

143 FERC ¶ 61,257
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Holdings Corp.
Entergy Corporation
Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER12-2681-000

Entergy Services, Inc.

ER13-948-000

ITC Arkansas LLC

ER13-782-000

ITC Texas LLC

ITC Louisiana LLC

(consolidated)

ITC Mississippi LLC

ORDER CONDITIONALLY ACCEPTING CERTAIN PROPOSED TARIFF
REVISIONS, ACCEPTING AND SUSPENDING CERTAIN PROPOSED TARIFF
REVISIONS, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued June 20, 2013)

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Appendix A: List of Motions to Intervene and Notices of Intervention

Appendix B: List of Motions, Comments and Protests

Appendix C: List of Answers and Other Responsive Pleadings

1. On September 24, 2012, pursuant to sections 203(a)(1), 203(a)(2) and 205 of the Federal Power Act (FPA),¹ and Parts 33 and 35 of the regulations of the Federal Energy Regulatory Commission (Commission),² ITC Holdings Corp. (ITC Holdings) and certain of its subsidiaries³ (together, the ITC Applicants), and Entergy Corporation (Entergy) and certain of its subsidiaries⁴ (together, the Entergy Applicants), (collectively, Applicants), submitted a Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of section 305(a) of the Federal Power Act (Application).⁵

2. In the Application, Applicants request all necessary authorizations and approvals to enable the merger of the jurisdictional transmission assets of the Entergy Operating Companies into ITC Midsouth, a newly-created subsidiary of ITC Holdings (Entergy-ITC Transaction). The Entergy Applicants also request that the Commission confirm that FPA section 305(a)⁶ is not a bar to any steps or sub-steps of the Entergy-ITC Transaction.⁷

¹ 16 U.S.C. §§ 824b(a)(1), 824b(a)(2), and 824d (2006).

² 18 C.F.R. Parts 33 and 35 (2012).

³ ITC Midsouth LLC (ITC Midsouth).

⁴ Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Texas, Inc. (Entergy Texas) (collectively, Entergy Operating Companies), and Mid South TransCo LLC (Entergy Mid South).

⁵ Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of Section 305(a) of the Federal Power Act, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (Filed Sept. 24, 2012). On December 3, 2012, Applicants filed corrections to certain statements in the Application and accompanying testimony. Errata, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (Dec. 3, 2012) (Errata to Application).

⁶ 16 U.S.C. § 825d(a).

⁷ Application at 76.

3. In addition to the authorizations requested pursuant to FPA section 203 for approval of the Entergy-ITC Transaction, the ITC Applicants seek approval pursuant to FPA section 205 of a proposed company-specific Attachment O formula rate template to the Midwest Independent Transmission System Operator, Inc. (MISO)⁸ Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) for the four new operating companies that will hold the Entergy transmission facilities after the Entergy-ITC Transaction closes (the New ITC Operating Companies).⁹ This formula rate template is referred to as the New ITC Operating Companies MISO Attachment O formula rate in this order. In addition to approval of the formula rate, Applicants also request approval of several new rate schedules under the MISO Tariff, and several jurisdictional agreements. Applicants state that the proposed rate construct is integral to the Entergy-ITC Transaction, and that the proposed formula rate, rate schedules and jurisdictional agreements included in the Application will provide the Commission with a “complete picture” of the Entergy-ITC Transaction.¹⁰

4. On January 18, 2013, pursuant to FPA section 205 and Part 35 of the Commission’s regulations, the New ITC Operating Companies filed an application seeking Commission approval of their proposed accounting and ratemaking treatment for certain pension and post-retirement welfare (OPEB) plan costs that relate to the approximately 750 employees of Entergy that will become ITC Holdings employees as part of the Entergy-ITC Transaction (OPEB Filing).¹¹

⁸ Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

⁹ The *pro forma* MISO Attachment O formula rate template was approved in *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231, *order on reconsideration*, 85 FERC ¶ 61,250, *order on reh’g*, 85 FERC ¶ 61,372 (1998); *Midwest Independent Transmission System Operator, Inc.*, 87 FERC ¶ 61,189 (1999).

¹⁰ Application at 2. According to Applicants, MISO joins the Application as “Administrator of the MISO Tariff and as a signatory to the Appendix I Agreement submitted [with the Application] for acceptance, but otherwise takes no position on the substance of [the Application].” Application at 3.

¹¹ Accounting and Ratemaking Treatment for Pension and OPEB Costs, Docket No. ER13-782-000 (Jan. 18, 2013). Applicants explain that these employees will help staff and manage the New ITC Operating Companies. OPEB Filing at 2.

5. On February 15, 2013, pursuant to FPA section 205 and Part 35 of the Commission's regulations, MISO and Entergy Services, Inc. (Entergy Services), on behalf of the Entergy Operating Companies, filed company-specific Attachment O formula rate templates to the MISO Tariff for each of the Entergy Operating Companies (TPZ Filing). These formula rate templates are referred to as the Entergy Operating Companies MISO Attachment O formula rates in this order. As explained in further detail below, the Entergy Operating Companies state that the rates proposed in the TPZ Filing would be used in the event that the Entergy-ITC Transaction fails to close and Entergy retains its transmission assets. The Entergy Operating Companies explain that if the Entergy-ITC Transaction does close, these rates will be used by the New ITC Operating Companies to bill for transmission service during the interim period from the date that the Entergy-ITC Transaction closes to the date that the Entergy transmission system is fully integrated into MISO, which is expected to occur December 19, 2013, subject to true-up. The Entergy Operating Companies also propose to establish four transmission pricing zones in MISO.

6. This order addresses Applicants' requests pursuant to FPA section 205 in the Application, the OPEB Filing, and the TPZ Filing. With the exception of certain issues that are summarily resolved below, in this order we set for hearing and establish settlement judge procedures for certain aspects of the New ITC Operating Companies and Entergy Operating Companies MISO Attachment O formula rates; the proposed rate schedules; certain of the proposed agreements filed pursuant to FPA section 205; and the OPEB Filing. Our preliminary analysis indicates that the requests and proposals being set for hearing and settlement judge procedures have not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. We find that, except for the issues summarily resolved below, these requests and proposals raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

I. Background

A. Entergy's Integration into MISO and the Entergy-ITC Transaction

7. In April 2011, Entergy announced its intention to join MISO as a Transmission Owner effective December 19, 2013, subject to receiving the necessary regulatory approvals.¹² Eight months later, while MISO was taking preparatory steps towards

¹² Filing of *Pro Forma* Tariff Sheets Including Proposed Module B-1 to MISO's Tariff, Transmittal Letter at 2, Docket No. ER12-2682-000 (filed Sept. 24, 2012) (Module B-1 Filing).

integrating Entergy into MISO, Entergy and ITC Holdings announced their proposal to separate Entergy's jurisdictional transmission facilities into six separate "wires-only" transmission subsidiaries of Entergy Mid South, a newly-formed subsidiary holding company of Entergy, to spin-off the ownership interests of Entergy Mid South to Entergy's shareholders, and then to merge Entergy Mid South with ITC Midsouth, a newly-formed subsidiary holding company of ITC Holdings.¹³ In order to meet both of these goals, the proposed integration of Entergy into MISO and the transfer of Entergy's transmission facilities to ITC Holdings through the proposed merger, Entergy, ITC Holdings, and MISO devised a "phased approach."¹⁴

8. The first phase of this process involves several Commission filings by MISO, ITC Holdings and Entergy to effectuate the transfer of Entergy's transmission assets to the New ITC Operating Companies and to create an appropriate tariff mechanism to be known as Module B-1 for MISO's provision of transmission service on these facilities during the time after the Entergy-ITC Transaction closes and before integration of the generation and load within Entergy's footprint into MISO's energy and operating reserves markets (Interim Period). Among these filings are the Application, the TPZ Filing and the OPEB Filing.¹⁵ Also related to this group of filings is the Module B-1 Filing, wherein MISO proposes the terms and conditions pursuant to which MISO would provide transmission service over the Entergy transmission facilities immediately after closing of the Entergy-ITC Transaction until Entergy's full integration into MISO. Other related filings include a filing to terminate Service Schedule MSS-2 of the Entergy System Agreement,¹⁶ and a filing to establish a tariff for Entergy to provide ancillary services, including imbalance and regulation services.¹⁷

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Separate requests for authorizations under FPA section 204 to facilitate the Entergy-ITC Transaction were also filed in Docket Nos. ES13-5-000, ES13-6-000, ES11-40-002 (Section 204 Applications). The Commission approved these requests on May 16, 2013. *See ITC Arkansas LLC*, 143 FERC ¶ 61,123 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,124 (2013); *Transmission Company Arkansas, LLC*, 143 FERC ¶ 61,125 (2013).

¹⁶ Notice of Cancellation of Service Schedule MSS-2 under the Entergy System Agreement upon Consummation of Spin-Merger of Entergy Operating Companies' Transmission Business to ITC, Docket No. ER12-2693-000 (filed Sept. 26, 2012). Service Schedule MSS-2 concerns transmission equalization under the Entergy System Agreement. The System Agreement is a Commission-approved tariff that currently

(continued...)

9. In addition to this order, the Commission is issuing concurrently three other orders addressing these related filings. As noted above, this order addresses Applicants' requests pursuant to FPA section 205 that were filed as part of the Application; the TPZ Filing; and the OPEB Filing. The other orders address:

- (1) Applicants' request for approval of the Entergy-ITC Transaction under FPA section 203, and the Entergy Applicants' petition for a declaratory order that certain steps in the Entergy-ITC Transaction do not violate FPA section 305(a);¹⁸
- (2) the Module B-1 Filing;¹⁹ and
- (3) the filing to cancel Service Schedule MSS-2 of the System Agreement.²⁰

B. Overview of the Filings

1. The Application

a. The New ITC Operating Companies MISO Attachment O Formula Rates

10. As noted above, in addition to seeking approval under FPA section 203 for the Entergy-ITC Transaction in the Application, Applicants also seek approval under FPA section 205 for the New ITC Operating Companies MISO Attachment O formula rate, several new rates schedules under the MISO Tariff, and several agreements. According to the ITC Applicants, the New ITC Operating Companies MISO Attachment O formula rate template is a transmission rate construct that will be used for each of the New ITC Operating Companies – ITC Arkansas LLC, ITC Louisiana LLC, ITC Mississippi LLC,

requires the Entergy Operating Companies' generation and transmission facilities to be operated as a single integrated operating system.

¹⁷ Entergy Services, Inc. Ancillary Services Tariff and Notice of Cancellation, Docket No. ER12-2683-000 (filed Sept. 24, 2012). *Entergy Services, Inc.*, Docket No. ER02-1059-000 (Jun. 20, 2013) (delegated letter order).

¹⁸ *ITC Holdings Corp. and Entergy Corporation*, 143 FERC ¶ 61,256 (2013).

¹⁹ *Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,258 (2013).

²⁰ *Entergy Arkansas, Inc., et al.*, 143 FERC ¶ 61,259 (2013).

and ITC Texas LLC.²¹ The ITC Applicants explain that the rate will be charged in four transmission pricing zones under the MISO Tariff, one each for Arkansas, Louisiana, Mississippi, and Texas.²² In the Application, the ITC Applicants explain that the four transmission pricing zones will be proposed by Entergy in a forthcoming filing related to Entergy's application to join MISO.²³ Subsequently, the Entergy Operating Companies proposed the transmission pricing zones in the TPZ Filing, which is summarized below.

11. The ITC Applicants explain that, if the Entergy-ITC Transaction closes, the New ITC Operating Companies MISO Attachment O formula rate will go into effect and be used to calculate the rates for transmission service over the transmission facilities of the New ITC Operating Companies (i.e., the former Entergy transmission facilities).²⁴ The formula rate has three components: (1) the formula itself (including a statement of the annual transmission revenue requirement including the true-up and unit cost rate);²⁵

²¹ Application at 49. As part of the Entergy-ITC Transaction, ITC Holdings intends to combine the transmission businesses of Entergy Louisiana, Entergy Gulf States and Entergy New Orleans into a single operating company, ITC Louisiana LLC. Application at 17.

²² *Id.* at 49. According to Applicants, the creation of ITC Louisiana LLC aligns with the scope of the Louisiana transmission pricing zone that was proposed in the TPZ Filing. Application, Exhibit No. ITC-200: Prepared Direct Testimony of Cameron M. Bready on Behalf of ITC Holdings Corp. at 30:14-15 (Bready Test.).

²³ *Id.* at 49.

²⁴ *Id.* If the Entergy-ITC Transaction does not close before December 19, 2013, the anticipated date of the Entergy Operating Companies' integration into MISO, the New ITC Operating Companies MISO Attachment O formula rate will not go into effect because the transmission facilities will remain with Entergy. If the Entergy-ITC Transaction closes after December 19, 2013, the Entergy Operating Companies MISO Attachment O formula rates would go into effect on December 19, 2013, and remain in effect until closing, at which time the New ITC Operating Companies MISO Attachment O formula rate would go into effect. If the Entergy-ITC Transaction does not close, the New ITC Operating Companies MISO Attachment O formula rate would be mooted by events as ITC Holdings would not obtain the Entergy transmission facilities.

²⁵ Application, Exhibit No. ITC-400: Prepared Direct Testimony of Alan C. Heintz on Behalf of ITC Holdings Corp. (Heintz Test.) at 8. The *pro forma* Attachment O formula rate template is attached to the Application as Attachment 3.

(2) the implementation protocols, which describe how the formula will be updated each year;²⁶ and (3) the true-up methodology, which accounts for differences between the projected costs under the forward-looking formula rate and the actual costs incurred.²⁷ The ITC Applicants state that the rate construct includes the use of the 12.38 percent return on equity (ROE) that is currently available to all Transmission Owners in MISO; “an actual capital structure targeting 60 percent equity and 40 percent debt”;²⁸ and the implementation of MISO Attachment O on a forward-looking basis with a true-up mechanism.²⁹ The ITC Applicants state that Commission approval of these three aspects of the rate construct are essential to effect the Entergy-ITC Transaction.³⁰ The ITC Applicants contend that the Commission’s failure to approve this rate construct will jeopardize the Entergy-ITC Transaction and risk loss of the benefits associated with independent ownership of Entergy’s transmission facilities.³¹

12. The ITC Applicants state that the New ITC Operating Companies MISO Attachment O formula rates are comparable to existing, approved formula rates for Transmission Owners in MISO.³² Additionally, the ITC Applicants assert that the proposed rate construct has been viewed favorably by investors and rating agencies due to its ability to provide steady and predictable cash flows.³³ The ITC Applicants state that the proposed rate construct is expected to result in high investment grade credit ratings for the New ITC Operating Companies, and corresponding access to capital

²⁶ The proposed *pro forma* implementation protocols are attached to the Application as Attachment 4 and are described in Applicants’ witness testimony. Application, Exhibit No. ITC-800: Prepared Direct Testimony and Exhibits of Thomas H. Wrenbeck (Wrenbeck Test.).

²⁷ Application at 59. The true-up methodologies are established in Attachment 6 to the Application, *Pro Forma* Attachment GG Annual True-up Procedure.

²⁸ *Id.*

²⁹ The ITC Applicants state that this proposal is consistent with the treatment of other independent transmission companies in MISO. *Id.*

³⁰ *Id.* at 50.

³¹ *Id.* The ITC Applicants describe the benefits of the requested rate construct in enabling ITC Holdings to invest in the transmission system in witness testimony.

³² *Id.* at 50.

³³ *Id.*

markets for financing and favorable cost of debt.³⁴ The ITC Applicants further assert that the proposed rate construct will enable substantial investment of capital into the transmission systems.³⁵ The ITC Applicants note that approval of the rate construct proposed by the New ITC Operating Companies will result in the introduction of independent transmission ownership with the desire and ability to invest in needed transmission to a new region of the country.³⁶ The ITC Applicants conclude that the proposed formula rate is comparable to formula rates previously approved by this Commission, and for the reasons discussed above, is just and reasonable.³⁷ The ITC Applicants request that the effective date of the tariff sheets to implement the New ITC Operating Companies MISO Attachment O formula rates and the proposed rate schedules and jurisdictional agreements be deferred until the closing date of the Entergy-ITC Transaction.³⁸

b. Proposed Rate Schedules under the MISO Tariff

13. Applicants explain that the change in ownership of the transmission assets from Entergy to ITC Holdings creates certain unique rate issues related to the historical treatment of certain ratemaking items in the Entergy Open Access Transmission Tariff (OATT) formula rates. Applicants propose several rate schedules to address these issues.

14. First, the New ITC Operating Companies would recover the costs of Supplemental Upgrades under proposed Schedule 40.³⁹ Applicants state that the cost of Supplemental Upgrades (i.e., economic upgrades) funded by the Entergy Operating Companies on behalf of their bundled retail load is recovered only through bundled retail rates, not from Entergy's wholesale transmission customers through Entergy's OATT rates. Applicants explain that, although the New ITC Operating Companies will own these upgrades following the closing of the Entergy-ITC Transaction, the cost of these facilities will not be rolled into their transmission rates. Instead, the New ITC Operating Companies will recover the costs associated with these upgrades directly from the Entergy Operating Companies through a separate schedule to the MISO Tariff, proposed Schedule 40.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 54.

³⁷ *Id.*

³⁸ *Id.* at 81.

³⁹ *Id.* at 55.

15. Second, Applicants propose Schedule 41 to recover securitized storm restoration costs.⁴⁰ Applicants explain that the Entergy Operating Companies securitized storm restoration costs associated with Hurricanes Katrina, Rita, Ike, and a 2009 ice storm in Arkansas. The costs of the securitized assets were removed from the books of the affected Entergy Operating Companies, and the Entergy OATT formula rate does not include any charges for the recovery of the securitized assets. Applicants state that, pursuant to settlement agreements approved by the Commission, the applicable Entergy Operating Companies are authorized to recover in wholesale rates from wholesale customers taking service under the Entergy OATT their share of the transmission portion of the storm restoration costs for these hurricanes and the ice storms. Given that Entergy will no longer have an OATT rate in effect if the Entergy-ITC Transaction closes, Applicants propose Schedule 41 to the MISO Tariff to continue the current treatment and bill the annual storm securitization charges.

