Addendum 2 (Shown as HSPM Exhibit AC-19).
Mr. Kimbrough's analysis reflected Addendum 1 to that response. Dr. Berry notes that Mr. Kimbrough did not reflect Addendum 2 because that Addendum was filed on July 1, 2014, which was after Mr. Kimbrough filed his Direct and Answering Testimony on June

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[6] As set forth below more fully, the undersigned finds the 2010 valuation assessment study performed by Mr. Crowley to be the most probative predictor for determining the actual amount of settlement benefits which will accrue during the post withdrawal period, after December 18, 2013, through June 30, 2015.

27, 2014. Dr. Berry's second correction concerns over-estimates of EAI coal energy sold into the Energy Exchange during on-peak hours. (Ex. AC-18, at 4-5).

162. Dr. Berry testifies further that the implication of these corrections is that there are no uncompensated damages. Congruent with Staff's recommendations, if payments by EAI post December 18, 2013 to other EOCs are considered at all, EAI should make payments to each EOC based on the smaller of Mr. Cain's proposed damages. Since there are no uncompensated damages for any of the other EOCs, EAI should not make any payments to any other EOCs given these two corrections to Staff's damages estimates, in his view. (Ex. AC-18, at 6-7).

163. Dr. Berry states that ESI witness Thomas Crowley has revised his estimate of the UP Settlement benefits. Dr. Berry testifies that the consequence of that revision is that EAI should make no payments to the other EOCs. (Ex. AC-18, at 8-9).

D. Rebuttal Testimony

1. Mr. Baron

164. Mr. Baron's Rebuttal Testimony responds to the testimony of FERC staff witnesses Sammon and Kimbrough (answer and direct); APSC witness Dr. Berry (answer and cross-answer) and Entergy witness Louiselle (answer and cross-answer). These witnesses are opposed to the LPSC position in this case, though the FERC Staff does recommend a transition mechanism in certain circumstances to ensure that benefits occurring in the period after the EAI withdrawal are allocated so that the other Operating Companies at least collect their actual damages. (Ex. LC-22, at 2).

165. Mr. Baron recaps that Mr. Sammon, Mr. Louiselle and Dr. Berry assert that the allocation of UP benefits among the Companies that occurred prior to December 18, 2013 (the date that EAI terminated its position in the System Agreement) is just and reasonable because the allocation was made pursuant to the System Agreement. These parties argue that such an allocation cannot now be changed. Having reviewed this testimony, Mr. Baron agrees, although conceptually, the System Agreement allocations were not designed to match benefits and damages, they were nevertheless made pursuant to a tariff found just and reasonable by FERC, which need to include an analysis and acceptance by FERC that any settlement be just and reasonable. Mr. Baron has updated his analysis to reflect this change. (Ex. LC-22, at 2-3).

166. Based on his updated study, EAI will still have substantial excess benefits during the post-termination period. These excess UP benefits should be apportioned among the other companies through a reasonable transition mechanism, in his opinion. The LPSC methodology allocates the total post-termination UP benefits on the basis of each Company's damages and compares this amount to the expected benefits that each

Company will receive in this same time period. The excess or deficit amount of the benefits represents the amounts for each Company that should be reallocated in a just and reasonable transition measure. (Ex. LC-22, at 3).

167. Mr. Baron also responds to the assertion that any post-termination transition measure would constitute an exit fee, contrary to the Commission's decision in Docket No. ER09-636. Mr. Baron explains that the LPSC's proposed transition mechanism is solely designed to reasonably apportion excess EAI UP Settlement benefits obtained by the Entergy System for all of the Companies. It is only related to the UP settlement and does not represent an attempt to replicate the lost benefits to the System that resulted from EAI's withdrawal, which would constitute an exit fee. Such is not the case here. The LPSC's request in Docket No. ER09-636 was for an exit fee related to all the lost benefits, which in turn, resulted from planning on a single Entergy System basis. The Commission was well aware of its decision in Docket No. ER09-636 when it set this UP case for hearing. Implicit in this ruling was the Commission's determination an appropriate allocation of these UP settlements was permissible, so long as it be just and reasonable and otherwise found to be appropriate. (Ex. LC-22, at 3-4).

168. Mr. Baron further responds to the testimony of the FERC Staff, Entergy and the APSC regarding the issue of a benefit cap. The FERC Staff, in particular, argues that there should be a cap on the benefits that are re-allocated from EAI to each of the Companies, which would be set at the level of their damages. Mr. Baron shows that this argument is erroneous and inconsistent with the Staff's position on pre-withdrawal benefits. He also explains why it is discriminatory and provides an unreasonable preference to EAI, to the detriment of each of the other Companies, in his view. The undersigned finds Mr. Baron's testimony to be highly probative on this point. (Ex. LC-22, at 4-5).

169. Mr. Baron also responds to the contention of APSC witness Dr. Berry that he has made an error in one of the components of the LPSC damage analysis. He purports to demonstrate that Dr. Berry is incorrect in both his analysis and conclusions. Mr. Baron presents additional evidence substantiating the reasonableness of the LPSC's stated on-peak exchange energy replacement power allocation factor, and show that this percentage represents a conservative estimate of the UP damages incurred by the other Companies as a result of coal delivery curtailments. (Ex. LC-22, at 5).

2. Mr. Kollen

170. Mr. Lane Kollen's Rebuttal Testimony on behalf of the LPSC responds to the Answering and Cross-Answering testimonies of Entergy witnesses' Mr. Crowley and Mr. Louiselle; the Answering testimony of Entergy witness Mr. Barrilleaux; the Direct and Answering testimony of Commission Staff witness Mr. Sammon; and the Cross-Answering testimony of Arkansas Public Service Commission witness Dr. Keith Berry.

Mr. Kollen supports the use of Mr. Crowley's 2010 UP Settlement benefits study updated for actual costs incurred and more recent projections, as the basis for quantifying the UP Settlement benefits in this proceeding. (Ex. LC-24, at 2).

171. Mr. Kollen further responds to what he terms the flawed and hindsight-based conclusions resulting from Mr. Crowley's 2014 UP Settlement benefits study which are relied on by Mr. Louiselle, Mr. Sammon, and Dr. Berry to oppose any EAI post-withdrawal payments to the other Operating Companies. Mr. Kollen also responds to the contentions of Mr. Louiselle and Mr. Barrilleaux that the opportunity/financing costs included by Entergy in its damage claims before the State Court of Pulaski County were in error and should be removed when comparing the benefits received to the damages incurred by the various Entergy Operating Companies. (Ex. LC-24, at 2).

172. Mr. Kollen's testimony shows that the Commission should rely on the 2010 study performed by Mr. Crowley, as updated by the LPSC to reflect actual tons of coal delivered, transportation rates and indices, and fuel surcharge amounts, and more recent projected information to determine the benefits of the UP Settlement that should be allocated to the Operating Companies, after December 18, 2013. (Ex. LC-24, at 3-4).

173. The 2010 study, as updated by the LPSC, in his opinion, is the only reasonable study to determine the UP Settlement benefits that should be paid by EAI to the other Entergy Operating Companies. The analytical structure of Mr. Crowley's 2010 study is sound and reflects the relevant time period and contract prices for quantifying the benefits of the UP settlement agreement compared to a "market" alternative. (Ex. LC-24, at 4).

174. Mr. Kollen also states that, in response to the LPSC claim for the remaining benefits resulting from the UP Settlement in this proceeding, Mr. Crowley performed this new study 2014 study, in order to and for the express purpose of this litigation, to mitigate the findings of his own 2010 study. (Ex. LC-24, at 5).

175. Mr. Kollen testifies that it is a basic regulatory principle that regulators should not engage in hindsight to evaluate utility conduct; instead, that conduct should be assessed based on the facts and circumstances existing when the decision was made, or would have been made. The 2014 study developed by Mr. Crowley totally violates this basic principle, and produces unreliable and flawed results. (Ex. LC-24, at 6).

176. According to Mr. Kollen, in his 2010 testimony before the APSC in support of the 2010 study, Mr. Crowley assumed that the transportation market would continue its historic upward trend in developing his market rates. Other information suggests that this assumption was consistent with industry views at the time. For example, comments made by the CEO of the Western Coal Traffic League before the federal Surface Transportation Board (STB) demonstrate that there was a well-founded concern among

shippers that competition between UP and BNSF had eroded, that transportation rates were rising, and that the STB would have to enact new regulations to curb this trend. There was no expectation that rates would drop within the next two years, in his view. (Ex. LC-24, at 7).

177. Mr. Kollen contends further that undermining the validity of this new assumption regarding Entergy's conduct that he introduced into the 2014 study, Mr. Crowley stated in response to discovery in this proceeding that he "has no opinion on what UP might have offered if no lawsuit had ever been filed and EAI issued a bid solicitation at some other, unspecified time prior to the natural end of the original UP contract." He believes that is a remarkable statement because there is no other support for this radical change in the 2014 study compared to the 2010 study. (Ex. LC-24, at 7-8).

178. Mr. Kollen testifies that the Commission should reject Mr. Crowley's attempts in his Cross-Answering Testimony to buttress this change in the 2014 study, which he made in response to Mr. Sammon's criticism. (Ex. LC-24, at 8).