16. Third, Applicants propose Schedule 42-A to collect charges for accrued interest for transmission customer prepayments through the New ITC Operating Companies MISO Attachment O formula rate.⁴¹ Applicants explain that the Commission's general policy is that, when a generator pays for upgrades located "at or beyond" the point of interconnection to the transmission grid, it is entitled to transmission credits, with interest, because these are network upgrades. According to Applicants, the Entergy Operating Companies recorded the Allowance for Funds Used During Construction (AFUDC) associated with these network upgrades and originally included such AFUDC in transmission in calculating their annual rate update, but, as part of a Commission settlement,⁴² the Entergy Operating Companies agreed to remove this capitalized AFUDC from the annual rate update calculation. As a result, AFUDC associated with the network upgrades was deleted from transmission plant for purposes of calculating transmission rates.⁴³ Applicants explain that all of the accrued interest portion associated with transmission credits paid or credited to customers that made prepayments for transmission facilities is treated as a deferred asset and added to the Entergy Operating Companies' rate base calculation for purposes of the annual rate update calculation. Similar to the approach with securitization, charges from wholesale customers for accrued interest for transmission customer prepayments would be collected under Schedule 42-A.

⁴⁰ *Id.* at 56-57.

⁴¹ *Id.* at 57-58.

⁴² Applicants refer to a settlement in Docket No. ER04-886-000.

⁴³ Application at 57.

17. Finally, similar to Schedule 42-A, Applicants propose Schedule 42-B to continue to include credits to wholesale customers for AFUDC associated with generator interconnection prepayments in the New ITC Operating Companies MISO Attachment O formula rate.⁴⁴

c. Proposed Agreements

18. In addition to the New ITC Operating Companies MISO Attachment O formula rate and the proposed rate schedules, Applicants also request approval of an agreement under Appendix I of the MISO Transmission Owners Agreement (MISO TOA), and several ancillary agreements.

19. Applicants explain that the New ITC Operating Companies will sign the MISO TOA, and that the New ITC Operating Companies and MISO will enter into an agreement under Appendix I of the MISO TOA (the Appendix I Agreement). Applicants state that the Appendix I Agreement provides for the operation of independent transmission companies such as the New ITC Operating Companies in MISO, and allows for the assignment to an independent transmission company certain responsibilities that would otherwise belong to MISO.⁴⁵

20. In addition to the Appendix I Agreement, ITC Holdings and Entergy will enter into two transition service agreements that provide for transition services between the relevant operating companies upon consummation of the Entergy-ITC Transaction. Applicants state that these agreements are intended to facilitate the transfer of the transmission business from Entergy to ITC Holdings. According to Applicants, under one agreement, Entergy will provide services to the New ITC Operating Companies in the areas of field support services, engineering support services, site access services, and corporate support services; under the other agreement, ITC Holdings will provide these same services to the Entergy Operating Companies. Applicants state that both agreements have a one-year term, renewable for up to two six-month periods, and that services under both agreements will be provided at cost, with no profit margin.⁴⁶

21. Applicants also submit for approval the Distribution-Transmission Interconnection Agreement, which provides for the interconnection of the New ITC Operating Companies' transmission facilities with the Entergy Operating Companies' distribution

⁴⁴ *Id.* at 58.

⁴⁵ *Id.* at 60.

⁴⁶ *Id.* at 68-69.

facilities and establishes the rights, responsibilities, and obligations of the parties related to that interconnection, including the obligation for the parties to operate their facilities in accordance with Good Utility Practice, applicable reliability standards, and applicable regional transmission organization (RTO) requirements.

22. The Entergy Operating Companies, ITC Holdings, and MISO have also filed a form of Generator Interconnection Agreement to govern the continued interconnection and operation of Entergy's existing generating facilities with the New ITC Operating Companies' transmission systems. Applicants state that a separate Generator Interconnection Agreement will be executed for each Entergy Operating Company to govern the continued interconnection and operation of the existing generating facilities.

23. Applicants also request approval of a Pole Attachment Agreement for Electric Distribution Facilities. Applicants state that this agreement provides for the attachment of existing and future Entergy-owned distribution facilities to and upon certain poles, towers, substations and other multi-use transmission structures transferred to ITC Holdings under the Entergy-ITC Transaction. The agreement also provides for the attachment of ITC Holdings' transmission facilities to and upon Entergy distribution structures.

24. Lastly, Applicants request approval of a Transmission Structure Attachment Agreement for Telecommunications Facilities. Applicants state that this agreement defines the rights, responsibilities and obligations of the New ITC Operating Companies and the Entergy Operating Companies relative to telecommunications lines that are owned by the Entergy Operating Companies and that are attached to transmission facilities that will be transferred to the New ITC Operating Companies under the Entergy-ITC Transaction.

2. The TPZ Filing

25. In the TPZ Filing, the Entergy Operating Companies request approval of the Entergy Operating Companies MISO Attachment O formula rates. As with the New ITC Operating Companies MISO Attachment O formula rate, the Entergy Operating Companies propose to adopt MISO's current Commission-approved transmission formula rate template in Attachment O of the MISO Tariff with certain company-specific revisions. According to the TPZ Filing, the purpose of these revisions is to continue the historical treatment of certain ratemaking items in the Entergy OATT formula rates. The Entergy Operating Companies request that the Commission accept the proposed Attachment O formula rates and other proposed revisions to become effective when the

Entergy Operating Companies fully integrate into MISO, which is scheduled for December 19, 2013, unless the Entergy-ITC Transaction has closed by that date.⁴⁷

26. The Entergy Operating Companies propose ten categories of company-specific changes to the Commission-approved MISO *pro forma* formula rate to address: (1) supplemental upgrades previously addressed in Attachment T to the Entergy OATT; (2) securitized storm damage costs; (3) AFUDC associated with independent power producers prepayments; (4) interest on independent power producers prepayments; (5) the inclusion of payroll changes from Entergy Services and Entergy Operations, Inc. in the wages and salary allocator; (6) Accumulated Deferred Income Tax (ADIT) adjustments; (7) excess deferred income taxes; (8) a permanent income tax adjustment; (9) credits under section 30.9 of the MISO Tariff;⁴⁸ and (10) FERC Form No. 1 page reference for peak load.⁴⁹

27. In the TPZ Filing, the Entergy Operating Companies also propose to establish four transmission pricing zones within MISO: one for the Entergy Texas transmission facilities; one for the Entergy Gulf States Louisiana, Entergy Louisiana, and Entergy New

⁴⁷ As noted earlier, if the Entergy-ITC Transaction closes before December 19, 2013, the Entergy Operating Companies MISO Attachment O formula rates will not go into effect. Rather, transmission service would be provided under the New ITC Operating Companies MISO Attachment O formula rate. If, however, the Entergy-ITC Transaction closes after December 19, 2013, the Entergy Operating Companies MISO Attachment O formula rates would go into effect on December 19, 2013 and remain in effect until the date of closing, at which time the New ITC Operating Companies MISO Attachment O formula rate would go into effect. If the Entergy-ITC Transaction does not close, the Entergy ITC Operating Companies MISO Attachment O formula rates would go into effect on December 19, 2013 and remain in effect thereafter.

⁴⁸ Section 30.9 of the MISO Tariff relates to credits for Network Customers that own existing transmission facilities that are integrated into the MISO transmission system.

⁴⁹ TPZ Filing at 5.

Orleans transmission facilities;⁵⁰ one for the Entergy Arkansas transmission facilities; and one for the Entergy Mississippi transmission facilities.⁵¹

3. The OPEB Filing

28. In the OPEB Filing, the New ITC Operating Companies propose accounting and rate treatment for certain pension and post-retirement welfare plan costs. The New ITC Operating Companies explain that, as part of the Entergy-ITC Transaction, approximately 750 Entergy employees will become employees of ITC Holdings, and help staff and manage the New ITC Operating Companies.⁵² The New ITC Operating Companies explain that, under the New ITC Operating Companies MISO Attachment O formula rate, they will recover their transmission revenue requirements, including compensation and benefit related expenses, on a current basis, with a true-up mechanism designed so transmission customers only pay amounts that correspond to actual revenue requirements.⁵³ The New ITC Operating Companies explain that the template for this rate includes pension and OPEB costs, thereby allowing recovery of pension and OPEB plan employee costs associated with services provided to ITC Holdings post-closing of the Entergy-ITC Transaction.⁵⁴

⁵⁰ As noted above, ITC Holdings intends to consolidate these transmission facilities under one operating company, ITC Louisiana LLC.

⁵¹ TPZ Filing at 17-19. The TPZ Filing also includes revisions to Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service), Schedule 8 (Non-firm Point-to-Point Transmission Service), Schedule 9 (Network Integration Transmission Service), Schedule 26 (Network Upgrade Charge from Transmission Expansion Plan), and the preamble to Attachment O (Rate Formulae) of the MISO Tariff to make appropriate references to the proposed four transmission pricing zones and the Entergy Operating Companies MISO Attachment O formula rates.

⁵² OPEB Filing at 2. The Employee Matters Agreement, which is included as Exhibit No. I-3 to the Application, allocates among ITC Holdings and Entergy “certain assets, liabilities and responsibilities regarding employee matters, benefits and programs.” Application at 14.

⁵³ OPEB Filing at 2.

⁵⁴ OPEB Filing at 2.

29. The New ITC Operating Companies state that the use of purchase accounting for the Entergy-ITC Transaction makes the OPEB Filing necessary because ITC Holdings will need to record liabilities that include previously unrecovered pension and OPEB costs that would not otherwise be recovered in rates.⁵⁵ For this reason, the New ITC Operating Companies seek Commission approval to create, amortize over time, and recover in rates regulatory assets related to previously unrecovered pension and OPEB costs.⁵⁶

II. Notice of Filing and Responsive Pleadings

30. Notice of the Application was published in the *Federal Register*, 77 Fed. Reg. 60,417 (2012), with interventions and protests due on or before November 8, 2012. In response to a motion to extend the comment date,⁵⁷ the deadline for filing comments, protests, and interventions on the Application was subsequently extended to December 7, 2012. In response to a second request to extend the comment date,⁵⁸ the deadline for filing comments, protests and interventions on the Application was extended to January 22, 2013.

31. On November 20, 2012, ITC Holdings and Entergy Services submitted an amendment to the Application that was styled as an answer and included a series of confidential workpapers and additional background information relating to the Application.⁵⁹ Notice of the Amendment to the Application was published in the

⁵⁵ OPEB Filing at 2.

⁵⁶ OPEB Filing at 2.

⁵⁷ *See generally* Entergy Retail Regulators Oct. 4 Motion for Extension of Comment Deadline, Docket No. ER12-2681-000.

⁵⁸ *See generally* Entergy Retail Regulators Nov. 27 Motion for Extension of Comment Deadline, Docket No. ER12-2681-000.

⁵⁹ *See* Answer of ITC Holdings Corp. and Entergy Services, Inc. to Motion to Direct the Filing of Additional Information or to Reject Filings, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (filed Nov. 20, 2012) (Amendment to the Application). On December 4, 2012, in response to a request from a party to this proceeding, Applicants incorporated additional confidential materials into the analysis provided in the Amendment to the Application. ITC Holdings Corp., *et al.*, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (filed Dec. 4, 2012).

Federal Register, 77 Fed. Reg. 72,846 (2012), with interventions and protests due on or before January 22, 2013.

32. Various parties filed motions to intervene, comments, protests, answers and other pleadings in response to the Application. The entities that filed these pleadings are listed in the appendices to this order, while summaries of the protests and substantive comments are included in the appropriate sections below.

33. Notice of the OPEB Filing was published in the *Federal Register*, 78 Fed. Reg. 8,508 (2013), with interventions and protests due on or before February 8, 2013.

34. Various parties filed motions to intervene, comments, protests, answers and other pleadings in response to the OPEB Filing. The entities that filed these pleadings are listed in the appendices to this order, while summaries of the protests and substantive comments are included in the appropriate sections below.

35. Notice of the TPZ Filing was published in the *Federal Register*, 78 Fed. Reg. 13,334 (2013) with interventions and protests due on or before March 8, 2013. In response to a motion to extend the comment date,⁶⁰ the deadline for filing comments, protests, and interventions on the TPZ Filing was subsequently extended to March 22, 2013.

36. Various parties filed motions to intervene, comments, protests, answers and other pleadings in response to the TPZ Filing. The entities that filed these pleadings are listed in the appendices to this order, while summaries of the protests and substantive comments are included in the appropriate sections below.

III. Discussion

A. Procedural Matters

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶¹ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁶² we will grant the late-filed motions to

⁶⁰ See generally Entergy Retail Regulators Feb. 26 Motion for Extension of Comment Deadline, Docket No. ER13-948-000.

⁶¹ 18 C.F.R. § 385.214 (2012).

⁶² 18 C.F.R. § 385.214(d) (2012).

intervene given intervenors' interests in the proceeding, the early stages of the proceeding, and the absence of undue prejudice or delay.

38. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁶³ prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

39. Some protestors request that the Commission consolidate consideration of the Application with various other proceedings,⁶⁴ and some parties also request that the Commission set the Application for hearing.⁶⁵ The Commission's practice is to consolidate proceedings where the issues are closely intertwined with each other.⁶⁶ The Commission finds that the issues that have been raised with respect to Applicants' FPA section 205 requests in the Application, the TPZ Filing, and the OPEB Filing are closely interrelated, and this warrants consideration of these three proceedings jointly for purposes of settlement, hearing and decision. Consequently, the Commission will consolidate these proceedings for purposes of settlement, hearing and decision, as discussed further below. In addition, as discussed in further detail below, the Commission is setting various issues relating to these filings for hearing and establishing settlement judge procedures.

⁶³ 18 C.F.R. ¶ 385.213(a)(2) (2012).

⁶⁴ *See, e.g.*, Joint Customers Jan. 22 Protest of Application at 117, Docket No. ER12-2681-000.

⁶⁵ *See, e.g.*, Texas Commission Jan. 22 Protest of Application at 15, Docket No. ER12-2681-000; Louisiana Commission Jan. 22 Protest of Application at 2, Docket No. ER12-2681-000.

⁶⁶ *Missouri River Energy Servs.*, 124 FERC ¶ 61,309, at P 39 (2008); *Public Service Company of New Mexico*, 142 FERC ¶ 61,168, at P 19 (2013).

B. Substantive Issues**1. Issues Set for Hearing****a. Protests**

40. Protestors raise a number of issues with the proposed formula rates, and certain of the proposed related schedules and agreements.⁶⁷ A majority of the protestors request a hearing on the formula rate templates and related agreements.⁶⁸ For example, Joint Customers argue that Applicants' requested rate construct should not be approved because the formula rate: inappropriately includes the costs of retail radial lines;⁶⁹ inappropriately includes post-Order No. 2003 interconnection facilities;⁷⁰ fails to reduce rate base for unfunded reserves;⁷¹ and fails to properly weight income taxes.⁷² Additionally, Joint Customers take issue with the two Transition Service Agreements, arguing that the agreements contain no rates or charges, and that there is no provision for Joint Customers to question the charges, access the data underlying the invoices, or audit the charges under the agreements.⁷³

41. Protestors also raise issues with the Pole Attachment Agreement for Electric Distribution Facilities and the Transmission Structure Attachment Agreement for Telecommunications Facilities. For example, Joint Customers argue that the New ITC

⁶⁷ We note that there are many common issues of fact between the New ITC Operating Companies and Entergy Operating Companies MISO Attachment O formula rates, which are identical in most respects, as relevant to both the vertically-integrated Entergy Operating Companies and the transmission-only new ITC Operating Companies.

⁶⁸ The parties requesting a hearing on the formula rate issues include Associated Electric, Joint Customers, the Louisiana Commission, the Kansas Commission, the City of New Orleans, and the Texas Commission.

⁶⁹ Joint Customers Jan. 22 Protest of Application at 49, Docket No. ER12-2681-000.

⁷⁰ *Id.* at 51.

⁷¹ *Id.* at 52.

⁷² *Id.* at 53.

⁷³ *Id.* at 110-111; Joint Customers Mar.11 Answer at 47-48, Docket No. ER12-2681-000.

Operating Companies should be required to charge the Entergy Operating Companies attachment fees for both existing and new facilities attached to ITC structures.⁷⁴ Joint Customers assert that, otherwise, the Entergy Operating Companies would benefit, without compensation to ITC, from existing structure attachments, and that such benefit is in the form of avoidance of distribution facilities investments (i.e., stand-alone distribution poles).

42. Similarly, Joint Customers assert that the Entergy Operating Companies' proposed Attachment O formula rates are flawed and should not be approved unless modified.⁷⁵ Joint Customers argue that the Commission should reject as unjust and unreasonable the Entergy Operating Companies' "cherry-picking" approach to establish a formula rate for the companies upon their integration into MISO.⁷⁶ Specifically, Joint Customers argue that: the use of the *pro forma* Attachment O formula rate template with limited Entergy-proposed modifications is unjust and unreasonable;⁷⁷ retail radial lines should be excluded from transmission plant;⁷⁸ the formula rate fails to reduce rate base for unfunded reserves;⁷⁹ transmission costs are inflated due to the failure to account for distribution under-build facilities on transmission poles and towers;⁸⁰ the proposed formula rate does not reflect all appropriate revenue credits;⁸¹ the proposed formula rate inappropriately includes post-Order No. 2003 interconnection facilities;⁸² the proposed

⁷⁴ Joint Customers Jan. 22 Protest of Application at 115-116, Docket No. ER12-2681-000.

⁷⁵ Joint Customers Mar. 22 Protest of TPZ Filing at 4, Docket No. ER13-948-000.

⁷⁶ Joint Customers Jan. 22 Protest of Application at 4, Docket No. ER12-2681-000.

⁷⁷ Joint Customers Mar. Protest of TPZ Filing at 4, Docket No. ER13-948-000. Joint Customers allege that additional modifications beyond what Entergy proposed are necessary to make the proposed formula rate just and reasonable.

⁷⁸ *Id.* at 6.

⁷⁹ *Id.* at 10.

⁸⁰ *Id.* at 12.

⁸¹ *Id.* at 14.

⁸² *Id.* at 16.

formula rate is wrongly based on end-of-year balances;⁸³ prepayments included in rate base must exclude retail costs;⁸⁴ Entergy's inclusion of certain accumulated deferred income taxes is contrary to Commission precedent;⁸⁵ and Entergy's permanent differences tax adjustment is unsupported.⁸⁶

43. Protestors also take issue with the OPEB Filing. Joint Customers, for example, argue that the wide-ranging estimates for pension and OPEB regulatory assets demonstrate that the requested approvals are premature.⁸⁷ Joint Customers also argue that the OPEB Filing raises a number of unanswered questions regarding the requested regulatory asset approval.⁸⁸ For instance, Joint Customers contend that granting the New Operating Companies pre-approval of certain formula rate template components without specific cost information is inappropriate and could prevent interested parties from challenging the actuarial valuations once available.⁸⁹ Joint Customers argue further that the OPEB Filing violates the Commission's Post-Employment Benefits Other than Pensions Statement of Policy⁹⁰ and also fails to include the studies necessary for the Commission to review the New Operating Companies' proposed treatment of pension and OPEB costs.

b. Commission Determination

44. We find that the proposed Attachment O formula rates for the New ITC Operating Companies and the Entergy Operating Companies, Schedules 40, 41, 42-A, and 42-B, and certain related agreements filed by Applicants,⁹¹ as well as the OPEB Filing, except

⁸³ *Id.* at 17.

⁸⁴ *Id.* at 19.

⁸⁵ *Id.* at 22.

⁸⁶ *Id.* at 23.

⁸⁷ Joint Customers Protest of OPEB Filing at 9.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Post-Employment Benefits Other Than Pensions*, 61 FERC ¶ 61,330 (1992), *order denying reh'g and granting clarification in part*, 65 FERC ¶ 61,035 (1993).

⁹¹ Specifically, protestors raised issues of material fact with respect to the Pole Attachment Agreement for Electric Distribution Facilities and the Transmission Structure

(continued...)

for the issues summarily resolved below, raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

45. Our preliminary analysis indicates that the proposed Attachment O formula rates for the New ITC Operating Companies and the Entergy Operating Companies, Schedules 40, 41, 42-A, and 42-B, and certain related agreements filed by Applicants, as well as the OPEB Filing, have not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept for filing, suspend, and make effective subject to refund the New ITC Operating Companies MISO Attachment O formula rate, Schedules 40, 41, 42-A, and 42-B and certain related agreements proposed in the Application, and the OPEB Filing, to become effective on the date that the Entergy-ITC Transaction closes, as requested. We also accept for filing, suspend, and make effective subject to refund the Entergy Operating Companies MISO Attachment O formula rates, to become effective on December 19, 2013, unless the Entergy-ITC Transaction closes prior to that date, in which case the New ITC Operating Companies MISO Attachment O formula rates will go into effect. We also establish hearing and settlement judge procedures in these proceedings. In addition, given the common issues of fact and law, we will consolidate them for purposes of settlement, hearing, and decision.

46. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁹³ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief

Attachment Agreement for Telecommunications Facilities; and the Transition Service Agreements.

⁹² 18 C.F.R § 385.603 (2012).

⁹³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

Judge shall provide the parties with additional time to continue their settlement discussions or provide commencement of a hearing by assigning the case to a presiding judge.

2. **Issues Summarily Resolved**

a. **ROE**

i. **Proposal**

47. Applicants contend that the New ITC Operating Companies are entitled to use the current 12.38 percent MISO ROE because they will be Transmission Owners in MISO.⁹⁴ They further assert that the New ITC Operating Companies' ROE must be similar to that of other MISO companies in order to have efficient access to capital.⁹⁵ The Entergy Operating Companies also propose to use the current 12.38 percent MISO ROE in the Entergy Operating Companies MISO Attachment O formula rates.⁹⁶

48. Applicants state that ITC Holdings is not requesting any transmission rate incentives for the New ITC Operating Companies but reserves the right to request, in the future, as may become necessary, transmission rate incentives for the New ITC Operating Companies, including an incentive adder for independent transmission companies.⁹⁷

⁹⁴ Application at 50 (citing *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 83 (2012) (*DATC Midwest*) (finding that if DATC Midwest Holdings, LLC becomes a transmission owning member of MISO, it would be entitled to receive the then-current ROE that the Commission approved for MISO Transmission Owners); *Ameren Services, Co.*, 135 FERC ¶ 61,142, at P 94 (2011) (*Ameren*) (noting that the Commission has approved a single base ROE for transmission-owning members of MISO, and protestors have not demonstrated why applicants should not also be entitled to the same treatment if such entities become transmission-owning members of MISO)).

⁹⁵ *Id.* at 50.

⁹⁶ TPZ Filing at 17.

⁹⁷ Application at 51.

ii. Protests

49. Several parties protest the use of the 12.38 percent MISO ROE for the New ITC Operating Companies, arguing, among other things, that the MISO ROE is excessive, based on outdated equity costs, and unsupported.⁹⁸

50. The Arkansas Commission and the Louisiana Commission argue that in the past five years, capital costs in the United States have significantly decreased. The Arkansas Commission explains that as a result, interest rates have decreased, representing a decrease in interest rates of 186 to 250 basis points. The Arkansas Commission contends that the cost of equity strongly correlates with interest rates, and that the cost of equity for electric utilities has fallen such that reduced capital costs should be reflected in New ITC Operating Companies' proposed cost of equity. Additionally, the Arkansas Commission states that the proposed ROE of 12.38 percent exceeds the 10.20 percent ROE that the Arkansas Commission approved for Entergy Arkansas retail customers.⁹⁹

51. The Louisiana Commission and the Texas Commission argue that the current MISO allowed return on common equity was last set in 2002, and should not be the basis for setting rates going forward. The Louisiana Commission asserts that since the time when the cost of common equity was determined for the MISO Transmission Owners, the decline in capital costs ranges from approximately 280 to 340 basis points. The Louisiana Commission cites expert testimony that a reasonable range of the current cost of equity capital for fully-integrated electrics is between 8.50 percent and 9.50 percent, which is more than 300 basis points below the return on equity requested by Applicants.¹⁰⁰

52. The Texas Commission argues that the 12.38 percent ROE for Transmission Owners within MISO is inflated, due to falling bond yields and lower expectation of

⁹⁸ *See, e.g.*, Arkansas Commission, Texas Industrial Energy Consumers, Louisiana Commission, Joint Customers, Municipal Energy Agency of Mississippi, Texas Commission, and the NRG Companies.

⁹⁹ Arkansas Commission Mar. 22 Protest of TPZ Filing at 4, Docket No. ER13-948-000.

¹⁰⁰ Louisiana Commission Jan.22 Protest of Application at 12-13, Docket No. ER12-2681-000.

ROE in the common equity markets as a whole since 2002.¹⁰¹ The Texas Commission cites to a number of cases where parties filed complaints regarding excessive ROEs that were lower than the 12.38 percent MISO ROE and the Commission set all of the ROE issues for hearing.¹⁰² The Texas Commission argues that the Commission should require Applicants to provide an ROE study, following the Commission's Discounted Cash Flow (DCF) methodology, that reflects current equity market conditions, and set this matter for hearing and settlement judge procedures to set a reasonable ROE.¹⁰³

53. Joint Customers' expert witness indicates that, by performing analysis that closely tracks the analysis adopted when the 12.38 percent MISO ROE was originally established, the just and reasonable base ROE for the Entergy transmission facilities is no greater than 8.91 percent. Joint Customers also point to lower bond yields over a 10-year period from August 2001 to December 2012, which they assert reflect a drop in the cost of high-grade debt of between 316 and 372 basis points.¹⁰⁴

54. The Louisiana Commission further explains that electric utility transmission operations are less technically complicated and therefore have a lower operation and investment risk than fully-integrated utilities (i.e., utilities with generation). Joint Customers agree, arguing that at the time that the Commission initially approved the MISO ROE, MISO was a new RTO and there was great turmoil, uncertainty and risk for RTOs in general and MISO in particular. The Louisiana Commission argues that if ITC Holdings' transmission operations have lower investment risk due to the nature of its operations compared to fully-integrated electric utilities, and the current cost of equity capital for fully-integrated electric utilities ranges from 8.50 percent to 9.50 percent, then the cost of equity capital for the Applicants' transmission operations should be below the

¹⁰¹ Texas Commission Jan. 22 Protest of Application at 12, Docket No. ER12-2681-000. *See also* Texas Commission Mar. 22 Protest of TPZ Filing at 9, Docket Nos. ER13-948-000 and ER12-2681-000.

¹⁰² Texas Commission Jan. 22 Protest of Application at 12-14 (citing *Grand Valley Rural Power Lines, Inc. v. PSC Colorado*, 141 FERC ¶ 61,019 (2012) (*Grand Valley Rural*); *Martha Coakley v. Bangor Hydro-Electric Co.*, 139 FERC ¶ 61,090 (2012) (*Martha Coakley*); and *Kansas City Power & Light Co.*, 130 FERC ¶ 61,009 (2010) (*Kansas City*), Docket No. ER12-2681-000).

¹⁰³ *Id.* at 14.

¹⁰⁴ Joint Customers January 22 Protest of Application at 60-62, Docket No. ER12-2681-000.

8.5 percent to 9.5 percent range.¹⁰⁵ The Louisiana Commission further contends that under the Commission's formula rate structure, a utility recovers its cost of common equity in an expense-like fashion that is periodically trued-up so that the utility recovers exactly what is allowed in the rate. Therefore, the Louisiana Commission asserts that the risk to which common equity capital is exposed under a formula rate construct at the Commission is substantially less than that which exists generally with publicly-traded electric utilities, and the appropriate return for that risk is substantially lower.¹⁰⁶ The Louisiana Commission maintains that Commission precedent recognizes this outcome.¹⁰⁷

55. Joint Customers argue that another significant change since the MISO ROE was established is the composition of the MISO proxy group. Joint Customers contend that due to departures from MISO and other factors, only five of the nine companies in the proxy group used to establish the 12.38 percent MISO ROE remain. Joint Customers assert that this shift in proxy group eligibility is a further reason the 2002 DCF study that underlies the 12.38 percent MISO ROE is not valid for establishing just and reasonable rates for a new MISO Transmission Owner.¹⁰⁸

56. Joint Customers contend that Applicants' request for a 12.38 percent ROE is unsupported and contend that, while the Commission has permitted other Transmission Owners that have entered MISO to adopt the same ROE, this approach has never been reviewed or endorsed by the courts. Joint Customers argue that the Commission's logic creates a conclusive and irrebuttable presumption that an ROE deemed just and reasonable for the companies that were MISO Transmission Owners in 2002 is also just and reasonable as to any other company that becomes a MISO Transmission Owner. Joint Customers assert that this presumption is premised on the view that MISO participation is the only pertinent factor in determining a just and reasonable ROE of an incoming utility. Joint Customers point out that the validity of this assumption has never been established, generically or with respect to any particular incoming Transmission Owner. Joint Customers argue that the absence of any confirmation that

¹⁰⁵ Joint Customers make the same argument in their protest of the TPZ Filing. See Joint Customers Mar. 22 Protest of TPZ Filing at 30, Docket No. ER13-948-000.

¹⁰⁶ Louisiana Commission Jan. 22 Protest of Application at 14-15, Docket No. ER12-2681-000.

¹⁰⁷ *Id.* at 15 (citing *South Carolina Generating Company, Inc.*, 40 FERC ¶ 61,116 (1987) and *Indiana and Michigan Power Company*, 4 FERC ¶ 61,316 (1978)).

¹⁰⁸ Joint Customers Jan. 22 Protest of Application at 64, Docket No. ER12-2681-000.

the 12.38 percent MISO ROE is an appropriate value to use as the cost of common equity for any particular new Transmission Owner, or that rates produced by application of the 12.38 percent MISO ROE results in just and reasonable charges for use of a specific new Transmission Owner's facilities, makes it likely that this approach would be overturned if examined by a reviewing court.¹⁰⁹

iii. Answer

57. In response to protestors, Applicants argue that this FPA section 205 proceeding is not the appropriate forum in which to challenge the MISO ROE because they have not proposed to change it. Applicants state that changes to the MISO ROE require a separate proceeding under FPA section 205 or 206. Applicants further contend that the New ITC Operating Companies are entitled to use the 12.38 percent ROE in accordance with Commission precedent because they will be Transmission Owner members of MISO.¹¹⁰ With regard to arguments that a DCF analysis reflecting current equity market conditions is required in this proceeding to support the MISO ROE, Applicants state that the Commission has, in previous decisions, rejected similar arguments.¹¹¹

iv. Response to Answer

58. Joint Customers disagree with Applicants' argument that *DATC Midwest* demonstrates that a new Transmission Owner entering MISO is entitled to the MISO ROE. Joint Customers contend that Applicants are not excused from demonstrating that the ROE component of its operating subsidiaries' rates and charges is just and reasonable when it first submits the rates for filing under FPA section 205. Joint Customers further maintain that even if the Commission authorized this ROE for some MISO Transmission Owners, those orders do not have binding force of law in this proceeding.¹¹²

59. Joint Customers also take issue with Applicants' argument that this FPA section 205 proceeding is not the place to challenge the MISO ROE, and that a separate complaint under FPA section 206 is required. Joint Customers state that Applicants have filed proposed formula rates and seek approval under FPA section 205 for the proposed

¹⁰⁹ *Id.* at 58-60.

¹¹⁰ Applicants Feb. 22 Answer at 9-10 (citing *DATC Midwest*, 139 FERC ¶ 61,224, Docket No. ER12-2681-000).

¹¹¹ *Id.* at 10-11.

¹¹² Joint Customers Mar. 11 Answer at 6-8, Docket No. ER12-2681-000.

ROE, and that the Commission must provide reasoning and evidence to support its decision on the FPA section 205 filing, even in the absence of an FPA section 206 complaint challenging the current MISO ROE. Joint Customers point out that the Commission can institute its own FPA section 206 investigation of the current MISO ROE, but that the Commission cannot escape deciding the factual and legal issues created by the FPA section 205 filing and the protests in this proceeding. Therefore, Joint Customers contend that the Commission should reject Applicants' proposed ROE and order the use of the 8.91 percent ROE that Joint Customer's witness demonstrated is just and reasonable.¹¹³

v. Commission Determination

60. We accept the use of the MISO ROE for the Entergy Operating Companies and the New ITC Operating Companies. The MISO ROE was established for all MISO Transmission Owners.¹¹⁴ Accordingly, we find, consistent with Commission precedent, that if the New ITC Operating Companies become members of MISO, they are entitled to the then-current ROE that has been approved for use by all MISO Transmission Owners. Similarly, we also find that the Entergy Operating Companies, if they become Transmission Owners in MISO, are entitled, like all other MISO Transmission Owners, to the then-current ROE.

61. The Commission has previously approved a single base ROE for transmission-owning members of MISO, and has found that “[t]ransmission-owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement.”¹¹⁵ Although protestors have submitted an alternative DCF analysis for the MISO Transmission Owners and other evidence to challenge the MISO ROE, we find that protestors have not demonstrated why the New ITC Operating Companies, or the Entergy Operating Companies, should not be entitled to the same treatment as all other transmission-owning members of MISO.¹¹⁶

¹¹³ *Id.* at 8-9.

¹¹⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292 (2002), *reh'g denied*, 102 FERC ¶ 61,143 (2003), *order on remand*, 106 FERC ¶ 61,302 (2004), *aff'd in part, Pub. Serv. Co. of Ky. v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005), *order on remand*, 111 FERC ¶ 61,355 (2005).

¹¹⁵ *DATC Midwest*, 139 FERC ¶ 61,224 at P 83.

¹¹⁶ *See, e.g., Ameren*, 135 FERC ¶ 61,142 at P 94; *Midwest Indep. Trans. Sys. Operator, Inc.*, 100 FERC ¶ 61,292. *See also Michigan Electric Trans. Co. and Midwest*

(continued...)

62. We note protestors' reliance on a number of recent cases, in which the Commission has set the requested ROE for hearing. However, these cases are distinguishable. In *Martha Coakley* and *Grand Valley Rural*, the challenges to the ROE were made through FPA section 206 complaints.¹¹⁷ In contrast, the instant proceeding involves applications under FPA section 205 to use the currently effective Commission-approved MISO ROE in particular proposed Attachment O formula rates. As we note above, if protestors wish to change the MISO ROE, they must file a separate FPA section 206 complaint. *Kansas City* is also distinguishable. In that case, the applicant proposed a new formula rate under FPA section 205, including an ROE, to establish its transmission rates within SPP. Unlike the MISO Transmission Owners, the SPP transmission owners have not established a generally applicable ROE for use by all of the SPP transmission owners, and, therefore, individual SPP transmission owners must propose and support an ROE for their own use when they file to change their rates. We find that these cases are distinguishable from the facts in this proceeding.

b. Proposed 60 Percent Equity/40 Percent Debt Capital Structure

i. Proposal

63. Applicants argue that the Commission's previous approval of the use of an actual capital structure targeting 60 percent equity/40 percent debt for the Existing ITC Operating Companies¹¹⁸ supports approval of a comparable capital structure for the New ITC Operating Companies.¹¹⁹ Applicants state that the capital structure of the Existing ITC Operating Companies has supported their ability to access capital markets to support transmission investment even in times of extreme market volatility.¹²⁰ Applicants contend that the target capital structure results in a financial structure that properly

Indep. Trans. Sys. Operator, Inc., 113 FERC ¶ 61,343, at P 15 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006).

¹¹⁷ *Martha Coakley*, 139 FERC ¶ 61,090; *Grand Valley Rural*, 141 FERC ¶ 61,019.

¹¹⁸ The Existing ITC Operating Companies refers to ITC *Transmission*; Michigan Electric Transmission Company, LLC (Michigan Electric Transmission); ITC Midwest LLC (ITC Midwest); and ITC Great Plains, LLC.

¹¹⁹ Application at 51.