179. Finally, Mr. Kollen testifies that the Commission should reject the arguments of Mr. Louiselle and Mr. Barrilleaux to exclude the opportunity/financing costs from the Entergy damage calculation relied on by Mr. Baron. These were damages incurred by customers of the Operating Companies. The costs actually were incurred by customers as a consequence of the excessive costs that they paid through the fuel/energy adjustment clauses for replacement coal and purchased energy. The customers incurred the damages and financed the damages until they recovered those excessive costs through the UP Settlement benefits. In addition, financing costs correctly were included to state the damages at a net present value amount as of the date of the damages claim. As noted by Mr. Baron, this issue makes a difference only if the allocation of benefits for companies other than EAI is limited to the amount of damages, which would be inappropriate, in his view. (Ex. LC-24, at 10).

3. Philip Hayet

180. Mr. Hayet is Director of Consulting with J. Kennedy and Associates, Inc. He is appearing for the first time in this proceeding as a Rebuttal Witness on behalf of the LPSC. (Ex LC-30, at 1). Mr. Hayet earned a Bachelor of Science degree in Electrical Engineering from Purdue University in 1979, and a Masters' degree in Electrical Engineering from the Georgia Institute of Technology, with a specialization in Power Systems. He has more than thirty years of experience in the electric utility industry, having worked in the areas of generation resource planning, economic analysis, regulatory support, and rate analysis. He first starting working for Energy Management Associates, an Atlanta based utility consulting firm, where he acquired expertise in the PROMOD modeling system. In 1996 Mr. Hayet began his own consulting firm, Hayet Power Systems Consulting in which he continues to work on projects involving

generation resource planning, economic analysis, regulatory support, and rate analysis. In addition to continuing to work for HPSC, he joined Kennedy and Associates in 2000 and provides similar consulting services to Kennedy and Associates' clients. (Ex LC-30, at 2).

181. Mr. Hayet has testified at the FERC regarding other Entergy System matters, including Entergy's proposed System Agreement modifications in connection with the withdrawal of Operating Companies facing retail access, which led to the FERC decision that the Entergy operating companies were no longer in rough production cost equalization (Opinion Nos. 480 and 480-A). Mr. Hayet participated in a FERC proceeding concerning a series of affiliate power purchase agreements that were in dispute and the 2006, 2007 and 2008 Entergy Bandwidth Implementation Cases. He presented testimony in a FERC proceeding involving the Entergy Off-System Sales Complaint. He has also been involved in regulatory proceedings before the Louisiana Public Service Commission regarding other Entergy System matters. (Ex LC-30, at 2-3).

182. The purpose of Mr. Hayet's testimony is to respond to the Answering and Cross-Answering Testimonies of ESI witness Mr. Crowley. In those testimonies, he notes that Mr. Crowley presents a new valuation analysis of the Union Pacific Railroad Settlement Agreement that concludes that all of the benefits that Entergy Arkansas achieved through the UP Settlement occurred prior to EAI exiting the System Agreement, and that no further benefits will occur during the remaining period that the UP Settlement will be in effect. Mr. Hayet contends that he has reviewed Mr. Crowley's new valuation analysis and has identified substantial flaws in his assumptions that biases the results and leads to his erroneous conclusions. His analysis concludes that Mr. Crowley inappropriately relies on hindsight instead of contemporaneous market data. Mr. Hayet concludes that Mr. Crowley's 2010 analysis is the best indicator of the benefits that EAI will derive from the Settlement after its exit from the System Agreement. (Ex LC-30, at 3).

183. Mr. Hayet testifies that the Commission should rely on the 2010 study performed by Mr. Crowley, as updated by the LPSC, to determine the benefits of the UP Settlement that should be allocated among the Operating Companies after December 18, 2013. (Ex LC-30, at 4).

184. Mr. Hayet challenges Mr. Crowley's 2014 analysis to value the settlement on grounds that it uses after-the-fact market data. Mr. Hayet states that information that has only become available in hindsight cannot be used as the basis for developing assumptions about a contract Entergy would have entered into had the UP Settlement Agreement not occurred, and therefore, it is unreasonable to use that information to evaluate the benefit of the Settlement. (Ex LC-30, at 4-5).

IV. Summary of Hearing Testimony

A. Impeachment/Redirect Examination of Experts

185. The parties had an opportunity to cross-exam the experts at the hearing in this case. A brief summary of some of those pertinent portions of these expert witnesses' examinations which additionally support or are otherwise relevant to the undersigned's findings are provided in this section. The complete examinations appears in the hearing transcript; Volumes 2-5.

1. Mr. Baron

186. Mr. Baron testified on September 9, 2014. He identified those documents he was involved in preparing and which he sponsors. (HR. TR. Vol. 2, at 103-105). Mr. Baron further testified upon cross-examination that the case being tried is a cost allocation case in large part, and that LPSC is not proposing a disallowance of costs based on imprudence. He agreed that LPSC makes no allegation that Entergy Arkansas was imprudent for entering into the Union Pacific settlement or that EAI is somehow responsible to the other operating companies for Union Pacific's breach. (HR. TR. Vol. 2, at 106). Mr. Baron also agreed there is no post exit fee requirement in the Entergy Systems Agreement, and that the Agreement does not specify any allocation mechanism for this case. (HR. TR. Vol. 2, at 109).

187. Mr. Baron further confirmed that, under the Entergy System Agreement, EAI was responsible for procuring coal on behalf of co-owners, and the co-owners received benefits that were matched by the costs they incurred, each pro-rated to their ownership interest in a unit. (HR. TR. Vol. 2, at 110). He also agreed that the same matching would be true for entities that held a purchase power agreement in one of the units, such that if an entity with a PPA was entitled to a percentage of the output, that entity would be responsible for costs in the amount of the same percentage. He added that in the case of the Entergy Operating Companies, the PPA arrangement would be pursuant to MSS-4. (HR. TR. Vol. 2, at 111-113). He further noted upon cross-examination how the Entergy Exchange worked and opined that damages likewise were incurred by the EOCs through this method. (HR. TR. Vol.2, at 122-135).

188. Mr. Baron further stated that the Entergy companies all incurred damages as a part of the UP matter, and the settlement, in this case, produced benefits meant for all EOCs. According to him, each of the Entergy Operating Companies should receive a reasonable share of those benefits. He explained that he had used a calculation of relative damages as a transition mechanism in order to assign that allocation. (HR. TR. Vol. 2, at 127-129).

189. Mr. Baron confirmed his direct testimony that Entergy traded a damage claim against UP for an expectation of future benefits, including benefits to be obtained after EAI's withdrawal. He further testified that contemporaneous with the UP settlement in 2008, Mr. Crowley provided an estimate of that expectation of future events, including both pre and post-EAI exit. (HR. TR. Vol. 2, at 140).

190. Mr. Baron further confirmed upon cross-examination that the direct ownership and PPA related damages were not at issue in this case. He indicated that the benefits at issue in this matter are those that will continue residing with EAI in excess of a reasonable level and not be made available to parties that don't own units, either through direct ownership or PPAs, but incurred damages from UP. He further testified it would not be reasonable to cap allocation to particular EOCs based upon damages, because that would provide EAI with a windfall. (HR. TR. Vol. 2, at 142-143).

191. Mr. Baron stated that he agreed with Mr. Hayet that Mr. Crowley's updated 2010 analysis is the more appropriate value assessment which should be relied upon in this case. (HR. TR. Vol. 2, at 140).

192. Mr. Baron stated that the quantification of benefits was estimated since the settlement was not in the form of cash, and that his estimate relied on some assumptions and forecasts. He further testified that he believes the settlement had definite economic value. (HR. TR. Vol. 2, at 145-146; 156-159).

193. Mr. Baron further expressed that he had concerns about Mr. Cain's allocation method, because it relied on an assumption that the System Agreement continued. However, in terms of a method to determine the quantification of a transition measure, he testified that he did not have any strong objection to it, and essentially could support it. (HR. TR. Vol. 2, at 168-169).

194. Mr. Baron testified that he certainly did not support Trial Staff's proposal with regard to a cap of benefits, based upon actual damages. However, although he did not directly support Trial Staff's proposal, he did not strongly object to the quantification methodology endorsed by Staff, which was based upon Mr. Cain's analysis. (HR. TR. Vol. 2, at 169).

195. Upon redirect examination, Mr. Baron testified that the relevant time period to conduct the a value assessment of the UP settlement was in the 2010 time period, and that in his opinion Mr. Crowley's 2010 value assessment is the most relevant for this proceeding. (HR. TR. Vol., at 216-217).

2. Mr. Kollen

196. Mr. Kollen testified on September 10, 2014. He identified the exhibits which he prepared and sponsored. He testified that his experience relative to coal transportation has been limited to looking at contracts in the context of conducting fuel audits, primarily in the present docket. (Hr. Tr. Vol. 3, at 268-269). He explains that his direct testimony consisted of reporting the findings of Entergy's expert witnesses and a narrative of the UP litigation in the Arkansas Court, including reviewing the testimonies of Entergy's experts. (HR. TR. Vol. 3, at 269-270). He further testified that in his rebuttal testimony he affirmed the 2010 value study conducted by Mr. Crowley as a reasonable and the best approach of the value assessment for the UP settlement, and performed additional analyses which are outlined in his rebuttal testimony to support his views. (HR. TR. Vol. 3, at 274-275; 278).

197. Mr. Kollen agreed that the actual benefits that will be obtained from the UP settlement will be a function of the tons of coal actually delivered to the two generation plants and the transportation rates applied to that tonnage. He added that a comparison of the UP settlement to other possibilities then would have to be made to assess the value. (HR. TR., Vol. 3, at 346-348).

198. Mr. Kollen further explained in his testimony that in order to compute the value of the UP settlement in this proceeding, one would have to compare it to a market alternative—a "but-for" analysis. (HR. TR. Vol. 3, at 311). For instance, one would have to assess what Entergy would have done if there had been no UP settlement, which in his view is an essential component of any economic analysis. He stated that in his experience, such "but-for" analyses are used in regulatory proceedings is a very common practice. (HR. TR. Vol. 3, at 377).

199. Upon redirect examination, Mr. Kollen explained in his view Entergy had a point of leverage for negotiating the incremental coal tons for the White Bluff plant in the case of the UP settlement, as opposed to that of a replacement contract. (HR. TR. Vol. 3, at 380). He also stated that to the extent Entergy decided to operate White Bluff and required more than the minimum tons, then it had the ability to competitively bid those incremental tons between UP and BNSF. Re-negotiation with UP essentially locked down those incremental tons to UP, in his view. (HR. TR. Vol. 3, at 380).

200. Furthermore, Mr. Kollen testified that Mr. Crowley, in direct contrast to his 2010 study, in his 2014 study, assumed Entergy would enter into a one-year contract initially, rather than a four-year contract; and then after the one-year contract, would have been able to enter into a three-year contract. This assumption, Mr. Kollen stated, was a significant departure in assumptions that Mr. Kollen did not believe is borne out by the facts and the circumstances at the time. (HR. TR. Vol. 3, at 381-382).

201. Mr. Kollen spent a great deal of time explaining how EAI had a history of entering into long term contracts and that is another reason why Mr. Crowley's assumptions in his 2014 value assessment are not reliable. He reaffirms his view that the 2010 assessment is the most reliable study and that Entergy touted its value to the Arkansas Commission when it had to defend a prudence investigation regarding the value of the UP settlement. (HR. TR., Vol., at 381-386).

3. Mr. Hayet

202. Mr. Hayet testified on September 10, 2014. He identified for the record his rebuttal testimony and exhibits he was sponsoring. (HR. TR. Vol., at 388-389). He also stated that if the UP contract did not exist in his view, then at the end of the legacy contract which had been in place, EAI would have gone to the market for coal transportation in late 2010 to early 2011 time period, with an RFP. He continued that in his opinion, the 2009 BNSF bid for White Bluff is reflective of the bids EAI would have received a year or so later in response to an RFP that would have been issued. He formed this opinion in light of market evidence available in this case. He also testified upon cross examination that utilities generally prefer longer term coal transportation contracts. (HR. TR. Vol. 3, at 395-399).

203. Mr. Hayet also opined that he believes the assumptions Mr. Crowley made in his 2010 value assessment study were reasonable. He further opined that had Entergy not entered into the UP settlement it would have had to have gone to the open market and paid higher prices in the 2010-2011 time period. (HR. TR. Vol., at 401-403).

204. Mr. Hayet also testified why he believes Mr. Crowley's 2014 value assessment study is not accurate and unreliable, in great detail, noting that the 2014 study had faulty assumptions and is a product of hindsight, and that the 2010 study is much more accurate because that is the very time period Entergy would have been in the market for new coal transportation contracts, had it not entered into the UP settlement in 2008. (HR. TR. Vol., at 405-408).

205. Mr. Hayet further testified about the Arkansas Commission proceeding, and how Mr. Crowley's 2010 study was relied upon by Entergy at that time. (HR. TR. Vol., at 410-412). Mr. Hayet upon cross examination also distinguished and explained why Entergy's use of some shorter term contracts at Nelson facility in 2008 is not relevant to this case because it represents an entirely different set of circumstances. He also discussed that Entergy never produced any evidence in discovery indicating when or that it ever had information opining when coal transportation contracts were going to peak. (HR. TR. Vol. 3, at 417-426).

206. Mr. Hayet also explained that he read Mr. Crowley's 2010 value assessment and testimony before the Arkansas Commission's prudence investigation as stating that

Mr. Crowley believed at the most relevant time period to assess the value of the settlement, that coal transportation rates were expected to remain high. (HR. TR. Vol., at 437).

4. Mr. Cain

207. Mr. Cain testified on September 11, 2014. The overall probative value of Mr. Cain's testimony was certainly enhanced by his strong and deliberate responses to cross-examination by opposing counsel. He identified the exhibits he is sponsoring for this hearing. (HR. TR. Vol. 4, at 517-518). Furthermore, Mr. Cain testified that his calculation of payments from Entergy Arkansas to EMI for any remaining UP settlement benefits were not premised on EAI's continued participation in the Entergy System Agreement. Instead, he explained, they were premised on the idea that the mechanism by which the settlement benefits propagated to the respective Entergy Operating Companies was the Entergy System Agreement, which he used then as the model for allocation. His calculation, therefore, was based on an assessment of the flow of benefits through the System Agreement. His model for allocation does not require EAI to be part of the System Agreement. (HR. TR. Vol. 4, at 520-521).

208. According to his view, if that flow of benefits through the System Agreement was considered just and reasonable, then estimating that flow for the period after Entergy Arkansas left the System Agreement would be appropriate. (HR. TR. Vol. 4, at 521). Upon cross examination Mr. Cain further testified that he does not find the 2014 Crowley value assessment study to be accurate. (HR. TR. Vol.4, at 523).

209. Mr. Cain further testified that everything he heard in the LPSC witnesses' testimonies and in what he had read was consistent with his view that but-for analysis would be contemporaneous, and it would assess information that was known at the time that the alternative to the 2008 settlement would have been pursued by Entergy, and that there was general agreement with the LPSC witnesses on major points regarding allocation of settlement benefits from EAI to the other EOCs. (HR. TR. Vol. 4, at 523).

210. Mr. Cain also testified that there were a substantial amount of benefits from the settlement that flowed preferentially to Entergy Arkansas, and it is his position that EAI should return its so-called excess benefits that are expected to it accrue to it for the entire settlement period. (HR. TR. Vol. 4, at 540-1).

211. Mr. Cain further stated he had quantified the effect by operation of Schedule MSS-3 with regards to EAI and explained his methodology very effectively and conservatively. (HR. TR. Vol. 4, at 543). Upon questioning by the undersigned, Mr. Cain provided a very thorough response explaining how there are excess benefits which will still flow pursuant to the energy exchange through the settlement period through June 2015. (HR. TR. Vol. 4, at 571-577). Moreover, he testified that the rationale for the UP

settlement was clearly to compensate all of the EOCs for damages, including those damages associated with the sale of energy which would flowed through the System Agreement. (HR. TR. Vol. 4, at 578-579).

5. Mr. Crowley

212. Mr. Crowley testified that on September 11, 2014. He identified the exhibits he sponsored for purposes of this hearing. (HR. TR. Vol. 4, at 591). The undersigned finds that Mr. Crowley's testimony upon cross-examination by opposing counsel was somewhat vague, evasive and inconsistent, especially when asked about the assumptions and methodology he used for his 2014 value assessment. Overall, the undersigned finds that Mr. Crowley was not able to displace his earlier reliance upon his 2010 value assessment study, nor was he able to enhance the reliability of his 2014 study.

213 Upon friendly cross examination from the APSC, he testified that his 2010 value assessment updated his 2008 study to reflect more current information that had become available since the 2008 valuation was undertaken. Likewise, he stated when he did the 2014 valuation, he was also asked to update what he had done in 2010 and use more current data to the extent it was available. (HR. TR. Vol. 4, at 593).

214. Mr. Crowley also testified that assuming the correct perspective to employ was an assessment of what EAI would have done in the 2010 time period, and further assuming that there were no UP settlement as a part of that, market conditions were not supportive of EAI entering into a long-term deal for ISES and White Bluff coal transportation. However, upon questioning by the LPSC counsel, Mr. Crowley admitted he and Entergy had relied upon his 2010 value assessment study, and that he had advised Entergy that the UP settlement was a good settlement for Entergy. (HR. TR. Vol., 4).

215. Mr. Crowley admitted that at UP settlement provided for four consecutive years of reduced coal transportation costs to EAI's customers and that he believed this at the time the settlement was entered into. (HR. TR. Vol. 4, at 631). He further admitted that when Entergy entered into its settlement with UP for reduced rates, that coal transportation rates were at an all-time high level and that Entergy, in reliance on his 2010 study, entered into a long term commitment with UP pursuant to the settlement. (HR. TR. Vol. 4, at 634-635).

216. Moreover, Mr. Crowley admitted Entergy used his 2010 study to support Entergy's position before the Arkansas Public Service Commission. (HR. TR. Vol. 4, at 635-636). Mr. Crowley also confirmed upon questioning from the MPSC counsel that his 2014 study used for some components of his model, actual data for past time periods. (HR. TR. Vol., at 663-664).

6. Mr. Barrilleaux

217. Mr. Barrilleaux testified on September 11, 2014. He identified the exhibits he was sponsoring in this case. (HR. TR. Vol. 4, at 719). In his testimony, Mr. Barrilleaux agreed that the two categories of damages; the lost generation power purchases and replacement coal purchases, were passed on to end-use customers via the respective operating company's fuel clause. (HR. TR. Vol. 4, at 725).