¹²⁰ *Id.* Application, Exhibit No. ITC-200: Brady Test. at 14.

balances the risks faced by shareholders of ITC Holdings and the impact of rates on the customers of the New ITC Operating Companies.¹²¹ Applicants further state that the New ITC Operating Companies, like the Existing ITC Operating Companies, will be dedicated exclusively to constructing, owning, operating, and maintaining transmission facilities.¹²² According to Applicants, these companies will have no other revenue-generating activities.¹²³ Applicants explain that a capital structure with less debt is appropriate for such companies that are singularly focused on transmission because they are less able to withstand disruption in their revenue streams (compared to companies with delivered revenue streams).¹²⁴ Applicants state that the 60 percent equity/40 percent debt capital structure also leads to lower fixed interest payments. Applicants further state that less debt in the capital structures of the ITC Holdings' operating subsidiaries preserves investor confidence and allows for more predictable and cost effective access to capital to support investment requirements.¹²⁵

ii. Protests

64. The NRG Companies argue that Applicants have not supported the proposed capital structure for the New ITC Operating Companies.¹²⁶ Joint Customers state that “[a]lthough ITC’s existing operating companies in MISO report capital structures that are close to the requested target capital structure for [the New ITC Operating Companies], the consolidated balance sheet of [ITC Holdings] has a capital structure that (conservatively stated) is just 36 percent equity and 64 percent debt.”¹²⁷ Joint Customers add that “during the last four years (2008-2011), [ITC Holdings’] capital structure has averaged 30 percent equity and 70 percent debt.”¹²⁸ The Arkansas Commission also

¹²¹ Application at 52.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Application, Exhibit No. ITC-200: Bready Test. at 14.

¹²⁶ NRG Companies Jan. 22 Protest of Application at 6, Docket No. ER12-2681-000.

¹²⁷ Joint Customers Jan. 22 Protest of Application at 21, Docket No. ER12-2681-000.

¹²⁸ *Id.*

challenge the proposed capital structure, asserting that the New ITC Operating Companies' common equity is projected to be in the range of 42.5 percent to 48.8 percent, which is significantly less than the proposed capital structure of 60 percent equity and 40 percent debt.¹²⁹

65. Joint Customers allege that the highly-leveraged capital structure at the holding-company level and the 60 percent equity/40 percent debt capital structure at the operating subsidiary level show that ITC Holdings has issued large sums of holding-company debt and pushed this debt down to its operating subsidiaries as equity investment, enabling it to earn an equity return on its holding-company level debt.¹³⁰ Joint Customers explain that the use of this practice is readily apparent from ITC Holdings' balance sheet.¹³¹ Joint Customers assert that it appears that a central purpose of the Entergy-ITC Transaction for ITC Holdings is to extend its double leveraging practice to the former Entergy transmission system.¹³² Joint Customers further state that the refinancing that is the subject of the Section 204 Applications is specifically intended to provide long-term financing that maintains the capital structure of the New ITC Operating Companies at the requested 60 percent equity/40 percent debt.¹³³

66. Joint Customers argue that the 60 percent equity/40 percent debt capital structure that Applicants represent as the basis for financing the New ITC Operating Companies is extremely misleading.¹³⁴ Joint Customers also argue that the ultimate stockholders in the marketplace, those who own the public shares of ITC Holdings, see a vastly different 30 percent equity/70 percent debt (several year average) capital structure.¹³⁵ According to Joint Customers, ITC Holdings has been able to maintain solid investment grade credit ratings despite this extremely low 30 percent equity ratio because the electric

¹²⁹ Arkansas Commission Jan. 22 Protest of Application at 2-3, Docket No. ER12-2681-000.

¹³⁰ Joint Customers Jan. 22 Protest of Application at 21-22, Docket No. ER12-2681-000.

¹³¹ *Id.* at 22.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 23.

¹³⁵ *Id.*

transmission business is the lowest-risk business in the electric utility industry.¹³⁶ Joint Customers argue that the Commission largely eliminates the transmission business risk by providing ITC Holdings' operating companies with automatically adjusting annual cost of service formula rates that guarantee the collection of all prudently incurred costs of providing service through after-the-fact true-up provisions.¹³⁷

67. Joint Customers allege that, since ITC Holdings is simply a vehicle for financing and owning the operating companies, the effect of its financing/ratemaking construct is for ITC Holdings to borrow money at what it projects in this proceeding to be 3.5 percent; convert those borrowed funds into contributed common equity capital at the operating company level by pushing the funds down to the operating companies; earn a guaranteed formula-based equity return on those funds (in this case, the 12.38 percent MISO ROE; pay the bondholders their 3.5 percent charge for having loaned the funds; and provide the remaining 8.88 percent that was collected from ratepayers directly to the stockholders of ITC Holdings.¹³⁸ The Louisiana Commission adds that the proposed hypothetical capital structure is unjust and unreasonable and does not reflect a reasonable reflection of the capitalization of the project.¹³⁹ The Louisiana Commission also argues that the capital structure is not representative of how the assets of ITC Holdings are actually capitalized.¹⁴⁰ The Louisiana Commission states that the assets of ITC Holdings are capitalized with far more debt capital than indicated in the requested ratemaking capital structure.¹⁴¹

68. Joint Customers state that they “do not find fault with [ITC Holdings’] financing strategy” because “the extremely low risk of the Commission-regulated, cost-of-service formula rate based transmission service can reasonably be financed with relatively low equity levels.”¹⁴² However, Joint Customers argue that ITC Holdings attempt to perpetuate a myth that its transmission businesses are financed with 60 percent equity,

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Louisiana Commission Jan. 22 Protest of Application at 11, Docket No. ER12-2681-000.

¹⁴⁰ *Id.* at 18.

¹⁴¹ *Id.*

¹⁴² *Id.* at 24.

when in fact, they are financed with approximately 30 percent equity, and that ITC Holdings continues to seek to have ratepayers charged an equity return on borrowed funds.¹⁴³ Joint Customers argue that the Commission should require that the real sources of the funds used to finance the rate bases of the operating companies and their actual costs be used in the transmission formula rates of the operating companies.¹⁴⁴ Joint Customers argue that the most transparent way to so would be to use ITC Holdings' capital structure and debt and equity cost rates rather than the fictitious capital structures of the individual operating companies.¹⁴⁵ The Louisiana Commission also asserts that the highly leveraged nature of ITC Holdings has negative implications for ratepayers because the parent company leverage substantially negates the debt cost savings that might otherwise be available due to any lowered financial risk.¹⁴⁶

69. Joint Customers acknowledge that the Commission's general practice is to use an operating company's actual capital structure (rather than the parent's capital structure) if the operating company issues its own debt without parent guarantees, has its own bond rating, and has a capital structure within the range approved by the Commission.¹⁴⁷ However, Joint Customers assert that there are ample grounds not to apply this approach to the New ITC Operating Companies because the rates of transmission-only companies are regulated exclusively by the Commission, and thus the Commission has freedom to devise rate policies that avoid creating a perverse incentive for double leveraging. They argue that the rates of the New ITC Operating Companies should be established by imputing the consolidated capital structure of their corporate parent, using the 60 percent/40 percent capital structure.¹⁴⁸

70. In addition, Joint Customers argue that the New ITC Operating Companies' proposed capital structure results in a phantom income tax effect. Specifically, they

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Louisiana Commission Jan. 22 Protest of Application at 18, Docket No. ER12-2681-000.

¹⁴⁷ Joint Customers Jan. 22 Protest of Application at 24 (citing *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084 (1998), Docket No. ER12-2681-000).

¹⁴⁸ *Id.* at 25.

assert that the proposed formula rate would determine the required income tax component of costs based on a formula that uses the composite state and federal income tax rate for each of the New ITC Operating Companies and the corresponding equity return for each company. Joint Customers contend that the resulting income tax component of the formula rate will be inflated because of the excessive ROE component of the cost of capital due to the 60 percent equity ratio. They maintain that ITC Holdings will pay income taxes on a consolidated holding company basis where its equity return will be proportionately much less due to its much lower equity ratio, which has averaged only 30 percent.¹⁴⁹

iii. Answer

71. In response to protestors, Applicants explain that the New ITC Operating Companies' proposed capital structure is consistent with Commission approval of similar capital structures for ITC Holdings' regulated subsidiaries in MISO and SPP, as well as for other transmission-owning members of MISO.¹⁵⁰ Applicants further explain that the proposed capital structure has enabled ITC Holdings' subsidiaries to access capital markets to support transmission investment even in times of extreme market volatility.¹⁵¹ Applicants note that the proposed capital structure properly balances the risks faced by ITC Holdings' shareholders with the impact on the transmission rates of its subsidiaries' customers.¹⁵² Applicants further note that a formula rate that utilizes solely debt financing would put undue risk on ITC Holdings' shareholders. They argue that, conversely, a formula rate that utilizes only equity financing would unfairly burden transmission customers by inflating the overall weighted average cost of capital.¹⁵³

72. Applicants also explain that, because the New ITC Operating Companies will be independent transmission companies dedicated exclusively to constructing, owning,

¹⁴⁹ *Id.* at 25-26.

¹⁵⁰ Applicants Feb. 22 Answer at 11 (citing Application, Exhibit No. ITC-200: Bready Test. at 13-14 (citing *Atlantic Grid Operations A LLC*, 135 FERC ¶ 61,144 (2011); *Tallgrass Transmission, LLC*, 132 FERC ¶ 61,114 (2010); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306 (2008); *Transource Missouri, LLC*, 141 FERC ¶ 61,075 (2012), Docket No. ER12-2681-000)).

¹⁵¹ *Id.* at 12.

¹⁵² *Id.*

¹⁵³ *Id.*

operating, and maintaining transmission infrastructure, they will be unable to diversify their business and thus will have no other revenue-generating activities.¹⁵⁴ For this reason, Applicants assert that a capital structure targeting 40 percent debt is appropriate because the New ITC Operating Companies will be less able to withstand disruptions in their revenue streams compared to companies with varied revenue sources.¹⁵⁵

73. Further, Applicants respond that a capital structure of 60 percent equity/40 percent debt leads to lower fixed interest payments.¹⁵⁶ Applicants further argue that a debt level of 40 percent in the capital structures of the New ITC Operating Companies will preserve investor confidence and allow for more predictable and cost-effective access to capital to support significant and sustained levels of investment requirements.¹⁵⁷

74. Applicants state that the proposed capital structure, coupled with the 12.38 percent MISO ROE and a forward-looking formula rate, will mitigate the risks faced by the New ITC Operating Companies, will provide the companies with steady and predictable cash flows, and will support their strong credit quality, which also will protect the interests of transmission customers.¹⁵⁸ Applicants also state that this rate construct (capital structure, ROE, and forward-looking formula rate) has enabled the other ITC Holdings operating subsidiaries to raise the capital necessary for substantial investment in transmission.¹⁵⁹

75. In response to the Louisiana Commission's argument that the proposed capital structure is hypothetical, Applicants contend that they are not proposing a hypothetical capital structure.¹⁶⁰ Rather, Applicants propose that the New ITC Operating Companies use an actual capital structure targeting 60 percent equity/40 percent debt, calculated on an annual 13-month average basis.¹⁶¹

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 12-13.

¹⁵⁹ *Id.* 13 (citing Application, Exhibit No. ITC-200: Bready Test. at 11-16).

¹⁶⁰ *Id.* at 13.

¹⁶¹ *Id.* at 13 (citing Opinion No. 414-A, 84 FERC ¶ 61,084; *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 49 (2007) (*ITC Midwest*); *ITC Holdings Corp.*, 102 FERC

76. Applicants also maintain that under well-established precedent, the Commission should disregard protestors' assertions regarding double leveraging.¹⁶² Applicants explain that the Commission uses a utility's own capital structure "if the utility issues its own debt without guarantees, has its own bond rating, and has a capital structure within the range of capital structures approved by the Commission."¹⁶³ Applicants assert that the Commission will only look to the parent's capital structure if these conditions are not met.¹⁶⁴ Applicants explain that the New ITC Operating Companies have demonstrated that each of these conditions is satisfied. Applicants state that each of the New ITC Operating Companies has filed for authorization to issue its own debt under section 204 of the FPA.¹⁶⁵ And that there will be no parent guarantees of debt issued by the New ITC Operating Companies.¹⁶⁶ Further, Applicants state that the Section 204 Applications explain that each of the New ITC Operating Companies will have their own bond ratings.¹⁶⁷ Applicants state that the request for use of an actual capital structure targeting 60 percent equity and 40 percent debt is fully within the range of capital structures approved by the Commission, and consistent with the Commission's approval of the use of an actual capital structure targeting 60 percent equity/40 percent debt for the Existing ITC Operating Companies.¹⁶⁸

¶ 61,182, at P 68 (2003); *Green Power Express, LP*, 127 FERC ¶ 61,031, at P 72 (2009), *order on reh'g*, 135 FERC ¶ 61,141 (2011)).

¹⁶² *Id.* at 13.

¹⁶³ *Id.* at 13-14 (citing *ITC Midwest*, 121 FERC ¶ 61,229 at P 49).

¹⁶⁴ *Id.* at 14.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 14 (citing *ITC Arkansas LLC, et al.* Application under Section 204 of the Federal Power Act at 14, Docket No. ES13-5-000 (filed Oct. 31, 2012), ("... it is expected that the bonds will receive ratings comparable to those of the currently outstanding first mortgage bonds of ITC's existing operating companies that are transmission-owning members of [MISO], which have received ratings of A from Standard & Poor's and A1 from Moody's")).

¹⁶⁸ *Id.* (citing *ITC Midwest*, 121 FERC ¶ 61,229 at P 49; *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 68 (2003); *Green Power Express*, 127 FERC ¶ 61,031 at P 72).

77. Lastly, Applicants dispute that there is any “phantom tax effect” resulting from the proposed capital structure.¹⁶⁹ They state that each of the New ITC Operating Companies will be responsible for its share of income taxes as part of ITC Holdings’ consolidated tax return.¹⁷⁰ Applicants argue that the recovery of income taxes by the New ITC Operating Companies is entirely consistent with Commission policy.¹⁷¹

iv. Commission Determination

78. We find the capital structure proposed by Applicants for the New ITC Operating Companies to be just and reasonable and consistent with Commission policy. As the parties to this proceeding recognize in their pleadings, in approving the capital structure to be used for ratemaking, the Commission has used the operating company’s actual capital structure where the operating company: (1) issues its own debt without guarantees; (2) has its own bond rating; and (3) has a capital structure within the range of capital structures approved by the Commission.¹⁷² This three-part test demonstrates separation of financial risks between operating and parent company. In this situation, use of the operating company’s market driven capital structure more accurately reflects the utility’s operational and financial risk than that of the holding company.¹⁷³ We find that the New ITC Operating Companies meet this three-part test, as have other ITC Holdings subsidiaries.¹⁷⁴ Therefore, we find that the proposal to use the actual capital structures of

¹⁶⁹ *Id.* at 15.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*(citing *Inquiry Regarding Income Tax Allowances*, Policy Statement on Income Tax Allowances, 111 FERC ¶ 61,139, *order dismissing reh’g request*, 112 FERC ¶ 61,203 (2005)).

¹⁷² *See, e.g., ITC Midwest, LLC*, 121 FERC ¶ 61,229; Opinion No. 414-A, 84 FERC ¶ 61,084 at 61,413-15.

¹⁷³ *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414, 80 FERC ¶ 61,157, at 61,664 (1997) (quoting *Kentucky West Virginia Gas Company*, 2 FERC ¶ 61,139, at 61,325 (1978) (“In our opinion a utility should be regulated on the basis of its being an independent entity; that is, a utility should be considered as nearly as possible on its own merits and not on those of its affiliates.”)).

¹⁷⁴ *See ITC Midwest*, 121 FERC ¶ 61,229 at P 49. *See also* Opinion No. 414-A, 84 FERC ¶ 61,084 at 61,413-15.

the New ITC Operating Companies, targeted at 60 percent equity and 40 percent debt, to be just and reasonable and consistent with Commission policy.¹⁷⁵

79. Protestors have not presented evidence or provided any basis to depart from our policy that the regulated utility's actual capital structure is used in establishing the overall rate of return so long as it meets the three-part test outlined above. Further, the Commission has addressed similar double leveraging arguments and found that the rate of return should not depend on who owns the facility, nor on how that owner, whether a holding company or individual stockholders, financed its investment.¹⁷⁶ Also, we find that the Louisiana Commission's arguments that the highly leveraged nature of ITC Holdings may negate the debt cost savings are unsubstantiated. We find that the proposed capital structure is just and reasonable, as explained above, and has been shown to contribute to achieving and maintaining credit ratings and accessing capital markets.¹⁷⁷

80. Lastly, we disagree with Joint Customers' arguments regarding an alleged phantom tax effect. The Commission has a policy for determining tax allowances on a stand-alone operating company basis.¹⁷⁸ Under our income tax policy, public utilities are entitled to receive an income tax allowance when they pass-through profits to their parent and the parent incurs an actual or potential income tax liability on the distributive income received. It is therefore appropriate to provide the New ITC Operating Companies with an income tax allowance because ITC Holdings will incur an income tax liability on the distributive income received from its subsidiaries.

¹⁷⁵ The Commission notes that it previously approved actual capital structures targeting 60 percent equity and 40 percent for other ITC Holdings' operating companies. *See, e.g., ITC Holdings Corp.*, 102 FERC ¶ 61,182 (2003) (approving requested capital structure for ITC Transmission), *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007) (approving requested capital structure for ITC Midwest LLC).

¹⁷⁶ *Williams Natural Gas Co.*, 80 FERC ¶ 61,158, at 61,682 (1997), *order on reh'g*, 86 FERC ¶ 61,232, at 61,858-59 (1999). We note that portions of those orders were remanded back to the Commission in *Missouri Public Service Commission v. Federal Energy Regulatory Commission*, 215 F.3d 1 (D.C. Cir. 2000), but the D.C. Circuit Court of Appeals did not disturb the Commission's decision with respect to double leveraging.

¹⁷⁷ *See ITC Midwest*, 121 FERC ¶ 61,229 at P 49; *Green Power Express, LP*, 127 FERC ¶ 61,031 at P 72.