218. Mr. Barrilleaux further testified that customers paid for the lost generation power purchases and replacement coal purchases when it was charged to them through the fuel clause. He agreed that when customers paid for lost generation power purchases and replacement coal purchases through the fuel clause, they could not use that money for other purposes. (HR. TR. Vol. 4, at 725-727).

7. Mr. Louiselle

219. Mr. Louiselle testified on September 12, 2014. He identified those exhibits he is sponsoring at this hearing. (HR. TR. Vol. 5, at 738). He testified he was not involved in the UP litigation at the time, but was generally aware of it, but had been involved with Entergy on other UP matters. (HR. TR. Vol. 5, at 746-747).

220. Mr. Louiselle discussed he was aware that Mr. Dingle, a high official with Entergy did provide an assessment of damages for Entergy involving the UP litigation. Upon cross examination he also testified how the other EOCs would have incurred damages due to UP's failure to provide coal transportation, and how the damages flowed through the energy exchange. (HR. TR. Vol.5, at 755-759).

221. Mr. Louiselle further agreed that under the MSS-3 exchange, a company will sell to the exchange any of its energy in excess of its load that has been dispatched by the system, although he would qualify the term sale. (HR. TR. Vol. 4, at 761). Mr. Louiselle also testified that if he were trying to determine what EOCs incurred damages and what companies incurred benefits he would make a consistent set of assumptions and run them through the bandwidth. Mr. Louiselle testified that the but-for calculation that he did with regard to UP had to do with the estimate of damages and not a perceived estimate of benefits that resulted from the deal. He explained that his calculation did not have anything to do with benefits, in his view. (HR. TR. Vol. 4, at 783).

8. Dr. Berry

222. Dr. Berry testified on September 12, 2014. He identified the documents he sponsored for purposes of this hearing. (HR. TR. Vol. 5, at 788-789). He testified that he disagrees with Mr. Baron's use of a 75% allocator for replacement power. (HR. TR. Vol.

5, at 790).[7] He further testified that he agrees with Mr. Louiselle's assessment of the meaning as to what Exhibit LC-43 (regarding supporting data for the 75% allocation factor) represents. (HR. TR. Vol., at 791). He further reiterated his position that any allocation of settlement benefits would be an exit fee in his view. (HR. TR. Vol. 5, at 792)

9. Mr. Sammon

223. Mr. Sammon testified on September 12, 2014. He identified the documents he is sponsoring. (HR. TR. Vol. 5, at 794). He testified that the UP settlement consisted of two contracts; a one year extension was what was called the "legacy contract," and a new three year contract, and what was considered to be a very good deal with favorable rates. (HR. TR. Vol. 5, at 797-798). He testified further that in his opinion the proper elements of comparison in an economic analysis evaluating the settlement benefits in this case would involve a comparison of what Entergy Arkansas was paying to move coal from the Southern Powder River Basin to the Arkansas coal plants under the terms of the settlement, with what they would be paying had no settlement been entered into as a result of that litigation. (HR. TR. Vol. 4, at 798-799).

224. Mr. Sammon reiterated upon cross examination some of the criticisms he had of Mr. Crowley's 2014 value assessment study. He testified that Mr. Crowley did not prove to his satisfaction that Entergy would have entered into a one year contract extension, after the termination of the Legacy contract, an assumption Mr. Crowley relied upon in his 2014 study. (HR. TR. Vol. 5, at 808-809). Mr. Sammon had other concerns about Mr. Crowley's 2014 study, including his use of a BSNF 2009 bid for the one year extension and 2012 BSNF bids for the "new delivery contract."

225. He believes Entergy would have entered into a long term contract with UP had it not entered into the UP settlement. (HR. TR. Vol.5, at 810-812). He also testified he did not believe Mr. Crowley adequately responded to the criticisms raised against his 2014 study by the other parties in this case. (HR. TR. Vol.5, at 812).

226. Mr. Sammon also testified that he believed all the EOCs incurred damages by UP's actions and that the settlement was intended to benefit all the EOCs. (HR. TR. Vol., at 821-822). Mr. Sammon confirmed that he had no idea what an exit fee would be, and that the Commission correctly set this case for hearing as a transitional measure which was outstanding, and properly before the Commission. (HR. TR. Vol. 5, at 823-825).

[7] While ESI and APSC strongly criticized Mr. Baron's use of the 75% on-peak allocation factor in his analysis, this evidence is largely not relevant since the undersigned has adopted Mr. Cain's methodology.

227. Upon redirect examination, Mr. Sammon testified that his understanding of what Mr. Crowley did for the 2014 analysis was that he analyzed the two contracts separately from each other and when he did his evaluation of the benefits associated with the new delivery contract, he simply wanted to determine what would be the market rate Entergy Arkansas would have contracted for, but for the Union Pacific settlement. To make that determination, he used the renegotiated rates in 2012. (HR. TR. Vol. 4, at 856).

228. Mr. Sammon also testified that he thought Mr. Baron's methodology for allocating benefits was reasonable, in isolation, and reiterated that Staff's proposed methodology was based a large part upon the MPSC recommendation in this case. (HR. TR. Vol. 4, at 857-858).

10. Mr. Kimbrough

229. Mr. Kimbrough testified on September 12, 2014. He identified his direct and answering testimonies which were admitted as evidence in this proceeding. (HR. TR. Vol. 5, at 862-863). Upon cross-examination he stated that he does not have any degrees or formal training in the field of economics. (HR. TR. Vol. 5, at 864-870).

230. He further stated that he relied upon the 2014 value assessment prepared by Mr. Crowley in formulating his opinions, but did not have any opinion as to whether the 2014 study employs proper economic principles. (HR. TR. Vol. 5, at 876-877). He further indicated he did not know of any regulatory principle that supports EAI to be allowed to retain excess settlement benefits. (HR. TR. Vol. 5, at 879). Mr. Kimbrough also testified that the scope of his analysis in this case did not require that he replicate Mr. Crowley's work.

V. Findings

A. Summary

231. The undersigned observes that in several complaints filed with the Commission and in Entergy-initiated section 205 proceedings before the Commission made well prior to Entergy Arkansas's withdrawal, the Louisiana Public Service Commission contended that the other Operating Companies should receive an allocation of the proceeds from the 2008 UP Settlement that Entergy Arkansas will receive after Entergy Arkansas departed from the System Agreement). In Docket No. ER09-636-000, the Commission approved Entergy Arkansas's withdrawal from the System Agreement. *Entergy Services, Inc.*, 129 FERC ¶ 61,143 (2009) (Withdrawal Order), *reh'g denied*, 134 FERC ¶ 61,075 (2011). (Staff PRE-HR BR, at 2-3).

232. The Commission "found that the System Agreement contained no provisions requiring withdrawing Operating Companies to pay an exit fee or otherwise compensate

remaining Operating Companies, and the Commission did not impose an exit fee or other payment upon Entergy Arkansas or Entergy Mississippi." The Court of Appeals for the District of Columbia Circuit affirmed this determination in *City of New Orleans v. FERC*, 692 F.3d 172 (D.C. Cir. 2012). However, the Court stated that the Commission "must still review the post- withdrawal arrangements to ensure that they are just, reasonable, and not unduly discriminatory." (Staff PRE-HR BR, at 2-3). The Commission determined the UP settlement was part of this review process and ordered this matter to hearing in its December 18, 2013 Order.

233. On November 20, 2012, Entergy Services had filed amendments to the System Agreement in Docket No. ER13-432-000 to reflect Entergy Arkansas's withdrawal and other amendments concerning the remaining Operating Companies move to the "Midcontinent" Independent System Operator, Inc. (MISO), effective December 19, 2013. In the aforementioned Hearing Order, as previously indicated above in the background section of this decision, the Commission accepted Entergy Services' proposed amendments to the System Agreement subject to condition and refund, and clearly stated that the claims raised by LPSC with respect to the Union Pacific Settlement raised issues of material fact that these issues would be reserved and handled in this hearing. (Staff PRE-HR BR, at 2-3).

234. Regarding the UP settlement, it is undisputed that to address the decreased coal deliveries at White Bluff and ISES, EAI purchased additional coal from Colorado and other sources. EIA also ran White Bluff and ISES at lower output during off-peak hours, effectively conserving the restricted deliveries of coal in order to maintain higher generation output during peak load periods.

235. At times, the Entergy System also made purchases of replacement power to make up for reduced peak period generation at the affected coal plants. Entergy sued UP in State court, seeking compensation for damages associated with the need to buy more costly coal transportation, to buy coal from alternative sources that could be delivered over different routes, to generate power from more expensive resources, and to purchase replacement power. Entergy ultimately negotiated and agreed to the 2008 settlement to resolve its claims. (Ex. MC-1, at 5-6).

236. As all experts in this case seem to acknowledge that the benefits from energy produced at White Bluff and ISES largely flow directly via plant ownership shares. Plant ownership for the four units shows that EAI and EMI are the EOCs with direct ownership shares. However, power plants on the Entergy System are dispatched economically to meet load without reference to ownership shares. Because White Bluff and ISES generate power cheaply, they are typically dispatched at full output around the clock, even if individual owners do not require the power to meet their own load. The joint owners of the plants are allocated benefits from plant generation based on ownership shares according to the Energy Exchange provisions of the ESA. (Ex. MC-1, at 5-8). .

237. If the EOC owners each needed its share of output from White Bluff and ISES to meet native load each hour, then the 2008 settlement benefits would simply follow ownership share and there would be no problem caused by the settlement extending beyond EAI's exit from the ESA. However, EAI's shares of White Bluff and ISES often provide more energy that EAI needs to meet load. While EAI was participating in the ESA, benefits from that excess energy were then provided to other EOCs pursuant to the Entergy Energy Exchange. This was clearly part of the UP settlement and the EOCs were allocated substantial settlement proceeds accordingly. (Ex. MC-1, at 8-9).

238. Now that EAI has exited the ESA, EAI is in a position to sell that excess into MISO or other markets, for a spread that may significantly exceed its costs. The 2008 settlement will provide continued substantial value to EAI. In reaching his monetized calculations as to what that value is, Mr. Cain for the MPSC, indicates he conservatively calculated what the allocated benefits should be and did not include any inappropriate amount in his remedy calculation. (Ex. MC-1, at 8-9).

239. Mr. Cain explains how it works. He indicates that Service Schedule MSS-3 of the ESA establishes the process for exchange of excess energy among the EOCs participating in the ESA. (Ex. MC-1, at 5-9). Through the retrospective accounting, each EOC's load and resources (generation and purchase) are assessed on an hourly basis. For each given hour, each EOC retains its lowest cost resources to meet native load, and any excess energy is allocated at cost to EOCs that had load in excess of their resources that hour. In point of fact, EAI's generation exceeds its load in most hours. This is because EAI owns an abundance of low cost resources (including White Bluff and ISES), that are always economically dispatched. During its time on the Entergy System, EAI sold into the MSS-3 Entergy Exchange, most hours. (Ex. MC-1, at 9).

240. According to Mr. Cain, Entergy negotiated the UP settlement with the intent to recover both direct damages to the joint owners and indirect damages associated with reduced sales of energy from the affected plants through the Entergy Energy Exchange. This does not appear to be disputed by the parties. He also argues that UP, in agreeing to the settlement, was aware that it faced exposure to claims for damages that flowed through to other EOCs through the Entergy Exchange. Therefore, this was an additional measure of damages which was calculated by the parties and made part of the negotiations process, and ultimately the settlement.

241. Mr. Cain points out that in a case before the Arkansas Commission (APSC Docket No. 08-165-U), Mr. J. Stephen Dingle on behalf of ESI, presented an estimate of the benefits of the 2008 settlement to EAI retail customers that explicitly accounted for the increased capture of benefits after EAI exited the ESA in December 2013. (Ex. MC-1, at 10).

242. Based upon Mr. Cain's persuasive testimony and the totality of the evidence in the record, the undersigned expressly finds that the evidence in the record establishes EAI

will have settlement benefits after December 18, 2013 from the 2008 settlement agreement between ESI, EAI and Union Pacific, which was entered into on behalf of all of the EOCs.

243. To the extent there are settlement benefits accrued to EAI, all of the EOCs should share in those benefits pursuant to just and reasonable terms and conditions implementing such an allocation between the EOCs. To deny the other EOCs their fair portion of continued benefits would be unduly discriminatory and preferential.

244. The undersigned further finds there is substantial evidence in the record that establishes that the just and reasonable allocation implementation method to apportion benefits is the methodology proposed by the MPSC and its expert witness Colin Cain. (Ex. MC-1; HR. TR., Vol. 3, at 463-468). The undersigned expressly adopts that methodology.[8]

245. Additionally, Mr. Cain's analysis as applied to all the EOCs as reflected in Exhibit S-12, and the precise amounts he recommends therein, are further adopted by the undersigned as the just and reasonable ceiling allocation amounts which should be distributed to the EOCs from EAI, subject to a final true-up, as recommended by the MPSC. (MPSC IB, at 3). These are the amounts which should be allocated to the EOCs. See Attachment A in the confidential version of this Initial Decision for those specified amounts.

B. Stipulated Issues

246. Pursuant to the jointly stipulated issues proposed by the parties, the undersigned makes the following findings in accordance with those stipulated issues.

1. Issue 1:

What is the amount of the settlement benefits, if any, expected to be realized by Entergy Arkansas, Inc. ("EAI") after December 18, 2013 from the 2008 settlement agreement between ESI, EAI *et al*. and Union Pacific Railroad Company ("2008 Settlement") for damages resulting from an alleged contractual breach in 2005 and 2006?

247. The amount of settlement benefits are the benefits amounts proposed in the analysis by the MPSC and Mr. Cain, which should be allocated in accordance with Mr. Cain's methodology. (Ex. MC-1C, at 14-16; S-12). The undersigned finds there are substantial settlement benefits which will accrue through the June 30, 2015 period as

[8] Mr. Cain explains his calculations in detail in his testimony at Exhibit MC-1, at 4-21; and MC-4, at 1.

established by the 2010 Crowley value assessment study, which the undersigned finds probative. The undersigned additionally finds the testimonials provided by Mr. Hayet (Ex. LC-30) and Mr. Kollen (Ex. LC-24) substantially corroborate Mr. Cain's opinions and provide a probative updating of the Crowley 2010 value assessment study. The undersigned expressly rejects the 2014 Crowley value study, as being unreliable. See also additional findings and rationale above and below.

2. Issue 2:

Is it appropriate for EAI to retain that amount from the 2008 Settlement?

248. No. See finding to Issue 1. and the additional findings and rationale above and below. (MPSC RB, at 6-11; LPSC RB, at 22-29; PUCT RB, at 7-8).

3. Issue 3:

If no:

3a. How should that amount be allocated among the Entergy Operating Companies?

249. See finding to Issue 1. and additional findings and rationale above and below.

3b. What are the just and reasonable terms and conditions to implement such allocation?

250. See finding to Issue 1. and the additional findings and rationale above and below. Moreover, the undersigned adopts the recommendation by the MPSC and finds that there should be a true-up to the actual volumes relating to coal usage. (MSPC IB, at 3; MPSC RB, at 11-14).

C. Analysis and Rationale:

251. The undersigned further finds the testimonies of LPSC's experts Mr. Baron, Mr. Kollen, and Mr. Hayet, are probative to corroborate Mr. Cain's testimony that EAI will obtain continued settlement benefits post December 18, 2013, after it left the Entergy System. However, the undersigned finds the methodology proposed by Mr. Cain to be the most just and reasonable and appropriate under the facts of this particular case, and rejects the methodology offered by the LPSC for purposes of allocating specific settlement benefits.

252. The undersigned finds the evidentiary analysis offered by the MPSC to be particularly persuasive. Quantifying EAI's settlement benefits from UP requires

analyzing what EAI and ESI would have done if it had not reached the UP settlement. As argued by the MPSC, the settlement benefits to be quantified in this case consist of the post-December 18, 2013 portion of the difference between two coal transportation payment scenarios: One, the payments that EAI is actually making pursuant to its 2008 Settlement coal transportation contract with Union Pacific, and two, the payments that EAI would have made for coal transportation over the same period, had it not entered the 2008 Settlement. (MPSC IB, at 1-3).

253. The MPSC argues that the first side of this comparison is not a source of substantial controversy. The "at-issue period" is only half over (at the time of the hearing), so a degree of estimation is necessary to quantify those payment amounts, according to the MPSC. However, the MPSC correctly argues that Mr. Cain's calculation methodology is probative, and provides those necessary allocation measures. The undersigned agrees with the MPSC that Mr. Cain has made reasonable and conservative assumptions relating to coal usage over 50 weeks of 2013, capped at the maximum volumes specified within the 2008 settlement, is a fair proxy for annual coal usage (and thus for annual coal shipments) during the relevant period, subject to actual true-up. (Ex. MC-1, at 14-15).

254. In his analysis Mr. Cain conservatively capped the 2013 usage at maximum delivery volumes allowed under the 2008 settlement, even though the subsequent amendment to the agreement would result in increased delivery volumes during 2013-15. (MPSC IB, at 3). The undersigned finds that the MPSC accurately argues that no rebuttal or other evidence substantially questioning his methodology was presented by the ESI or APSC, which undermines his analysis.

255. The second question posed by the MPSC involves the coal transportation pricing, and for how long Entergy would have locked into by contracting in 2010–11, had it been in the market during the approach to the July 2011 date when, but for the 2008 settlement. Mr. Crowley's detailed 2010 value analysis assessment, which ESI and EAI presented to the APSC, in defense of the UP settlement before the APSC, is probative on this point. (MPSC IB, at 4).

256. The MPSC argues ESI now attempts to discredit its own previous assumptions and 2010 value analysis, because it does not now like the results, for purposes of this hearing. The MPSC persuasively argues that ESI should not be successful on this argument. (MPSC IB, at 4).

257. The MPSC observes further that in order to demonstrate that its decision to enter the 2008 settlement was reasonable, EAI quantified that agreement's value through sworn testimony that it pre-filed at the APSC in July 2010, including relying upon the 2010 Crowley value assessment study. (*See* Ex. LC-7; Ex. LC-8).

258. In that forward-looking 2010 valuation study, EAI compared coal transportation pricing under the 2008 Settlement to BNSF's November 2009 bid, as a representative proxy for what EAI would have had to pay to transport coal had it not entered the 2008 Settlement. (Ex. LC-8, at 22; Ex. ESI-15, at 16-21; Ex. ESI-18).