¹⁷⁸ *SFPP, L.P.*, 134 FERC ¶ 61,121, at P 277 (2011) (citing *City of Charlottesville, VA v. FERC*, 774 F.2d 1205, at 1216 (D.C. Cir. 1985)).

c. **Forward Looking Formula Rate**

i. **Proposal**

81. Applicants seek approval to use a forward-looking Attachment O formula rate template with a true-up mechanism, similar to the forward-looking implementation of Attachment O that the Commission approved for the Existing ITC Operating Companies, as well as for American Transmission Company.¹⁷⁹ Applicants explain how the use of a forward looking test year, rather than a historical test year, eliminates recovery lag by better matching cost incurrence and cost collection.¹⁸⁰ Applicants explain that the forward looking formula rate is coupled with an annual true-up adjustment, calculated after the close of each rate year, which protects both customers and ITC Holdings by accounting for the difference between forecasted and actual results.¹⁸¹ According to Applicants, any difference, including interest, is then incorporated in subsequent years.¹⁸² Applicants contend that the true-up ensures that customers are not harmed if the actual revenue requirement is less than the forecast.¹⁸³ Conversely, Applicants assert that the true-up also protects ITC Holdings if the actual revenue requirement is more than the forecast.¹⁸⁴ Applicants explain that the formula rate and true-up operate to ensure that the New ITC Operating Companies recover only their revenue requirements.¹⁸⁵

82. Applicants further explain the implementation of the New ITC Operating Companies MISO Attachment O formula rate.¹⁸⁶ Applicants state that between the close of the Entergy-ITC Transaction, which, at the time of the filing of the Application, was

¹⁷⁹ Application at 52 (citing *American Transmission Co. LLC*, 97 FERC ¶ 61,139 (2001); *International Transmission Co.*, 116 FERC ¶ 61,036 (2006); *Michigan Electric Transmission Co., LLC*, 117 FERC ¶ 61,314 (2006); *ITC Midwest*, 121 FERC ¶ 61,229).

¹⁸⁰ Application at 53. *See also* Application, Exhibit No. ITC-200: Bready Test. at 13.

¹⁸¹ Application at 53.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* *See also* Application, Exhibit No. ITC-800: Wrenbeck Test. at 16-17.

contemplated to occur on June 30, 2013, and the Entergy Operating Companies' integration into MISO, which is contemplated to occur by the end of 2013, the rates to be charged in each of the four pricing zones will be determined based on what the relevant Entergy Operating Companies would have charged under the Entergy Operating Companies MISO Attachment O formula rates.¹⁸⁷ Applicants explain that, by June 1, 2013, Entergy will populate the Entergy Operating Companies MISO Attachment O formula rates using data from the 2012 FERC Forms No. 1 filed by the Entergy Operating Companies, and will post these templates on the MISO Open Access Same-Time Information System (OASIS). Applicants state that the resulting rate will be charged by the New ITC Operating Companies between closing of the Entergy-ITC Transaction and January 1, 2014. Applicants state that any differences between revenues billed under the Entergy Operating Companies MISO Attachment O formula rates and those that would have been billed under the New ITC Operating Companies MISO Attachment O formula rate will be trued-up in 2014 and collected in the New ITC Operating Companies MISO Attachment O formula rates beginning on January 1, 2015.¹⁸⁸

83. Additionally, Applicants explain how the true-up mechanism will operate.¹⁸⁹ Applicants explain that if the amounts collected by the New ITC Operating Companies exceed the amounts necessary to recover their actual revenue requirement, as calculated when actual FERC Form No. 1 data becomes available, the New ITC Operating Companies will refund any such amounts to their customers (with interest at the rate prescribed by the Commission's regulations) in their rates effective the following year.¹⁹⁰ Similarly, Applicants state that if the amounts collected by the New ITC Operating Companies are less than their actual revenue requirement, the companies would collect any such under recovery from customers (with interest capped at the New ITC Operating Companies' short term borrowing rates) in rates effective the following year.¹⁹¹ Applicants state that there is a deliberate asymmetry designed into the interest rate

¹⁸⁷ Application at 53.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 54. *See also* Application, Exhibit No. ITC-800: Wrenbeck Test. at 7-8.

¹⁹⁰ Application at 54.

¹⁹¹ *Id.*

calculations which encourages companies with forward-looking Attachment O formula rates to forecast inputs to the rates as accurately as possible.¹⁹²

ii. Protests

84. The Texas Commission argues that it is necessary to proceed in a cautious fashion that balances the need to provide rate recovery assurances to Applicants on the one hand without jeopardizing customer protections on the other hand. The Texas Commission asserts that instead of approving an untested and unpopulated forward-looking formula rate, the Commission should direct Applicants to first use the existing MISO Attachment O formula rate. The Texas Commission asserts that, after the Entergy-ITC Transaction closes, Applicants could come back to the Commission with a comprehensive and complete application for authorization to move to a forward-looking transmission rate formula.¹⁹³

85. The City of New Orleans states that Applicants' formula rate true-up mechanism requires additional explanation.¹⁹⁴ The City of New Orleans states that the true-up will preclude under- or over-recovery of its revenue requirements.¹⁹⁵ The City of New Orleans states that, according to Applicants, the proposed true-up compares the revenue "actually collected" to the results of the formula rate populated with actual annual data.¹⁹⁶ The City of New Orleans states that it is not clear from the Application how ITC Holdings determines the actual revenue collected.¹⁹⁷ The City of New Orleans states that if the true-up compares forecasted revenue requirements to actual revenue requirements determined based on FERC Form No. 1-filed data after the year ends, as Applicants suggest, then the true-up does not determine actual revenue collected, which could vary

¹⁹² *Id.*

¹⁹³ Texas Commission Jan. 22 Protest of Application at 11-12, Docket No. ER12-2681-000.

¹⁹⁴ City of New Orleans Jan. 22 Protest of Application at 17, Docket No. ER12-2681-000.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

depending on, among other things, whether the billing determinants are accurate compared to demand.¹⁹⁸

iii. Answer

86. Applicants explain that forward-looking formula rates are widely used within MISO¹⁹⁹ and have been approved for the Existing ITC Operating Companies.²⁰⁰ Applicants assert that the protests offer no substantive arguments for why a forward-looking application of the Attachment O formula rate should not be implemented at the outset by the New ITC Operating Companies, as it was for ITC Midwest.²⁰¹ Applicants further assert that nothing would be gained by requiring that the New ITC Operating Companies make the same filing again in the future.²⁰²

87. In response to the City of New Orleans' concerns about forecasted revenues, Applicants state that, as explained in the Wrenbeck Testimony, the true up calculation compares actual revenues *received* to the actual revenue requirement.²⁰³ Applicants further state that actual revenue received is the transmission service revenue received from MISO.²⁰⁴ According to Applicants, these revenues are determined when MISO charges the New ITC Operating Companies' forecasted network rate to the load in the New ITC Operating Companies' transmission pricing zones; the New ITC Operating Companies will receive the revenue from these charges.²⁰⁵ Applicants note that those revenues are then compared to the actual revenue requirement calculated using actual data from the FERC Form No. 1, with any resulting over-collection or under collection reflected in the true up adjustment.²⁰⁶ Applicants argue that ITC Holdings, however,

¹⁹⁸ *Id.*

¹⁹⁹ Applicants Feb. 22 Answer at 21, Docket No. ER12-2681-000.

²⁰⁰ *Id.* (citing *International Transmission Co.*, 116 FERC ¶ 61,036; *Michigan Elec. Transmission Co.*, 117 FERC ¶ 61,314; *ITC Midwest*, 121 FERC ¶ 61,229).

²⁰¹ *Id.* at 21.

²⁰² *Id.*

²⁰³ *Id.* at 24 (citing Application, Exhibit No. ITC-800: Wrenbeck Test. at 7-8).

²⁰⁴ *Id.* at 24.

²⁰⁵ *Id.* at 24-25.

²⁰⁶ *Id.* at 25.

does not determine actual revenues, as the City of New Orleans suggests, since actual revenues are determined from the charges and revenues received under the MISO Tariff.²⁰⁷

iv. Response

88. In its response, the City of New Orleans states that Applicants' additional explanation regarding the proposed true-up calculation used in the proposed formula rate satisfies its concerns if the commitments are memorialized in an order.²⁰⁸

v. Commission Determination

89. We accept Applicants' proposed use of a forward-looking rate for the New ITC Operating Companies. The Commission has approved similar forward-looking formula rates for other MISO Transmission Owners.²⁰⁹ The use of a forward-looking formula rate, along with the true-up mechanism, ensures that customers will ultimately only pay the cost of service they would have paid on a lagging basis.²¹⁰ Forward-looking formula rates, if properly designed and supported, as is the case here, are acceptable to avoid lag in cost recovery.²¹¹

d. Formula Rate Protocols

i. Proposal

90. Applicants explain that the proposed formula rate protocols have been carefully crafted to ensure transparency and open communication with regulators, customers, and all interested parties regarding the annual rate projection and true-up calculations.²¹²

²⁰⁷ *Id.*

²⁰⁸ City of New Orleans Mar. 11 Response at n.7, 10-11, Docket No. ER12-2681-000.

²⁰⁹ *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,147 (2012); *Otter Tail Power Co.*, 129 FERC ¶ 61,287 (2009).

²¹⁰ *International Transmission Co.*, 116 FERC ¶ 61,036 at P 19.

²¹¹ *See, e.g., MidAmerican Energy Company*, 137 FERC ¶ 61,250, at P 70 (2011); *Xcel Services, Inc.*, 121 FERC ¶ 61,284, at P 69 (2007); *Mich. Electric. Transmission Co.*, 117 FERC ¶ 61,314 at P 17.

²¹² Application at 59.

Applicants state that the proposed formula rate protocols were derived from those approved by the Commission for the ITC Midwest and Michigan Electric Transmission formula rates.²¹³ Applicants note that, in addition to incorporating requirements that information on formula rates be provided to retail regulators, as well as stakeholders, the proposed formula rate protocols codify the structured “Partners in Business” process employed by the Existing ITC Operating Companies.²¹⁴

91. Applicants state that the proposed formula rate protocols establish the dates by which the forward-looking rate and True-up Adjustment will be posted on MISO’s OASIS and made available to regulators and stakeholders.²¹⁵ Further, the proposed formula rate protocols set forth a formal process through which the formula rate projection and cost details will be explained to regulators, customers, and stakeholders.²¹⁶ Applicants explain that the proposed formula rate protocols promote transparency and broad participation by requiring that rate information be provided to regulators and stakeholders.²¹⁷ Applicants add that the outcome of the proceeding in Docket No. EL12-35-000 (MISO Protocols Investigation) will inform the Commission’s review of the proposed formula rate protocols proposed here.²¹⁸ Applicants state that they agree to modify the proposed formula rate protocols as may be necessary to comply with the Commission’s directives in the MISO Protocols Investigation.²¹⁹

²¹³ *Id.* at 59 (citing *ITC Midwest*, 121 FERC ¶ 61,229; *Michigan Electric Transmission Co., LLC*, 119 FERC ¶ 61,203 (2007)). *See also* Application, Exhibit No. ITC-800: Wrenbeck Test. at 12.

²¹⁴ *Id.* at 59. *See also* Application, Exhibit No. ITC-800: Wrenbeck Testimony at 13.

²¹⁵ *Id.* *See also* Application, Exhibit No. ITC-800: Wrenbeck Testimony at 12.

²¹⁶ *Id.* at 60.

²¹⁷ Application at 60.

²¹⁸ *Id.*

²¹⁹ *Id.*

ii. Protests

92. Several parties protest the proposed formula rate protocols. Joint Customers argue that the formula rate protocols proposed for the New ITC Operating Companies are not just and reasonable and should be rejected by the Commission.²²⁰ Southwestern requests that the Commission apply whatever final determinations it makes to the MISO formula rate protocols in the MISO Protocols Investigation to the formula rate protocols that Applicants propose in this proceeding.²²¹ Similarly, the Arkansas Commission requests certain changes to make the proposed formula rate protocols more transparent.

93. Joint Customers state, in response to the statement of Applicants agreeing to modify the proposed formula rate protocols to reflect the outcome of the MISO Protocols Investigation, that an offer to conform the formula rate protocols to the outcome of the MISO Protocols Investigation is insufficient.²²² Joint Customers assert that the Commission cannot base its decision on a moving target.²²³

94. Furthermore, the Joint Customers argue that, even if the Commission does make changes generically to the *pro forma* MISO Attachment O formula rate protocols, the New ITC Operating Companies are in a different situation. Joint Customers argue that, because the Entergy-ITC Transaction represents a change for Entergy transmission customers, there is a need for greater transparency here than for the existing MISO transmission-owning members.²²⁴

95. Generally, Joint Customers argue that the Applicants' proposed formula rate protocols: (1) lack an informational filing requirement;²²⁵ (2) fail to provide for

²²⁰ Joint Customers Jan. 22 Protest of Application at 70, Docket No. ER12-2681-000.

²²¹ Southwestern Electric Jan. 22 Protest of Application at 8, Docket No. ER12-2681-000.

²²² Joint Customers Jan. 22 Protest of Application at 71, Docket No. ER12-2681-000.

²²³ *Id.*

²²⁴ *Id.* Joint Customers assert that the Entergy protocols are superior to ITC Holdings' protocols because the Entergy protocols provide for an informational filing and discovery and challenge rights.

²²⁵ *Id.* at 73.

discovery rights;²²⁶ (3) lack adequate challenge procedures;²²⁷ and (4) lack other customer protections.²²⁸

96. Similarly, the Arkansas Commission raises three issues with the proposed formula rate protocols. First, that more time must be afforded for retail regulators, customers, and stakeholders to review the forward-looking transmission rates.²²⁹ Second, that each of the New ITC Operating Companies should also provide sufficiently-detailed information in their informational filings on August 1, to enable retail regulators, transmission service customers and other stakeholders to understand the basis for the annual update to the rates for transmission service.²³⁰ Third, that there should be sufficient time and opportunity to allow for several rounds of discovery by retail regulators, customers and other stakeholders regarding the annual updated rates and charges for transmission service, if needed.²³¹

iii. Answer

97. Applicants respond to protestors that the New ITC Operating Companies propose to follow practices comparable to or enhanced beyond those previously approved by the Commission for similarly-situated, independent transmission companies using forward looking formula rates.²³² Applicants state that the Commission has recognized that the proposed formula rate protocols of two ITC Holdings' operating companies in MISO, ITC Midwest and Michigan Electric Transmission, go beyond the MISO formula rate protocols and specifically allow state commission access to information concerning these companies' net projected revenue requirements.²³³ Applicants state that the proposed formula rate protocols proposed for the New ITC Operating Companies include these

²²⁶ *Id.* at 75.

²²⁷ *Id.* at 76.

²²⁸ *Id.* at 78.

²²⁹ Arkansas Commission Jan. 22 Protest of Application at 4, Docket No. ER12-2681-000.

²³⁰ *Id.*

²³¹ *Id.* at 5-6.

²³² Applicants Feb. 22 Answer at 22, Docket No. ER12-2681-000.

²³³ *Id.* at 23.

provisions and others beyond those in the existing MISO formula rate protocols. Applicants reiterate that, should the Commission find the proposed formula rate protocols to be inadequate, the New ITC Operating Companies have committed to use whatever proposed formula rate protocols the Commission directs in the MISO Protocols Investigation.²³⁴

iv. Response

98. In their response to Applicants, Joint Customers reiterate their argument that Applicants are in a different situation than other Transmission Owners in MISO.²³⁵ They note that the formula rate protocols proposed for the New ITC Operating Companies are not already filed rate schedules.²³⁶ Joint Customers emphasize that the proposed formula rate protocols lack any discovery rights and adequate challenge procedures, both of which are critical components of just and reasonable formula rate protocols.²³⁷ Joint Customers argue that a commitment to modify, possibly, the proposed formula rate protocols at some point in the future does not change the fact that what was filed is unjust and unreasonable.²³⁸

v. Commission Determination

99. We accept the ITC Applicants' and the Entergy Operating Companies' respective formula rate protocols, subject to modification to comply with the Commission's recently issued order in the MISO Protocols Investigation.²³⁹ We recognize Joint Customers' and retail regulators' concerns regarding their participation in the New ITC Operating Companies' transmission rate development process. However, we find that their concerns are adequately addressed by the MISO Protocols Investigation Order, as discussed below.

²³⁴ *Id.*

²³⁵ Joint Customers Mar. 11 Answer at 24, Docket No. ER12-2681-000.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Protocols Investigation Order).

100. In the MISO Protocols Investigation, the Commission found that the existing MISO Attachment O formula rate protocols were insufficient to ensure just and reasonable rates and, therefore, directed the MISO Transmission Owners to file revised formula rate protocols to address the inadequacies of the protocols. Many of the concerns raised in that proceeding align with the concerns raised by Joint Customers and retail regulators in this proceeding.

101. For example, with respect to participation, the Commission found that the MISO Attachment O formula rate protocols inappropriately limited the ability of certain interested parties to obtain information and participate in review processes and were, thus, unjust and unreasonable.²⁴⁰ The Commission directed MISO and the Transmission Owners to revise the protocols to include all interested parties in information exchange and review processes.²⁴¹

102. With respect to transparency, the Commission found that MISO's Attachment O formula rate protocols fail to provide sufficient information with respect to MISO Transmission Owners' costs and revenue requirements.²⁴² The Commission found that MISO's protocols for both historical and forward-looking formula rates must require Transmission Owners to post their revenue requirements, and relevant information, on both MISO's website and OASIS, and then hold an annual meeting open to all interested parties, where the Transmission Owners can explain and those parties can review and discuss the Transmission Owners' calculations.²⁴³ The Commission further required that MISO specify in its protocols an adequate time period for interested parties to review information following its posting on MISO's website and OASIS.²⁴⁴ The Commission also found that MISO must also include a requirement that the Transmission Owner make a good faith effort to respond to information requests within a set, reasonable period of time.²⁴⁵ The Commission required that MISO's formula rate protocols include a

²⁴⁰ *Id.* P 31.

²⁴¹ *Id.*

²⁴² *Id.* P 78.

²⁴³ *Id.* P 83.

²⁴⁴ *Id.* P 87.