259. The MPSC persuasively states that Mr. Crowley explained that "[t]he 2010 valuation relied upon the BNSF rate quotation as representative of the market rate levels that would be available to EAI in the absence of the UP Settlement." (Ex. ESI-15, at 21). Moreover, Mr. Crowley conceded that the BNSF bid understated the market rate levels available at that time for shipments to the Independence plant, because its bid was for shipments to White Bluff (which has rail connections to both BNSF and UP) whereas Independence is captive to UP and therefore exposed to even higher pricing.

260. Thus, the MPSC argues, in July 2010, Mr. Crowley testified that the 2008 settlement's provision for 2012-15 volumes and rates "locks in rates that are well below the rates that would be competitive today for application beginning in the third quarter of 2012." (MPSC IB, at 4-5). In other words, Entergy relied upon the 2010 Crowley study as being authoritative in convincing the APSC that the UP settlement was prudent.

261. The forward-looking assessment of the coal transportation market held by Mr. Crowley and by Entergy in July 2010 persisted beyond July 2010, according to the MPSC. For instance, on January 13, 2011, Entergy joined in a stipulation and motion that relied on Mr. Crowley's July 2010 testimony as continuing to present a current, forward-looking picture of coal transportation pricing. (Ex. LC-40, at 3).

262. Additionally, in April 2011, Mr. Crowley testified before the Surface Transportation Board (Ex. ESI-32), and complained of continuing exorbitant rail pricing, and pleaded for rate relief. Mr. Cain concluded that if Entergy had not previously (through the 2008 settlement) locked in coal transportation pricing for the period July 2012–July 2015, it would have been in the market for such a multi-year arrangement well before July 2012, and therefore would have faced pricing for which the 2009 BNSF bid is a reasonable proxy. (Ex. ESI-20, at 9-10).

263. The extensive value of the 2008 settlement benefits to EAI resides in the fact that by locking UP into pricing for July 2012–July 2015 shipments, four to seven years in advance, spared EAI from having to procure forward contracts for July 2012–July 2015 coal transportation at the then much higher-priced market of 2010–11. (MPSC IB, at 5).

264. The MPSC argues further that from hindsight, Mr. Crowley and Entergy now erroneously assert that it would have been illogical for ESI to enter into a three-year contract for July 2012–July 2015 coal transportation by committing in the market of 2010–2011, because by 2012, coal transportation prices had begun to moderate. They contend, the "logical" thing for Entergy to have done, had it lacked the 2008 Settlement's

locked-in pricing, would have been to enter a one-year agreement to cover 2012–2013, followed by a three-year agreement for 2013–2016, that would not have been negotiated until 2012. (MPSC IB, at 5-6). This argument is speculative and counters the very assumptions Mr. Crowley previously used in his 2010 study to convince the Arkansas regulators that the UP settlement had substantial, long lasting value.

265. The undersigned agrees with both the MPSC (and the LPSC) that this hypothetical scenario was very unlikely. (MPSC IB, at 5-6; LPSC IB, at 26-29). The problem with that logic is obviously that the timing of a market peak is now known only with hindsight. As the MPSC convincingly argues; "Looking ahead from July 2010 and January 2011, Entergy and Mr. Crowley believed that the BNSF bid was 'well below the rates that would be competitive today for application beginning in the third quarter of 2012'." Looking ahead from that decisional time frame would have included an expectation that fuel prices available to Entergy (stated in equivalent $/MWh) would continue to favor coal over natural gas as base-load generation. (MPSC IB, at 5-7).

266. The forward-looking perspective also would have included official Energy Information Administration projections in which, as of the annual Energy Outlook released in April 2011, Gross Domestic Product was expected to be 3.9% higher in 2012 than 2011, and western coal production was expected to be 2.2% higher in 2012 than 2011. It is only looking back that one can now see that GDP grew only 1.7% in 2011 and that according to Mr. Crowley's testimony, coal transportation rates started to moderate thereafter. (MPSC IB, at 5-7).

267. At the hearing, the MPSC further observed that the APSC introduced the United States Energy Information Administration's August 2014 "Short-Term Energy Outlook," apparently in an attempt to show that because 2014 projections of 2015 natural gas prices are somewhat below 2011 projections of 2015 natural gas prices, that LPSC witness Hayet was wrong when he cited the 2011 projections as negating any expectation in 2011; "that natural gas-fired generation would displace coal fired generation over the long term." (*See* Ex. AC-24). Mr. Hayet's testimony, however, according to the MPSC, shows that decisions made in 2011 were made at a time when gas prices were expected to rise. The undersigned agrees with the MPSC that subsequent movements in gas prices are largely irrelevant about what was expected back in 2011.

268. There is no evidence that during 2010–2011, Entergy anticipated coal transportation prices would begin moderating for 2013–2016, such that it would have had reason to enter a one-year stop-gap contract in order to keep its future shipments exposed to future transportation prices. (MPSC IB, at 5-7).

269. The undersigned further finds the MPSC arguments persuasive that ESI had a then relevant history of attempting to lock in longer versus shorter term contracts. In 2000 for instance, ESI committed to pricing for eleven years. (Ex. LC-24, at 6). In 2008, Entergy

committed to pricing for the period three to seven years forward. Through requests for proposals issued in 2004, 2007, 2008, 2009, and 2011, Entergy sought commitments to pricing for multi-year periods, well in advance. (Ex. LC-48, at 2; LC-46, at 14).

270. For the six RFPs, the average contract duration was almost three years, and the forward periods (i.e., the interval between the RFP issuance date and the contract effective date) were respectively, nine months, five months, six months, six months, eleven weeks, and seven months, averaging about six months. As to the shortest of these intervals (the eleven-week one, in which Entergy issued an RFP in mid-October 2009 for terms of one to five years to begin in January 2010), BNSF responded that "this analysis will create a real time crunch, and asked: "Was there a reason for putting out the RFP so late we normally get a lot longer lead time f[ro]m you?" (indicating this was a unique situation). (Ex. LC-46, at 11; MPSC IB, at 7-8).

271. In its most recent RFP, issued in July 2014, Entergy entered the market a year in advance, seeking multi-year terms, and scheduled the key shopping decision, the elimination of losing bidders, nine months ahead of the contract effective period. (Ex. LC-34; MPSC IB, at 7-8).

272. The undersigned therefore, agrees with the position taken by the MPSC that substantial evidence establishes that if Entergy had lacked the 2008 settlement and therefore needed to replace a coal transportation contract set to expire in July 2011, it more likely than not, would have entered into a longer term contract, most probably a three-year pricing commitment in late 2010 or early 2011. That timing is contemporaneous with Mr. Crowley's 2010 valuation analysis. The 2010 Crowley valuation therefore provides the best available evidence to aid in quantifying the value of the UP settlement benefits to the post EAI withdrawal period. (MPSC IB, at 7-9).[9] The 2010 Crowley value assessment was reasonably relied upon by Mr. Cain to support his calculations.

[9] Mr. Crowley's 2010 valuation analysis, associated with the relevant period must be broken out from the 2012–2015 totals. That break-out is readily performed, because Mr. Crowley's valuation is already broken out by year. Second, the analysis must address the fact that in 2012, Entergy committed additional volumes to shipment by UP, and UP agreed to extend the 2008 Settlement pricing to those additional volumes. That is one must decide whether the quantification of settlement benefits should be increased by counting the 2012 contract modification as an outgrowth of the 2008 Settlement. Mr. Cain explained that to be conservative, he did not count the 2012 expansion of the applicability of 2008 settlement pricing as a settlement benefit. (Ex. MC-1 at 14-15).

273. As indicated, based upon the analysis and calculations performed by Mr. Cain, as discussed above, the undersigned adopts his recommended value amounts which should be allocated to each EOC in this case.[10]

274. The undersigned further finds Mr. Hayet's testimony regarding his updated analysis of the 2010 valuation assessment study of Mr. Crowley, to be highly probative. His analysis clearly supports a finding that the totality of the evidence shows there are still substantial benefits from the UP settlement which will continue to flow beyond the December 18, 2013 withdrawal date by EAI, through the contemplated settlement pay-off period, June 30, 2015. Mr. Hayet's analysis clearly supports Mr. Cain's opinions that the UP settlement will continue to produce defined and measureable benefits, which are capable of being monetized and allocated to the EOCs. These benefits should be allocated to all the EOC parties in accordance with the actual terms of the settlement agreement, which Mr. Cain's proposal achieves.

275. Moreover, Staff witness, Mr. Sammon, a long time expert on Entergy matters, adopts Mr. Cain's analysis to a large extent, at least as to allocation of settlement benefits methodology, in an alternative position offered by Staff, and opines that it is a reasonable allocation method to apply in this case. (Ex. S-1, at 53).[11]

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[10] Mr. Crowley's 2010 analysis substantially increased his opinion regarding the value assessment of the UP settlement, from his 2008 assessment. (ESI IB(C), at 19.

[11] Staff's position dramatically changed from Staff's initial position of not addressing the ultimate issue, and taking a neutral position as to whether any re-allocation to EOCs would be an impermissible exit fee, to taking a late position that payment to the other EOCs would be an exit fee. The legal position seemingly contradicts its own witness, Mr. Sammon's testimony. (Staff RB, at 4). Mr. Sammon's testimonials and analysis are given probative weight to the extent they support the undersigned's findings. The undersigned rejects Staff's late held legal position that the settlement benefits are an improper exit fee. The undersigned observes no Staff witness or evidence supports that position and Staff relies on Dr. Berry's and Mr. Louiselle's opinions to support that position. These opinions are not supported by substantial evidence and ignore the true nature of the benefits, i.e. they are the product of a voluntary settlement ESI and EAI entered into on behalf of all the EOCs. (Ex. S-1, at 3). Staff provides no direct or opinion evidence to support its position that any payment would be an "exit fee." (MPSC RB, at 5). However, Staff's evidence provides some probative value as it endorses Mr. Cain's allocation methodology over the methodology proposed by the LPSC. The undersigned therefore finds probative value in Mr. Sammon's testimony primarily for corroboration purposes that Mr. Cain's proposed allocation methodology is acceptable to him, and is therefore just and reasonable. The more crucial issue in this case is whether there exist actual settlement benefits post withdrawal period from which the EOCs can share. That issue is addressed by both the 2010 and 2014 studies by Mr. Crowley, which

276. The undersigned finds Mr. Sammon is well versed with the Entergy System Agreement and other Entergy matters, and has a long and distinguished FERC career overseeing the Entergy System. His testimony is deemed probative in this case to the extent he supports the undersigned's findings, especially regarding his opinion that the MPSC methodology is just and reasonable to allocate the excess settlement benefits to the EOCs. While the position of the parties are at diverse odds, the evidence is generally un-rebutted that the Entergy System Agreement was not designed to match benefits and damages as applied to this case, but the settlement with UP was nonetheless made pursuant to this tariff which was in use and which is subject to a finding by the Commission that it be just and reasonable.

277. Moreover, assuming EAI obtains excess benefits post December 18, 2013 from the UP settlement, which the evidence in this case shows it will, it is clearly just and reasonable to allocate those benefits to the other EOCs. Otherwise, EAI would receive an excessive amount of those benefits which were originally intended to be shared among the EOCs. Such a result would be unduly discriminatory, and provide a preference to EAI to the detriment and expense of the other EOCs. Additionally, the adopted Cain allocation method is only related to the UP settlement and is a just and reasonable transition measure, and is not an improper exit fee or other attempt to obtain lost benefits to the Entergy System resulting from EAI's withdrawal from the System. It is un-rebutted that EAI and ESI negotiated the settlement with UP for the benefit of all EOCs. (Ex. LC-19C; Ex. LC-22, at 34). Allocating those benefits only relates to enforcing the settlement ESI and EAI had originally agreed to.

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he did for Entergy. The results reflect divergent positions. While discussed more fully below, the undersigned agrees with Mr. Baron, Mr. Kollen, Mr. Hayet, and Mr. Cain that Mr. Crowley's 2010 settlement benefits valuation analysis, and not his 2014 analysis (nor his 2008 analysis, which is no longer material) is the most appropriate settlement benefits value analysis to rely on in this case. The undersigned rejects the 2014 study and finds the 2010 study is the most accurate valuation assessment of the UP settlement. It was this 2010 analysis that Dr. Crowley presented to the APSC in a proceeding to justify the prudence of EAI's settlement, which was being question by the Arkansas regulators. The undersigned agrees with the LPSC and MPSC experts that little or no probative weight should be given to the 2014 settlement benefits analysis. (Ex. LC-22, at 14; Ex. LC-30, 3-18, 22, 24-32, 33-34; Ex. LC-24, at 10-21). Furthermore, Mr. Sammon has severe criticisms of the 2014 value study as well. (Ex. S-1, at 44-45). Additionally, the undersigned finds the updated valuation analysis by Mr. Hayet, and the analysis by Mr. Kollen, to Dr. Crowley's 2010 study to be very probative. They provide substantial evidence to support the finding that the 2010 study is most determinative in this case, and this supports a finding that settlement benefits continue to flow even after EAI left the Entergy System. (Ex. LC-30, at 33-39; Ex. LC-24, at 6-7).

278. The undersigned did initially consider another alternative position offered by Staff to limit any allocation of settlement proceeds to those EOCs up to the amount of actual damages they incurred by UP's actions. In essence, the undersigned finds this should be done by the Commission as a bare minimum remedy in this case. However, after careful deliberation, the undersigned finds such a cap limit based upon actual damages would be unduly preferential and discriminatory since the other EOCs would not share in the benefits of the UP settlement as originally contemplated by ESI and EAI, and in accordance with the execution of the UP settlement. The APSC would continue to be given a preferential treatment. In this regard, the undersigned finds Mr. Baron's testimony at hearing strongly and persuasively supports this point. (HR. TR., Vol. 2, at 210).

279. The undersigned therefore finds the totality of evidence establishes that allocation of the post-withdrawal settlement benefits should be proportionately allocated pursuant to Mr. Cain's methodology, as was initially intended by the parties in their settlement with UP (Ex. LC-19C; MPSC RB, at 12-14). It is clear that the parties knew from the outset that EAI would be off the Entergy System before all the settlement benefits would accrue, yet agreed that the benefits period would extend to June 2015.

280. The settlement calls for it to be in effect until June 30, 2015, and the corollary contracts were executed in accordance with the settlement. (Ex. LC-19C). Nothing in the UP settlement limits the other EOCs benefits to EAI leaving the System. It is therefore probative that the settlement contains no express provision limiting or curtailing the settlement rights to benefits to the other EOCs after EAI's withdrawal from the System, or otherwise limits the rights of the other EOCs. The logical inference therefore being that the settlement intended EOCs to continue to share in the benefits proceeds proportionately as originally envisioned. This logic additionally supports the use of Mr. Cain's methodology to assure a just and reasonable allocation of benefits to the EOCs, as he calculates the benefits in accordance with the settlement, as if the EAI had remained on the Entergy System. This not only provides the true benefit of the bargain to the EOCs, but provides a just allocation to EAI as well, as it accounts for its direct ownership shares.

281. Moreover, it was also clear to the parties that the settlement benefits would exceed the damages incurred by the EOCs. (Ex. LC-7C, at 25). Some speculation at the hearing was raised as to why this was the case, and Mr. Crowley explained it was his belief that UP wanted to avoid litigation or set bad precedent. Also, another logical inference is that the extended benefits were agreed to in lieu of more immediate and direct lump sum cash payments. (HR. TR., Vol. 4, at 683-685). In any event, that was the settlement reached by the parties, and the EOCs should continue to share those benefits accordingly, adhering to those express settlement terms.

282. To avoid providing EAI an otherwise unsustainable preference over the other EOCs, a just and reasonable settlement, which is not unduly discriminatory or which provides an undue preference, requires the remaining UP benefits to be allocated in accordance with Mr. Cain's methodology, for all EOCs to get the benefit of the bargain of the settlement. A cap on damages would therefore be unduly discriminatory and preferential, as EAI would obtain benefits in excess of its damages, while the other EOCs would not.

283. Therefore, it is not rocket science to conclude that all EOCs should fairly share in any post December 18, 2013 settlement benefits, in accordance with the express terms of the settlement, ESI and EAI negotiated, agreed to and executed in Court, especially when EAI had a great deal of control initially as to how the UP settlement was structured. (MPSC RB, at 15-16; LPSC RB, at 29).

284. Moreover, substantial evidence in the record establishes that at least two EOCs, Entergy Gulf States and Entergy Texas, will not even fully recover the extent of their damages caused by UP, unless and until recovery of post withdrawal benefits are accrued and allocated to them. (Ex. S-21). Clearly, implementation of settlement benefits beyond EAI's withdrawal date is necessary in order for the settlement to be non-discriminatory and non-preferential.

285. In finding the 2010 Crowley study probative, the undersigned relies on Entergy's prior position before the Arkansas Commission. The 2010 study is a product of Entergy's expert Mr. Crowley, and was used and relied upon by Entergy to convince the APSC that the UP settlement had substantial value. (HR. TR., Vol. 3, at 384-386). It was produced by Entergy at a time where the value of the settlement could be more appreciably evaluated. The testimonials of Mr. Cain, Mr. Kollen, and Mr. Hayet, further establish that this is the study that most effectively defines the true value of the UP settlement. Mr. Kollen and Mr. Hayet describe in detail the deficiencies of the assumptions used in Mr. Crowley's 2014 value study and why it cannot be relied upon in this proceeding. (HR. TR Vol. 3, at 381-388:463-468; Vol. 4, at 561-562).

286. Indeed, no party challenged or otherwise quarreled with the results of the 2010 value study when it was submitted to the APSC as an accurate predictor and best evidence as to the true and significant value of the UP settlement. (HR. TR. Vol. 3, at 385-386). In response to the undersigned's questioning as to what if any relevance a current analysis might reveal, the parties all indicated that a more current analysis would not appreciably produce much in the way of further relevant results; the notion being that due to the structure of the settlement and expiration of time and performance under the contracts, the mere passage of time would not produce further reliable value information, other than the true-up of coal usage as advocated by the MPSC. In other words, there came a time where a relevant evaluation of the value of the UP settlement became

difficult to perform from hindsight, at least in regards to obtaining relevant and meaningful results. (HR. Tr. Vol. 2, at 226-227).