²⁴⁵ *Id.*

requirement that Transmission Owners make annual informational filings of their formula rate updates with the Commission.²⁴⁶

103. Further, with respect to challenge procedures, the Commission found MISO's challenge procedures were insufficient and required interested parties to traverse an *ad hoc* system of procedures to raise issues with Transmission Owners' annual updates.²⁴⁷ The Commission found that the absence of structured informal and formal challenge procedures in the MISO Attachment O formula rate protocols renders the protocols unjust and unreasonable.²⁴⁸ The Commission found that interested parties must be afforded the ability to challenge a Transmission Owners' annual update and resolve related disputes through straightforward and defined procedures.²⁴⁹

104. Accordingly, we direct the ITC Applicants and the Entergy Operating Companies to file, within 60 days of the date of this order, formula rate protocols that comply with the MISO Protocols Investigation Order. We note that parties will be provided the opportunity to respond to this filing once it is submitted to the Commission.

e. Transmission Pricing Zones Proposal

i. Proposal

105. The Entergy Operating Companies propose to establish four transmission pricing zones for the Entergy footprint within MISO – one for Entergy Texas; one for Entergy Gulf States, Entergy Louisiana, and Entergy New Orleans; one for Entergy Arkansas; and one for Entergy Mississippi.²⁵⁰ The Entergy Operating Companies state that these four transmission pricing zones will be among the largest zones in MISO. The Entergy Operating Companies explain that the Arkansas and Mississippi Commissions have made separate Arkansas and Mississippi transmission pricing zones conditions to allowing Entergy Arkansas and Entergy Mississippi, respectively, to transfer functional control of their transmission facilities to MISO. The Entergy Operating Companies also note that

²⁴⁶ *Id.* P 89.

²⁴⁷ *Id.* P 111.

²⁴⁸ *Id.* P 115.

²⁴⁹ *Id.*

²⁵⁰ TPZ Filing at 18. ITC Holdings proposes to adopt, for the New ITC Operating Companies, the transmission pricing zones approved for the Entergy Operating Companies. Application at 25.

the City of New Orleans has expressed its view that “it will be in the best interest of New Orleans Council-jurisdiction ratepayers for [Entergy New Orleans] to have its own transmission pricing zone.”²⁵¹ The Entergy Operating Companies note that it will amend the TPZ Filing if discussions between the City of New Orleans, Entergy New Orleans, Entergy Louisiana, Entergy Gulf States, and the Louisiana Commission result in an agreement regarding Entergy New Orleans having its own transmission pricing zone.

ii. Protests

106. Joint Customers argue that, given that Entergy has had a single regional transmission rate structure since the early 1990s, Entergy has not justified its proposal to replace a single energy transmission rate with four Entergy Operating Company zonal rates. Joint Customers assert that, not only does a single rate reflect Entergy’s historical treatment, but entities within the Entergy region have relied on this rate, and Entergy has proposed no change in operations to justify this change. Additionally, Joint Customers argue that zonal pricing is “antithetical to the regional nature” of the Entergy system, single-zone pricing is consistent with Commission precedent, and multiple zone pricing is inconsistent with Entergy’s proposed treatment of storm cost recovery securitization expenses.²⁵²

107. With respect to the storm cost recovery securitization expenses, Joint Customers state that the Entergy Operating Companies propose to add these securitization costs to the formula rate templates and to have MISO collect a surcharge to continue securitization cost recovery from wholesale customers. Joint Customers contend, however, that the Entergy Operating Companies have failed to explain how the proposal divides the securitization costs among the Entergy Operating Companies. Further, Joint Customers assert state that Schedule 41, as proposed in the Application, appears to contemplate that all wholesale customers in the Midsouth transmission system²⁵³ will be charged unit cost or load ratio share of all of the securitization costs previously accepted

²⁵¹ TPZ Filing at 19.

²⁵² Joint Customers Mar. 22 Protest of TPZ Filing at 35-39, Docket No. ER13-948-000. Specifically, Joint Customers are concerned that the proposal to use four pricing zones is inconsistent with Commission-approved settlement agreements that establish how the securitized storm costs will be recovered across the Entergy transmission system.

²⁵³ Midsouth refers to the area of MISO that will be served by the Entergy transmission facilities.

by the Commission.²⁵⁴ Joint Customers complain that the proposed treatment of securitization costs makes no effort to match ongoing responsibility for securitization costs with the benefits of the associated plant, as customers in any of the four pricing zones may be subject to the securitization costs surcharge in amounts that exceed the portion of the plant funded by securitization bonds attributed to that zone.²⁵⁵

108. Joint Customers also point to the requirement in Order No. 888 for holding company systems, such as Entergy, to provide transmission service under a single-system wide tariff across the entire holding company system at a single, system-wide transmission rate.²⁵⁶ They argue that, consistent with Order No. 888, the Commission, in a case involving PJM Interconnection, LLC (PJM), has previously rejected a proposal to create separately priced zones for each of a holding company's operating companies under the PJM Open Access Transmission Tariff.²⁵⁷ Joint Customers rely on the Commission's determination that the participation of the utility's operating companies in PJM did not justify separate zonal rates, and the Commission's reaffirmation that long-affiliated and centrally planned entities must use a single system-wide rate.²⁵⁸ Joint

²⁵⁴ Entergy originally proposed rate revisions in Docket Nos. ER10-984-000 and ER11-3274-000 to account for storm damage from Hurricanes Katrina and Rita and the 2009 Arkansas ice storm. The Commission accepted the parties settlement agreements in *Entergy Servs., Inc.*, 133 FERC ¶ 61,189 (2010) and *Entergy Servs., Inc.*, 137 FERC ¶ 61,175 (2011), respectively.

²⁵⁵ Joint Customers Mar. 22 Protest of TPZ Filing at 39, Docket No. ER13-948-000.

²⁵⁶ Joint Customers Jan. 22 Protest of Application at 44-45 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,728-29 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)), Docket No. ER12-2681-000.

²⁵⁷ *Pennsylvania- New Jersey- Maryland Interconnection*, 81 FERC ¶ 61,257, at 62,249 (1997) (PJM Zonal Rate Case), *aff'd in relevant part*, 92 FERC ¶ 61,282, at 61,951-52 (2000), *vacated in part*.

²⁵⁸ PJM Zonal Rate Case, 92 FERC ¶ 61,282 at 61,951-52.

Customers further argue that the existing single system-wide rate reflects that the Entergy Operating Companies have operated under Service Schedule MSS-2 of the Entergy System Agreement, which equalizes among the Entergy Operating Companies any imbalance of costs associated with the construction and operation of transmission facilities for the mutual benefit of all of the Entergy Operating Companies.²⁵⁹

109. Like Joint Customers, Lafayette Utilities and LEPA also argue that the Commission should prohibit the division of the Entergy transmission system into four state-based zones because the wholesale customers that use the Entergy transmission system have supported and paid for that system for decades.²⁶⁰ Lafayette Utilities and LEPA point out similarities between the previous Entergy proposal in which it proposed a tariff for each operating company with a separate rate for each zone and the TPZ Filing.²⁶¹ According to Lafayette Utilities and LEPA, the Commission rejected that proposal, stating that Entergy operated its system on an integrated basis and made sales at market-based rates on a system basis.²⁶² Lafayette Utilities and LEPA state that the Commission noted that Entergy had a pool agreement that recognized that the transmission system is planned and operated on a single system basis and equalizes the transmission cost per kW to reflect this fact. Lafayette Utilities and LEPA explain that, based on these findings, the Commission found no reason to require customers to negotiate separately with up to four different operating companies or to pay different transmission charges based on the particular Entergy company designated by Entergy as the contract path. As Lafayette Utilities and LEPA observe, the Commission directed Entergy to consolidate its tariffs into one and to adopt a single rate reflecting equalized costs under its pool agreement.²⁶³

²⁵⁹ Joint Customers Jan. 22 Protest of TPZ Filing at 42-43, Docket No. ER12-2681-000.

²⁶⁰ Lafayette Utilities and LEPA Protest of TPZ Filing at 8-14, Docket No. ER13-948-000.

²⁶¹ The four transmission pricing zones proposed by the Entergy Operating Companies in the TPZ Filing are based on state boundaries rather than operating company service area.

²⁶² *Entergy Services, Inc.*, 58 FERC ¶ 61,234, at 61,772, *order on reh'g*, 60 FERC ¶ 61,168 (1992), *rev'd and remanded on other grounds*, *Cajun Electric Power Cooperative, Inc. v. FERC*, 28 F.3d 173 (D.C. Cir. 1994).

²⁶³ *Id.*

110. Additionally, Lafayette Utilities and LEPA maintain that, even though the TPZ Filing proposes state-based zones rather than operating company zones, the Commission has not favored state-based zones either. As an example, they cite the Commission's rejection of Southern Company's (Southern) proposal to divide its transmission system into an eastern pricing zone (comprised of Georgia Power and Savannah Electric) and a western pricing zone (comprised of Alabama Power, Gulf Power, and Mississippi Power).²⁶⁴ In that case, the Commission found Southern's proposal deficient, stating that, among other things, Southern did "not explain why a geographic zone should reflect political or corporate subdivisions rather than electrical characteristics (*e.g.*, data showing that power flows in one zone do not affect flows in the other zone)."²⁶⁵

111. In its protest, the City of New Orleans asks the Commission "to direct Entergy to implement an [Entergy New Orleans]-specific [transmission pricing zone] with a license plate rate irrespective of whether [Entergy New Orleans] joins MISO as a Transmission Owner or [ITC Holdings] owns the [Entergy New Orleans] transmission assets when Entergy integrates with MISO."²⁶⁶ The City of New Orleans argues that an Entergy New Orleans-only zone is consistent with the Commission's precedent on license plate pricing and RTO practice. The City of New Orleans also asserts that Entergy has offered no justification to support different transmission pricing zone configurations dependent upon who owns the Entergy transmission system. The City of New Orleans argues that Entergy's proposal is unduly discriminatory to Entergy New Orleans, and emphasizes its commitment to secure a separate transmission pricing zone for Entergy New Orleans. The City of New Orleans maintains that Entergy's failure to propose a separate transmission pricing zone for Entergy New Orleans places the Entergy-ITC Transaction at risk, as the City of New Orleans has the ability to grant or decline to approve the transfer of Entergy New Orleans' transmission assets to a third party.²⁶⁷

²⁶⁴ *Southern Co. Services, Inc.*, 71 FERC ¶ 61,392, at 62,536 (1995).

²⁶⁵ *Id.* at 62,534. Southern later withdrew its proposal for zonal rates and proposed a single system wide rate. Lafayette Utilities and LEPA Jan. 22 Protest of Application at 8, Docket No. ER12-2681-000.

²⁶⁶ City of New Orleans Mar. 22 Protest of TPZ Filing at 4, Docket No. ER13-948-000.

²⁶⁷ City of New Orleans Mar. 22 Protest of TPZ Filing at 10, Docket No. ER13-948-000.

112. The Louisiana Commission states that the transmission pricing zone issues and others are subject to approval by the Louisiana Commission.²⁶⁸ The Louisiana Commission also states that, at this time, it does not support a separate pricing zone for Entergy New Orleans.²⁶⁹

iii. Answers

113. In their response to protestors, the Entergy Operating Companies maintain that the use of separate transmission pricing zones is consistent with MISO's and PJM's structures, and that other similarly situated MISO transmission-owning members with multiple operating companies under a holding company structure have established transmission pricing zones by state. The Entergy Operating Companies contend that customers will benefit from the Entergy Operating Companies' move to MISO due to the elimination of rate pancaking between MISO and the Entergy Operating Companies.²⁷⁰ The Entergy Operating Companies also assert that historical treatment under the Entergy OATT has no bearing on transmission pricing zones under MISO Attachment O. In response to Joint Customers and Lafayette Utilities and LEPA, the Entergy Operating Companies point out that one of the proposed company-specific amendments to the MISO Attachment O formula rate templates includes language to honor existing settlement agreements to ensure that wholesale transmission customers will bear their share of the storm restoration costs.²⁷¹ The Entergy Operating Companies and MISO also clarify that securitization costs will be recovered in the zone where the storm costs occurred.²⁷² Additionally, the Entergy Operating Companies explain that, during the annual MISO Attachment O rate update process, Entergy Services will prepare a work paper showing the amount of the storm securitization charged by each affected Entergy Operating Company.²⁷³

²⁶⁸ Louisiana Commission Mar. 22 Protest of TPZ Filing at 2, Docket No. ER13-948-000.

²⁶⁹ *Id.* at 5.

²⁷⁰ Entergy Operating Companies Apr. 9 Answer at 14, Docket No. ER13-948-000.

²⁷¹ *Id.* at 16.

²⁷² *Id.*

²⁷³ *Id.* at n.13.

114. The Entergy Operating Companies reiterate that they do not oppose a separate Entergy New Orleans pricing zone and that Entergy New Orleans and Entergy Louisiana commit to continue to facilitate discussions among themselves, the City of New Orleans, Entergy Gulf States Louisiana, and the Louisiana Commission about the issue.²⁷⁴

115. The City of New Orleans argues that there is no rationale for system-wide pricing across the Entergy transmission system after Entergy joins MISO. According to the City of New Orleans, protestors ignore the significantly changed circumstances that MISO membership brings, particularly a uniform process for recovering an operating company's annual transmission revenue requirement based on the operating company specific license plate rates.²⁷⁵ The City of New Orleans states that the protestors' proposals to establish an Entergy transmission pricing zone conflicts with the Commission-approved practice of using utility-specific transmission pricing zones with license plate rates in MISO and the majority of other RTOs.²⁷⁶ The City of New Orleans argues that multiple transmission pricing zones, including an Entergy New Orleans transmission pricing zone, will not violate storm recovery settlements or negatively impact future disaster mitigation because there is no apparent connection between how the transmission pricing zones are designed and the mitigation of the costs of natural disasters for customers.²⁷⁷

116. The Arkansas Commission also argues that the Commission should approve the proposed four transmission pricing zones for the Entergy Operating Companies. The Arkansas Commission states that, notwithstanding the Commission's authority over the Entergy-ITC Transaction under FPA section 203, the Commission should recognize the authority of state regulators to consider the impacts of such proposed transactions. The Arkansas Commission notes that, in its approval of Entergy Arkansas becoming a member of MISO, the Arkansas Commission required that Entergy Arkansas have a separate transmission pricing zone. The Arkansas Commission states that Entergy Arkansas agreed to this condition, subject to acceptance by MISO and the Commission. The Arkansas Commission states that ITC Holdings also committed to maintain a separate transmission pricing zone for Entergy Arkansas if the Commission were to accept Entergy's proposal to create an Entergy Arkansas transmission pricing zone. The Arkansas Commission argues that the Commission should not ignore the conditions

²⁷⁴ *Id.* at 17.

²⁷⁵ City of New Orleans Apr. 8 Response at 3-5, Docket No. ER13-948-000.

²⁷⁶ *Id.* at 5-7.

²⁷⁷ *Id.* at 12.

imposed by state regulators. The Arkansas Commission asserts that the Commission should not upset the conditions and commitments established in Entergy Arkansas's proceeding before the Arkansas Commission regarding that company's integration into MISO, particularly where the conditions imposed will not have an adverse impact on rates, regulation, or competition as contemplated by FPA section 203.²⁷⁸

117. The Arkansas Commission states that the Commission should reject the arguments of Lafayette Utilities and LEPA, and Joint Customers opposing Entergy's transmission pricing zone proposal. The Arkansas Commission states that the historic operations of the Entergy transmission system do not preclude the creation of separate transmission pricing zones at this time. The Arkansas Commission argues that given the changed circumstances of the Entergy transmission system, including the withdrawal of Entergy Arkansas and Entergy Mississippi from the Entergy System Agreement, it is appropriate to revisit the scope of transmission pricing zones. The Arkansas Commission notes that the Commission has approved separate pricing zones for affiliated operating companies in MISO, PJM, and the New York Independent System Operator, Inc.²⁷⁹

118. The City of New Orleans also responds to the protests of Lafayette Utilities and LEPA, and Joint Customers to the Application, and argue in support of the transmission pricing zones proposal in the TPZ Filing.²⁸⁰ The City of New Orleans counters Lafayette Utilities and LEPA's arguments regarding the Commission's rejection of Entergy's previous proposal to create transmission pricing zones, pointing out that the order pre-dates Commission orders approving utility specific license plate rates in MISO and PJM. The City of New Orleans asserts that service across the entire MISO system is provided under a single MISO Tariff, and that requests for interconnection and determinations regarding whether a related system upgrade is required to accommodate a new interconnection occur under a single MISO Tariff. Therefore, the City of New Orleans contends that the Commission's concerns in the previous Entergy case do not exist in a

²⁷⁸ Arkansas Commission Apr. 8 Answer at 6-8, Docket Nos. ER13-948-000 and ER12-2681-000.

²⁷⁹ Arkansas Commission Apr. 8 Answer at 8-9, Docket Nos. ER13-948-00 and ER12-2681-000.

²⁸⁰ The Arkansas Commission states that if the Commission upsets Entergy Arkansas' commitment to an Entergy Arkansas transmission pricing zone by rejecting the transmission pricing zones proposal in the TPZ Filing, "the Arkansas Commission would need to revisit, reconsider, and perhaps rescind its conditional approval of [Entergy Arkansas'] integration into MISO." Arkansas Commission Apr. 8 Answer at 6, Docket Nos. ER13-948-000 and ER12-2681-000.

regional transmission organization.²⁸¹ Likewise, the City of New Orleans argues that the Commission's order rejecting Southern's proposal for two transmission pricing zones is outdated and that although Lafayette Utilities and LEPA characterize the order as finding that a proposal for zonal rates must overcome a heavy burden, license plate rates have become the norm in the decades since the order was issued.²⁸²

119. The City of New Orleans also argues that Lafayette Utilities and LEPA's, and Joint Customers' arguments that Entergy has historically used a single system-wide rate no longer applies because MISO, not Entergy or ITC Holdings, will be responsible for dispatching Entergy's transmission and generation system in concert with the rest of MISO. The City of New Orleans cites the elimination of rate pancaking under MISO's rate structure and the pending departures of Entergy Arkansas, Entergy Mississippi, and Entergy Texas from the Entergy System Agreement as evidence that Entergy will be operating under a new paradigm. Based on these changes, the City of New Orleans concludes that there is no reason to treat the Entergy/ITC Holdings transmission system differently from the transmission systems of other MISO Transmission Owners.²⁸³ The Arkansas Commission also points out that the Commission has made clear that despite the history of the Entergy System Agreement and operations thereunder, there is no basis to support a "request for...involuntary continuation of the existing integrated system arrangements, or the virtual equivalent, in perpetuity."²⁸⁴

120. The City of New Orleans also responds to the argument that a single system rate has mitigated the adverse impacts of natural disasters by pointing out that under MISO, the Entergy Operating Companies and the New ITC Operating Companies will be part of a much larger system and will have access to support by all of MISO's members during emergencies.²⁸⁵ With respect to operating company-specific transmission pricing zones, the City of New Orleans further argues that Entergy has committed to establish an Entergy Arkansas-only transmission pricing zone and an Entergy New Orleans-only

²⁸¹ City of New Orleans Feb. 6 Response at 7-8, Docket No. ER12-2681-000.

²⁸² City of New Orleans Feb. 6 Response at 8-9, Docket No. ER12-2681-000.

²⁸³ City of New Orleans Feb. 6 Response at 3-4, Docket No. ER12-2681-000.

²⁸⁴ Arkansas Commission Feb. 6 Answer at 8 (quoting *Louisiana Public Service Commission v. Entergy Corp.*, 119 FERC ¶ 61,224, at P 47 (2007) (denying Louisiana Commission's complaint regarding Entergy Arkansas's withdrawal from the Entergy System Agreement), Docket No. ER12-2681-000).

²⁸⁵ Arkansas Commission Feb. 6 Answer at 10, Docket No. ER12-2681-000.

transmission pricing zone. The City of New Orleans contends that these commitments are consistent with the Commission's policies regarding utility-specific license-plate rates and the practices prevalent in MISO, PJM and other RTOs.²⁸⁶

121. Lastly, the City of New Orleans argues that Lafayette Utilities and LEPA, and Joint Customers rely on old cases that pre-date significant changes in the RTO and regulatory landscape since the early 1990s, such as the PJM Zonal Rate Case.²⁸⁷ Additionally, the City of New Orleans asserts that the single tariff and system-wide rate requirement for holding companies in Order No. 888 reflects the world under the Public Utility Holding Company Act of 1935, which required a public utility holding company to operate its affiliated companies as a single system. The City of New Orleans contends that if the requirement for a single-system wide rate across affiliated companies still existed, then none of the companies identified by the City of New Orleans would be permitted to have utility-specific transmission pricing zones for their affiliated companies.²⁸⁸

iv. Commission Determination

122. We accept the Entergy Operating Companies' proposed transmission pricing zones, as well as ITC Holdings' proposal to adopt the zones approved for the Entergy Operating Companies. Our acceptance is based on the fact that, contrary to Joint Customers assertion that Entergy has proposed no change in operations to justify this change, the integration of the Entergy Operating Companies into MISO will significantly alter the way service over the Entergy system is provided and priced. As explained in more detail below, operations over Entergy's transmission assets will change dramatically as MISO will be the entity administering transmission service over Entergy's transmission system. Accordingly, we find that the proposal is consistent with the use of license plate pricing in MISO.

123. While the Entergy Operating Companies have provided transmission service on their system at a single system average rate under the Entergy OATT, upon the Entergy Operating Companies' proposed integration into MISO, service will be provided on a

²⁸⁶ *Id.* at 10-11.

²⁸⁷ City of New Orleans Feb. 6 Response at 6 (citing PJM Zonal Rate Case, 81 FERC ¶ 61,257 at 62,249, Docket No. ER12-2681-000).

²⁸⁸ City of New Orleans Feb. 6 Response at 6-7, Docket No. ER12-2681-000. *See also* City of New Orleans Jan. 22 Protest of Application at 4-6, Docket No. ER12-2681-000.

regional basis over the entire MISO system and priced using MISO's license plate zonal rate design. Under the license plate zonal rate design, customers pay a single non-pancaked rate based on the cost of existing facilities and new local facilities in their pricing zone, plus the cost of new regional facilities allocated to that zone or shared regionally, and have access to the entire MISO system. In other words, the Entergy Operating Companies are joining an RTO that has received approval to implement license plate pricing and the TPZ Filing would implement that license plate pricing upon integration. This change in the way that service is provided and priced over Entergy's transmission system supports the use of multiple transmission pricing zones, which allows Entergy to adopt the current zonal structure in MISO. Additionally, the integration of the Entergy Operating Companies into MISO is a unique situation of a large, multi-operating company system that covers multiple states, rather than a single company. Moreover, the zonal configuration only applies to the costs of existing facilities and new local reliability facilities, and other facilities will be subject to broader regional cost sharing under the MISO Tariff.

124. We note that of the several cited cases that allegedly require the continuation of a single system rate, some pre-date the formation of ISOs and RTOs with license plate pricing.²⁸⁹ Further, we note that the PJM Zonal Rate Case cited by Joint Customers was issued at the inception of license plate pricing under a regional transmission tariff, before the Commission gained experience with implementation of license plate pricing in PJM and other ISOs and RTOs. Since the PJM Zonal Rate Case, the Commission has become more flexible with respect to license plate pricing, and has accepted its continued use for existing and new local facilities on a long-term basis, and accepted reconfigurations of license plate pricing zones that deviate from historical configurations.²⁹⁰

125. Moreover, we disagree with protestors that the four transmission pricing zones would be inconsistent with or frustrate storm recovery settlements accepted by the Commission. The protestors' primary concern relates to how the securitized costs will be

²⁸⁹ See, e.g., *Entergy Services, Inc.*, 58 FERC ¶ 61,234 at 61,769; *Southern Co. Services, Inc.*, 71 FERC ¶ 61,392 at 62,536.

²⁹⁰ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081 (2008) (MISO License Plate Order); *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082, *order denying reh'g*, 124 FERC ¶ 61,033 (2008); *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061 (2001), *order on compliance filing*, 101 FERC ¶ 61,345 (2002), *order on reh'g*, 104 FERC ¶ 61,124 (2003); *Ameren Corp.*, 131 FERC ¶ 61,240, at PP 11, 20 (2010).

divided among the Entergy Operating Companies. However, the Entergy Operating Companies explain that they will honor the existing settlement agreements.²⁹¹ As Entergy and MISO further explain, the securitization costs will be recovered in the zone where the storms occurred.²⁹² Accordingly, we find the Entergy Operating Companies' proposal to recover securitization costs in the zone where the storms occurred is consistent with their proposal to establish transmission pricing zones for the Entergy Operating Companies' transmission system.

126. Finally, with respect to arguments that the equalization of transmission costs among the Entergy Operating Companies under Service Schedule MSS-2 of the Entergy System Agreement justifies continuation of a single system rate, we find that the zonal rate proposal is not incompatible with cost allocations under the Entergy System Agreement – the implementation of the license plate zonal rate design under the MISO Tariff is separate and apart from how the Entergy Operating Companies allocate their costs among themselves under their long-term power pooling agreement.

127. Therefore, we find the Entergy Operating Companies' transmission pricing zones proposal to be just and reasonable. We recognize that additional negotiations are ongoing with respect to the transmission pricing zones but are not properly before the Commission at this time. Accordingly, our acceptance of the Entergy Operating Companies' transmission pricing zone proposal is without prejudice to Entergy making an additional filing seeking to establish a fifth zone for the Entergy New Orleans service territory.

f. Parallel Loop Flow Issues

128. Several parties argue that parallel loop flow issues will occur as a result of the integration of Entergy's transmission facilities into MISO. Specifically, SPP and the SPP Transmission Owners,²⁹³ Associated Electric Cooperative,²⁹⁴ TVA,²⁹⁵ and

²⁹¹ TPZ Filing at 15.

²⁹² Entergy Operating Companies Apr. 9 Answer at 16, Docket No. ER13-948-000.

²⁹³ *See, e.g.*, SPP Jan. 22 Comments on Application, Docket No. ER12-2681-000.

²⁹⁴ *See, e.g.*, Associated Electric Cooperative Jan. 22 Protest of Application at 13-15.

²⁹⁵ *See, e.g.*, TVA Jan. 22 Protest of Application, Docket No. ER12-2681-000.

Exelon²⁹⁶ express concerns that the integration of the Entergy transmission facilities into MISO will cause loop flows in SPP, the Associated Electric Cooperative transmission system, the TVA transmission system, and PJM, respectively. As explained further below, we find that existing arrangements are in place that address power flows between MISO and certain neighboring regions. However, we also note that parties are currently negotiating potential amendments to existing joint operating agreements (JOAs) or entirely new JOAs, and find that concerns regarding parallel loop flow issues are more appropriately addressed through those negotiations. Nonetheless, the Commission acknowledges the concerns raised by MISO's neighboring regions. Accordingly, we will require MISO to file an informational report, on or by November 1, 2013, providing the Commission with an update on the status of the negotiations to address those concerns.

129. Regarding the consideration of parallel loop flow issues in the JOAs between neighboring regions, we note that MISO and SPP are parties to a JOA (MISO-SPP JOA), which governs interregional coordination between them.²⁹⁷ We also note that the Commission has recognized that the transfer of control of the Entergy transmission facilities to MISO necessitates the renegotiation of the MISO-SPP JOA.²⁹⁸ Additionally, MISO and PJM are parties to a JOA, which also governs the interregional coordination between them. Under the Congestion Management Process incorporated into these JOAs,²⁹⁹ historic allocations are used to set limits of market flows and those historic allocations are honored when selling firm transmission service.

²⁹⁶ See, e.g., Exelon Jan. 30 Comments on Application, Docket No. ER12-2681-000.

²⁹⁷ SPP and MISO entered into the MISO-SPP JOA as part of SPP's application to become an RTO. See *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 63 (2004) (requiring SPP to have on file with the Commission a seams agreement with MISO and to participate in the Joint and Common Market with MISO and PJM).

²⁹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011) (MISO-SPP JOA Order), *reh'g denied*, 138 FERC ¶ 61,055 (2012) (MISO-SPP JOA Rehearing Order).

²⁹⁹ The Congestion Management Process is a standardized document resulting from discussions among multiple operating entities to resolve how different congestion management methodologies (i.e., market-based and traditional transmission loading relief measures) interact to ensure system reliability. The Congestion Management Process requires, among other things, the identification of impacted flowgates, allocates the capacity of those flowgates based on historic use to serve native load, and requires each entity to respect those allocations in the dispatch of their systems.

130. Also, it appears that TVA is considered a Reciprocal Entity under the MISO-PJM JOA.³⁰⁰ As mentioned in a previous Commission order on the MISO-SPP JOA, TVA does not have a reciprocal coordination agreement with MISO or SPP, but MISO, SPP, and TVA respect each other's flowgate allocations.³⁰¹ Thus, although MISO and TVA do not have a bilateral agreement that incorporates the Congestion Management Process, it appears that MISO is nonetheless required to treat TVA as a Reciprocal Entity under the MISO-PJM Congestion Management Process and therefore treat its flowgates with TVA as reciprocal coordinated flowgates. Finally, MISO offers seams service that incorporates the Congestion Management Process, under Module F of its Tariff, to all of its neighboring utilities on a non-discriminatory basis.

i. Protests

131. Several protestors raise concerns about the Entergy-ITC Transaction resulting in loop flows that will negatively affect adjacent transmission facilities, affecting the transmission provider's ability to serve its load.³⁰² SPP Transmission Owners argue that the Application and related filings, read in conjunction with the Commission's rulings on the MISO-SPP JOA, suggest that absent revisions to the JOA, MISO will be able to use the SPP transmission system to perform energy transfers between MISO and Entergy

³⁰⁰ See TVA Apr. 29 Motion to Strike at n.5, Docket No. ER13-948-000. In its motion, TVA explains that it is important to note that MISO terminated the Joint Reliability Coordination Agreement with TVA after TVA refused to accept a revisionist interpretation of a key provision. As a result, there is no bilateral agreement between TVA and MISO regarding the Congestion Management Process, and MISO must treat TVA as a "Reciprocal Entity" due to its JOA with PJM. TVA adds that, should the MISO-PJM JOA be terminated, superseded, or amended, or should TVA's Joint Reliability Coordination Agreement with PJM be terminated, superseded, or amended, that indirect link to treat TVA as a Reciprocal Entity under the Congestion Management Process could be severed. A Reciprocal Entity is defined as an entity that coordinates the future-looking management of flowgate capability in accordance with a reciprocal agreement as described in the Congestion Management Process. PJM and MISO Joint Operating Agreement, § 2.2.55.

³⁰¹ *Southwest Power Pool, Inc.*, 140 FERC ¶ 61,199, at PP 13, 42 (2012) (the Commission explained that while TVA does not have a reciprocal coordination agreement with MISO or SPP, MISO, SPP, and TVA must respect each other's flowgate allocations).

³⁰² See, e.g., TVA, Associated Electric Cooperative, SPP, Kansas City Power & Light, the Kansas Commission, Exelon, and SPP Transmission Owners.

without any compensation for this use of the SPP transmission system.³⁰³ SPP Transmission Owners assert that allowing Entergy to join MISO without resolving loop flow issues would exacerbate the negative financial impacts already suffered by the SPP Transmission Owners as a result of existing uncompensated loop flows. SPP Transmission Owners further contend that the need to identify the “contract path” available for MISO’s use to accommodate power flows to and from Entergy is critical.³⁰⁴

132. SPP asserts that without revisions, the JOA’s “firm flow entitlement” provisions will limit the firm transfers between MISO and Entergy and that the Commission should find that during periods of congestion, MISO must remove from SPP’s transmission system any Entergy transactions causing power flows to exceed the “Historical Firm Flow” entitlement established by the JOA.³⁰⁵ Additionally, SPP contends that the Commission should either limit the extent of the hourly MISO-Entergy energy transfers to the interconnection capability between MISO and Entergy of, at most, 1,000 megawatts (MW) or condition the transfer on MISO constructing additional direct interconnection capacity between the systems.³⁰⁶

133. SPP Transmission Owners explain that MISO would integrate Entergy through a single 1,000 MW interconnection at the southern tip of the existing MISO system, connecting to the northern tip of Entergy. However, SPP Transmission Owners state that massive flows of energy would likely traverse the SPP transmission system, particularly in view of the 14,000 MW of physical capability over multiple interconnections between the borders of SPP and Entergy, fourteen times greater than the physical interconnectivity

³⁰³ Kansas City Power & Light and the Kansas Commission each filed comments stating that they support SPP Transmission Owners’ Jan. 11 protest of the Application.

³⁰⁴ SPP Transmission Owners Jan. 11 Protest of Application at 18, Docket No. ER12-2681-000.

³⁰⁵ We note that the Commission did not agree with SPP’s interpretation of the MISO-SPP JOA in the MISO-SPP JOA Order. In that order, the Commission found that section 5.2 of the SPP JOA would allow for the sharing of available contract path transmission capacity between MISO and Entergy Arkansas, and SPP and Entergy Arkansas in the event that Entergy Arkansas becomes a Transmission Owner in MISO. *See* MISO-SPP JOA Order, 136 FERC ¶ 61,010 at P 60.

³⁰⁶ SPP Jan. 22 Comments on Application at 14-15, Docket No. ER12-2681-000. SPP makes similar arguments, supported by AEP, in its protest of the TPZ Filing. *See* SPP Mar. 22 Comments on TPZ Filing at 9; American Electric Power Protest of TPZ Filing at 3.

between the borders of MISO and Entergy. SPP Transmission Owners maintain that SPP has an aggressive transmission expansion program, but absent Commission intervention to ensure a fair resolution of the JOA negotiations, it is likely the New ITC Operating Companies would use the upgrades that have been and continue to be constructed for the benefit of, and paid for, by SPP transmission customers. SPP Transmission Owners argue that this result is unjust and unreasonable and inconsistent with the public interest because costs are not allocated to those who cause the costs to be incurred.³⁰⁷

134. TVA expresses concern regarding how Entergy will be integrated into the Congestion Management Process³⁰⁸ and has not seen any evidence that the Congestion Management Process, in its present form, would be able to mitigate the impacts due to the change in loop flows that would occur with Entergy's integration into the MISO market. TVA states that it is unknown whether generating facilities in the Entergy footprint will be redesignated as network resources for loads in the MISO market, and whether (and how) such resources will be capped given Entergy's limited interface capacity with MISO. TVA points out that MISO has stated it has not conducted any reliability studies focusing on integrating Entergy into its market and the possible shifts in flow patterns. TVA therefore requests that the Commission require MISO to conduct the necessary studies to show the effects of loop flows on adjacent transmission systems resulting from the integration of Entergy into MISO.³⁰⁹ Associated Electric Cooperative and Exelon agree with TVA.³¹⁰

135. TVA further states that it has conducted its own reliability studies which demonstrate that the loop flows related to the Entergy integration will cause significant adverse impacts on the TVA transmission system. TVA contends that its studies show that, under various scenarios, approximately 40 percent of Entergy-MISO flows will flow over the TVA transmission system, overloading between 12 and 70 transmission facilities. TVA asserts that initial cost estimates to remedy this situation range up to

³⁰⁷ SPP Transmission Owners Jan. 11 Protest of Application at 19-20, Docket No. ER12-2681-000.

³⁰⁸ We note that, pursuant to the Congestion Management Process, neighboring RTOs like MISO and PJM calculate market flows in order to manage congestion on their systems.

³⁰⁹ TVA Jan. 22 Protest of Application at 4-5, Docket No. ER12-2681-000.

³¹⁰ Associated Electric Cooperative Jan. 22 Protest of Application at 13-15, Docket No. ER12-2681-000; Exelon Jan. 30 Protest of Application at 3, Docket No. ER12-2681-000.