287. This is in part because the analysis must make assumptions as to what Entergy would have done had it not entered into the settlement, and the use of more current data does not appreciably alter that required hypothetical analysis. In part, this is why the 2014 value study is not probative. For instance, the LPSC and MPSC argue that Mr. Crowley's assumption in the 2014 study that Entergy would have entered into a single year, then a three year contract at lower prices is erroneous. (HR. Tr. Vol. 2, at 226-227). Mr. Sammon seems to share this criticism as well. (Ex. S-1, at 45).[12]

288. The 2010 study by Mr. Crowley is Entergy's own evidence of attempting to quantify the value of the settlement benefits, and provides the necessary data to enable Mr. Cain and Mr. Baron to monetize the value with a reasonable degree of certainty, at the most appropriate time. The 2014 study analysis, on the other hand, is based upon the usage of some hind-sighted data that also renders it unreliable, therefore attempting to back-cast assumptions in contrast to forecasting results.

289. Moreover, as indicated, Mr. Crowley erroneously uses an assumption of a short term one year contract followed by a lower priced three year contract, in his 2014 study. These assumptions result in an under-representative benefits analysis, which raises additional questions about its reliability. (HR. TR. Vol. 3, at 381, 465; Vol. 4, at 562). Mr. Baron points this out in his hearing cross-examination testimony, observing the real measuring stick is comparing what Entergy would have paid under the settlement to what they "hypothetically" would have paid without the settlement, which realistically at the time, would have been the more, not less, because rates had not fallen yet. (HR. TR. Vol. 2, at 226).

290. Mr. Sammon also harshly criticizes the 2014 study for using a BSNF November 9, 2009 bid for a one year extension, and early 2012 UP-BSNF bids for the new delivery contract period, opining that it was clear to him that absent the UP settlement, ESI would have entered into a long term contract that would have covered at least the entire UP settlement flow period. He also criticizes Mr. Crowley's 2014 study for using early 2012 rail coal transportation market data rates to determine the relevant date on which EAI would have entered into an alternative "hypothetical" (for use in his analysis) market based contract, had there been no settlement. (Ex. S-1, at 47).

291. Mr. Sammon goes on to opine that the exact monetary value of the post-withdrawal settlement benefits may never be known, "even after the period is over"

[12] Mr. Sammon also opines that the 2008 study by Mr. Crowley is not reliable at this time. (Ex. S-1, at 45).

and “actual tonnage deliveries are known.” (Ex. S-1, at 48). However, Mr. Sammon does opine that Mr. Cain’s methodology and calculations produce reasonable numbers that can serve as a basis for determining the maximum amount of settlement benefits which EAI should pay to the other EOCs. (Ex. S-1, at 48).[13] In other words, this methodology is the best way to provide the basis of the bargained settlement to all of the settling parties, the EOCs, including EAI.

292. Mr. Sammon also opined that the 2014 study erroneously assumed that a 2008 UP settlement that contained only the one year extension and did not include the new delivery contract. **(**Ex. S-1, at 44-45). This criticism is shared by the MPSC and LPSC experts (Ex. MC-1C; Ex.LC-30C) and had the effect of substantially under-valuing the settlement. As indicated, the 2014 study erroneously uses a hindsight based assumption analysis, based on speculation, and according to the LPSC experts, and is not supported by relevant market data conditions, as Mr. Crowley used 2012 data for his 2014 study. (Ex. LC-30C, at 6; HR. TR., at 562-563).[14]

293. Furthermore, Entergy provided an accurate assessment of the damages at the time to the APSC through their expert Staff personnel, Mr. Dingle and Mr. Emmert (HR. TR. Vol. 5, at 749-752), and as indicated, the 2010 valuation assessment study performed by Mr. Crowley (as now updated by Mr. Kollen and Mr. Hayet); all which support the significant value the UP settlement will provide through June 2015.

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[13] In endorsing Mr. Cain’s allocation methodology, Mr. Sammon assumes that this determination is also based upon rejection by the undersigned and the Commission of the 2014 study by Mr. Crowley, i.e. another alternative position by Staff. In this regard, Mr. Sammon, while he criticizes the 2014 study also indicates he generally favored the use of the latest data (Ex. S-1, at 46), but in the same breath also raises the aforementioned severe criticisms of the 2014 study. He further qualifies his opinion that he is also relying on the fact that Mr. Crowley has “disavowed” his 2010 study, which the undersigned finds insignificant here since the disavowal is late and his earlier reliance on the 2010 study was great. The undersigned finds the overall probative value of Mr. Sammon’s testimony on this evidentiary point is that he essentially corroborates Mr. Cain’s, Mr. Kollen’s, and Mr. Hayet’s criticism of the 2014 study by Mr. Crowley. Mr. Sammon has raised enough doubts about the 2014 study in this regard, corroborating its unreliability on several points.

[14] Moreover, a large portion of the under-valued 2014 study pertains to Mr. Crowley’s subjective analysis of regulatory perceptions, based upon mere speculation which cannot be relied upon with any degree of certainty. The undersigned finds Mr. Hayet’s updated analysis of the 2010 study and his views that the settlement clearly continues to provide benefits is more probative. (Ex. LC-30C, at 33-39). Mr. Crowley’s 2014 study appears to have “cherry-picked” the data he wanted to reach his results. (Ex. S-1, 45-48).

294. In essence, Entergy extended a large amount of resources, both in-house and out-sourced experts, to make sure it got it right before the APSC, to prove the UP settlement had substantial value, which would persist through the EAI post-withdrawal period. The 2010 study proves that value continues through June 2015. This evidence is substantial, and establishes settlement benefits continue after the post-withdrawal period, and are capable of being defined and equitably allocated. The undersigned finds this evidence is paramount to the flawed 2014 study, which changes assumptions and positions for purposes of this litigation.

295. In summary, Mr. Cain's proposed methodology provides the just and reasonable methodology to allocate continued settlement benefits among the EOCs. The Cain method mirrors the intent of the parties to distribute the settlement benefits as if the EAI had remained part of the Entergy System. It is insignificant that EAI has left the System. This is the methodology to distribute settlement proceeds the parties agreed upon in the settlement and it should be used to allocate the remaining benefits, since the benefits are capable of being defined through Mr. Cain's monetization calculations. Mr. Cain's methodology provides a reasonable means to allow this.

296. The UP settlement provides the benefits will continue even after EAI left the Entergy System. No provision in the settlement specifies that only EAI would continue to receive these benefits. Nor does the settlement state that the other EOCs would have their benefits cut off when EAI leaves the Entergy System. The benefits are capable of being defined and monetized to specific reasonable and just amounts, as Mr. Cain has accurately done. Substantial evidence indicates at least two EOCs have not yet recouped their actual damages. As indicated, Staff in large part endorses this approach in its alternative position, and adoption of this remedy is found to be the most fair and accurate in accordance with the intent of the parties and the UP settlement. (Ex. S-1, at 53).

297. This methodology for allocation also prevents unduly discriminatory treatment and preference in implementing the remaining post-withdrawal settlement benefits. (HR. TR. Vol. 4, at 543-560). Mr. Cain's approach is highly probative and his qualifications as an economist are impeccable.

298. Accordingly, the undersigned adopts Mr. Cain's methodology that the EOCs should receive the continued settlement benefits from EAI in this manner. Those precise amounts are filed in the confidential version of this Initial Decision, at Attachment A.[15]

[15] The undersigned observes that this case was especially ripe for settlement. It was in all the parties' best interest to compromise their claims in this matter. Having experienced several cases which settled after initial decisions and/or hearings had been completed the undersigned strongly suggests that the parties should attempt to seek a settlement in this matter, and be prepared to compromise their claims.

ORDER

299. The omission from discussion in this Initial Decision of any argument, testimony or exhibit, raised or offered by the parties at the hearing or in their briefs, does not mean that it has not been considered; rather, it has been evaluated and found to either lack merit or significance, or has been raised sufficiently in another context or by another party, such that inclusion would only tend to lengthen this Initial Decision without altering its substance or effect. Accordingly, all arguments, testimony and evidence made by the participants that were not specifically discussed and/or adopted by this decision, have been considered and rejected, or deemed not significant or repetitive. Moreover, reasoning provided in footnotes to this decision should be read as part of the undersigned's findings and rationale. Additionally, while the undersigned has gone to great length to assure no confidential information was inadvertently disclosed in this case, the undersigned finds there is a great public interest for transparency and making a public record. In this regard, several parties had at times different and changing notions of what evidentiary matters should receive confidential status. The undersigned finds that with the exception of those items addressed in Attachment A of the confidential version of this Initial Decision, the evidentiary matters disclosed in this public version Initial Decision, are not confidential, regardless of what any other party or parties may perceive.

300. **IT IS ORDERED**, subject to review by the Commission on exceptions or on its own motion, as provided by the Commission's Rules of Practice and Procedure, that within thirty (30) days of the issuance of the Final Order in this proceeding, all parties shall take appropriate action to implement all the rulings in this decision.

CERTIFICATION OF INITIAL DECISION

301. Pursuant to Rule 708(b)(3) of the Rules of Practice and Procedure, 18 C.F.R. § 385.708(b)(3), the undersigned hereby certifies the Initial Decision to the Commission. The record will be identified in a supplemental certification and sent to the Commission forthwith.

Michael J. Cianci, Jr.
Presiding Administrative Law Judge