\$500 million. TVA maintains that to the extent that it and other parties are adversely impacted by the integration of Entergy into MISO, MISO must hold harmless TVA and those parties from any adverse operational and financial impacts related to loop flows and congestion resulting from the integration.³¹¹ Associated Electric concurs, stating that the Commission should condition entry into MISO upon the entrant's commitment not to impose loop flows on neighboring transmission systems.³¹² Exelon argues that in addition to financial remuneration to compensate for the effects of congestion caused by MISO-related loop flows, MISO should plan its transmission system to minimize the impact of loop flows in PJM and coordinate such planning with PJM.³¹³

136. Several protestors argue that the Commission should hold neighboring transmission systems harmless from the loop flows that will result from the Entergy-ITC Transaction.³¹⁴ SPP argues that in *Commonwealth Edison*³¹⁵ the Commission found that neighboring systems must be held harmless from the effects of a utility's decision to join an RTO. The Commission granted Commonwealth Edison and American Electric Power Service Corporation's (American Electric Power) request to join PJM, conditioned on the requirement that MISO's member-utilities be held harmless from the financial and operational consequences of the Commonwealth Edison's and American Electric Power's integrations.

ii. Answers

137. Applicants respond to protestors,³¹⁶ arguing that the loop flow issues raised are unrelated to these proceedings because these proceedings relate only to authorizations to effectuate the Entergy-ITC Transaction and not the independent efforts of the Operating

³¹¹ TVA Jan. 22 Protest of Application at 5, Docket No. ER12-2681-000. *See also* TVA Mar. 22 Protest of TPZ Filing at 9, Docket No. ER13-948-000.

³¹² Associated Electric Cooperative Jan. 22 Protest of Application at 16, Docket No. ER12-2681-000.

³¹³ Exelon Jan. 30 Protest of Application at 4, Docket No. ER12-2681-000.

³¹⁴ *See, e.g.*, SPP Transmission Owners, KCP&L, SPP, and Kansas Commission.

³¹⁵ SPP Jan. 22 Comments on Application at 8 (citing *Commonwealth Edison Co.*, 106 FERC ¶ 61,250 (2004) (*Commonwealth Edison*)), Docket No. ER12-2681-000.

³¹⁶ Applicants specifically state in their answer that they are responding to protests filed by SPP, SPP Transmission Owners, Xcel Energy, Kansas City Power & Light, and the Kansas Commission.

Companies to join MISO (integration). Applicants contend that the Entergy-ITC Transaction involves a change in ownership of transmission assets and bears no relation to the loop flow arguments that are premised on mistaken assumptions regarding changes in generation dispatch.³¹⁷ Therefore, Applicants argue that the Commission should reject the protests on this issue as beyond the scope of these proceedings. Additionally, Applicants contend that the relief protestors requested – forced renegotiation of the MISO-SPP JOA – should be denied as premature because SPP and MISO have not yet commenced discussions regarding a renegotiated JOA.³¹⁸ Applicants further point out that the Commission has already recognized that completing the renegotiation of the JOA is not a precondition to the integration of the Entergy Operating Companies into MISO.³¹⁹

138. Applicants also contend that SPP Transmission Owners' request for loop flow compensation is premature until MISO and SPP conclude their negotiations regarding the JOA. Applicants assert that even if such compensation claims were relevant to these proceedings, there is no basis to reconsider them. Additionally, Applicants maintain that the protests are speculative and provide no basis for injecting this issue into these proceedings.³²⁰

139. Entergy and MISO state that although TVA and MISO have begun to discuss TVA's concerns, TVA has already resorted to litigation before the Commission and has opposed North American Electric Reliability Corporation (NERC) Operating Committee

³¹⁷ Applicants Feb. 1 Answer at 10, Docket No. ER12-2681-000.

³¹⁸ Entergy and MISO give the same response to SPP's protest of the TPZ Filing. *See* Entergy and MISO Apr. 16 Answer at 4. Entergy and MISO state that SPP and MISO must negotiate revisions to the Congestion Management Process in their Joint Operating Agreement to develop market-to-market protocols for use one year after commencement of the SPP Integrated Marketplace. Entergy and MISO also assert that the existing market-to-non-market protocols in the Congestion Management Process, which also apply to MISO's management of TVA's flowgates, are sufficient to manage congestion with SPP in the interim.

³¹⁹ Applicants Feb. 1 Answer at 3-4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,055, at P 30 n.53 (2012), Docket No. ER12-2681-000).

³²⁰ Applicants Feb. 1 Answer at 4-5, Docket No. ER12-2681-000. Applicants also note TVA and Exelon's assertions regarding potential loop flow claims and argue that the claims should be dismissed because they have no relationship to these proceedings and are unsubstantiated. *Id.* at 5 n.9.

approval of the MISO reliability coordination plan because of its concerns. Entergy and MISO argue that if SPP and TVA believe revisions to their coordination agreements are appropriate, they must first voice their concerns with MISO before litigating the issues before the Commission.³²¹

140. Entergy and MISO also state that the Congestion Management Process included in MISO's Joint Operating Agreement with SPP, and used by MISO and TVA, was designed to address seams issues of the type raised here. More specifically, Entergy and MISO state that the Congestion Management Process requires identification of impacted flowgates, allocates the capacity of those flowgates based on historical use to service native load, and requires each entity to respect those allocations in the dispatch of their systems. Because of the existence of this Commission-approved mechanism, Entergy and MISO state that SPP and TVA are wrong to contend that "MISO can usurp their transmission systems" following the integration of the Entergy Operating Companies.³²²

iii. Responses

141. SPP Transmission Owners and Associated Electric Cooperative take issue with Applicants' assertion that loop flow issues have no connection to this proceeding and have no merit. SPP Transmission Owners argue that while the impact of the merger and integration of Entergy into MISO cannot be determined fully until the JOA is renegotiated, there is no basis for concluding that such renegotiations should be delayed until after Entergy is integrated into MISO. SPP Transmission Owners and Associated Electric Cooperative argue that the impact of loop flows is a critical fact relating to the justness and reasonableness of the Entergy-ITC Transaction, including integration into MISO, which must be approved by state and federal regulatory authorities as a condition precedent to closing the Entergy-ITC Transaction.³²³ Associated Electric Cooperative agrees with SPP Transmission Owners' arguments and also contends that Applicants cannot credibly deny that this transfer will alter flows across the Eastern Interconnection, nor can Applicants credibly meet their burden to show that transmission service will continue to be just and reasonable without even studying the loop flow impacts of the Entergy-ITC Transaction.³²⁴ Associated Electric Cooperative contends that if Applicants

³²¹ Entergy and MISO Apr. 16 Answer at 4, Docket No. ER13-948-000.

³²² *Id.*

³²³ SPP Transmission Owners Feb. 14 Answer at 4, Docket No. ER12-2681-000.

³²⁴ Associated Electric Cooperative Mar. 4 Answer at 8-9, Docket No. ER12-2681-000.

cannot produce studies to demonstrate that loop flows resulting from Entergy's integration into MISO will not have a negative impact on Associated Electric Cooperative's transmission system and generating resources, the Commission should order Applicants to hold Associated Electric Cooperative harmless from adverse loop flows caused by the Entergy-ITC Transaction.³²⁵

142. SPP Transmission Owners assert that allegations that SPP has delayed the renegotiation of the JOA by 18 months do not support a conclusion that the finalization of such renegotiations can take place after the merger.³²⁶ SPP Transmission Owners urge the Commission to appoint a settlement judge to oversee the renegotiation of the JOA to address the loop flow issues in a timely manner that will allow the Commission to consider such renegotiations as part of the overall evaluation of whether the Entergy-ITC Transaction, including the integration of the Entergy Operating Companies into MISO, is in the public interest.³²⁷

143. TVA moves to strike the answer filed by Entergy and MISO. TVA states that the answer contains rehashed arguments and mischaracterizations.³²⁸ TVA also asserts that MISO and Entergy have had no incentive and have shown no interest in resolving TVA's loop flow concerns.³²⁹

144. TVA states that its studies demonstrate that the current practice under the Congestion Management Process will do little to mitigate the impacts on the TVA transmission system, as the firm flow allocations that limit firm market flows have little relation to current system conditions or system reliability limits. TVA also states that different flowgate attributes and "higher of" allocation logic create total allocation amounts well above real-time flowgate ratings.³³⁰ Additionally, TVA points out that the independent study cited by Entergy and MISO honors the 1,000 MW contract path limit between Entergy and MISO, which Entergy and MISO ignore. Moreover, TVA contends that MISO has no intention of honoring this limit since the Commission determined that section 5.2 of the MISO-SPP Joint Operating Agreement provides for SPP and MISO to

³²⁵ *Id.* at 10.

³²⁶ SPP Transmission Owners Feb. 14 Answer at 4, Docket No. ER12-2681-000.

³²⁷ *Id.* at 5.

³²⁸ TVA Apr. 29 Motion to Strike at 1, Docket No. ER13-948-000.

³²⁹ *Id.* at 2.

³³⁰ *Id.* at 2-3.

share their contract path capacity.³³¹ TVA states that, instead of having a single physical 1,000 MW connection, Entergy and MISO can now utilize up to 14,000 MW of capacity through the Entergy-SPP ties. Because the TVA transmission system carries approximately 40 percent of the flows between Entergy and MISO, TVA asserts that flows in excess of 1,000 MW will create significant reliability impacts on TVA.³³² TVA also states that Entergy and MISO offer no reliability study or other evidence to rebut TVA's findings and that the study cited by Entergy and MISO relies upon outdated information.³³³

145. SPP states that its concerns are not premature, as the MISO-SPP JOA Order cited by Entergy and MISO did not state that SPP's concerns should be raised in a future proceeding. Additionally, SPP argues that the duty of SPP and MISO to renegotiate the Joint Operating Agreement's terms does not render premature the need to investigate the issues raised by SPP. Furthermore, SPP argues that the significant impacts that will result from the integration of Entergy's system into MISO cannot be addressed through the Congestion Management Process' real-time flowgate coordination procedures.³³⁴ SPP also considers it inconsistent for Entergy and MISO to argue that the current Congestion Management Process offers adequate protection to address SPP's concerns while it has been acknowledged that the Joint Operating Agreement needs to be revisited to accommodate MISO's membership change.³³⁵ SPP argues that if Entergy and MISO believe that the Congestion Management Process is sufficient to address SPP's concerns, it is unlikely to reach an agreement with SPP in the Joint Operating Agreement renegotiation process.³³⁶ Finally, SPP argues that the existence of factual disputes between SPP, Entergy Services, MISO, and others reinforces the need for a thorough

³³¹ Section 5.2 (Sharing Contract Path Capacity) of the implementing provisions of the MISO-SPP JOA provides, in relevant part, "[i]f the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties."

³³² TVA Apr. 29 Motion to Strike at 2-3, Docket No. ER13-948-000.

³³³ *Id.* at 4.

³³⁴ SPP May 2 Answer at 8, Docket No. ER13-948-00.

³³⁵ *Id.*

³³⁶ *Id.*

investigation into the reliability, economic, and operational impacts of the Entergy/MISO integration.³³⁷

iv. Answer to Responses

146. Entergy and MISO take issue with SPP's contention that the assumed loop flows resulting from Entergy's integration into MISO cannot be addressed through the Congestion Management Process' real-time flowgate coordination procedures. In particular, Entergy and MISO state that the Congestion Management Process allocates capacity at particular flowgates and requires MISO to redispatch its system to reduce flows to honor its firm flow allocation or, if a market-to-market protocol was in effect, compensate SPP (or TVA) for its redispatch costs for MISO's market flows in excess of its firm allocation if the flowgate becomes congested.³³⁸ Entergy and MISO therefore question what SPP and TVA seek to be held harmless from, as they have never been specific about the relief that they request. Entergy and MISO surmise that they may object to MISO's Firm Flowgate Entitlements or disagree with the fact that the Congestion Management Process imposes a five percent flow threshold for designating coordinated flowgates rather than a lower figure.³³⁹ Entergy and MISO state that such objections would be attacks on the filed rate itself. If that is the case, according to Entergy and MISO, SPP and TVA have no right to be held harmless from the terms of the Congestion Management Process. Instead, they argue that SPP and TVA must negotiate in good faith with MISO to determine whether the parties can agree upon any modifications to the Joint Operating Agreement or Congestion Management Process.³⁴⁰

v. Commission Determination

147. We note that, although there are existing arrangements in place to handle power flows as a result of Entergy's integration, parties to this proceeding have expressed concern about the sufficiency of the existing arrangements. We also note that some of the parties are currently in negotiations over potential modifications to these existing arrangements or the establishment of new agreements to resolve their respective issues. We strongly encourage the parties to continue to work together to resolve these issues, and remain interested in the status of those negotiations.

³³⁷ *Id.* at 9.

³³⁸ Entergy and MISO May 8 Answer at 3, Docket No. ER13-948-000.

³³⁹ *Id.*

³⁴⁰ *Id.* at 6.

148. With respect to the arguments that the Commission should require Applicants to hold parties harmless from potential parallel and loop flows, we note that *Commonwealth Edison* is distinguishable from this proceeding because the hold harmless remedy established in that case for utilities in Wisconsin and Michigan was developed to mitigate the geographic separation of utilities in those two states resulting from Commonwealth Edison and American Electric Power's decisions to join PJM. Thus, the hold harmless remedy for utilities in Wisconsin and Michigan was not established to address loop or parallel flows *per se*, but rather geographic separation of certain utilities from the rest of their RTO, a situation that does not exist here.

149. We also note that, at the time of the Commonwealth Edison proceeding, the present day RTOs were just forming and had not established arrangements to coordinate flows on neighboring transmission systems. Since then, however, to address issues such as these, RTOs have developed joint operating agreements, with mechanisms to coordinate parallel flows, such as the coordination in the Congestion Management Process, which is used in a number of seams agreements between the RTOs and their neighbors. The Congestion Management Process forms the basis for coordination of parallel flows between MISO and SPP under the MISO-SPP JOA, and is included in the seams service that MISO offers under Module F of its Tariff to all of its neighboring utilities, including TVA and Associated Electric Cooperative, on a non-discriminatory basis. The Congestion Management Process, further enhanced by market-to-market coordination, is also included in the MISO-PJM JOA. The Congestion Management Process requires, among other things, the identification of impacted flowgates, and the allocation of the capacity of those flowgates based on historic use to serve native load, and requires each entity to respect those allocations in the dispatch of their systems, or, where market-to-market coordination is in place, compensate the other party for redispatch costs of market flows in excess of the allocation.

150. With respect to the arguments concerning loop flows over the SPP transmission system, we note that the renegotiation of the MISO-SPP JOA is ongoing. In the MISO-SPP JOA Order, MISO petitioned the Commission to interpret a provision in section 5.2 of the MISO-SPP JOA regarding the availability of transmission path sharing under the agreement. In the order, the Commission found in favor of MISO but recognized SPP's statement that the MISO-SPP JOA should be renegotiated pursuant to its terms and noted that MISO and SPP are obligated to negotiate in good faith in response to revisions either party might propose.³⁴¹ Subsequently, in conditionally approving SPP's Integrated Marketplace, the Commission required SPP to begin negotiations with MISO on developing a market-to-market coordination process for managing congestion across the

³⁴¹ MISO-SPP JOA Order, 136 FERC ¶ 61,010 at P 64.

seam of MISO and SPP, and required SPP to file a phase 2 MISO-SPP JOA by June 30, 2013.³⁴² In accordance with these orders, MISO and SPP are currently renegotiating the MISO-SPP JOA in order to address congestion across the seam between the two RTOs. Interested parties will be free to challenge the terms of the revised MISO-SPP JOA when it is filed with the Commission. Should MISO and SPP fail to reach agreement, they may petition the Commission for modifications to their JOA.³⁴³

151. In addition to parties raising issues regarding flows over the SPP transmission system, Exelon raises similar arguments with respect to flows over PJM; TVA raises similar arguments with respect to flows over the TVA transmission system; and Associated Electric Cooperative raises similar concerns with respect to flows over its transmission system. We note that the joint operating agreement between MISO and PJM, and their market-to-market coordination processes, address parallel flows across PJM. In contrast, TVA and Associated Electric do not have agreements in place with MISO or SPP to address such flows, but are in the process of negotiating new agreements with MISO to address their concerns.

152. Accordingly, we direct MISO, on or by November 1, 2013, to file an informational report detailing the status of the negotiations regarding revisions to existing JOAs or the development of new JOAs to address the loop flow concerns, with SPP, TVA, and Associated Electric Cooperative.

153. Finally, the pleadings indicate that all of the parties are currently engaged in discussions regarding the adequacy of MISO's reliability plan in light of the integration of Entergy's transmission assets into MISO. We note that MISO is obligated to comply with mandatory and enforceable requirements set forth in the NERC's Reliability Standards.

³⁴² *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 364 (2012), *order on reh'g*, 142 FERC ¶ 61,205 (2013).

³⁴³ *See* MISO-SPP JOA Rehearing Order, 138 FERC ¶ 61,055 at n.53 (“If and when Entergy Arkansas joins MISO, and if and when MISO utilizes the provisions in the [MISO-SPP JOA], whatever they might be at such time, then parties may file a complaint [] under [FPA section 206] if they believe the terms of the MISO-SPP JOA are unjust, unreasonable, unduly discriminatory or preferential.”).

g. **Approval of the New ITC Operating Companies’
Participation in MISO as Appendix I Members**

i. **Proposal**

154. Applicants state that Appendix I of the MISO TOA provides for the operation of independent transmission companies like the New ITC Operating Companies in MISO and allows for the assignment to an independent transmission company of certain responsibilities that otherwise would reside in MISO.³⁴⁴ Applicants explain that only independent transmission companies whose structure and governance ensure that they are fully independent from any market participants are eligible for Appendix I membership in MISO.³⁴⁵ Additionally, Applicants state that independent transmission companies must be of sufficient size and configuration to assume the rights, responsibilities, and functions proposed.³⁴⁶

155. Applicants state that the New ITC Operating Companies will sign the MISO TOA and will also enter into an agreement with MISO under Appendix I of the MISO TOA (Appendix I Agreement).³⁴⁷ Section 3 of the Appendix I Agreement contains a detailed explanation of the rights, responsibilities and functions that the New ITC Operating Companies will assume, including general rights to: redistribute revenues to the New ITC Operating Companies; file with the Commission a mechanism for determining loss responsibility; establish rates, terms and conditions of service; establish ratings and operating procedures and maintenance and outage schedules; plan for construction of facilities; perform billing, crediting and accounting responsibilities; and establish terms and conditions of generator interconnection service.³⁴⁸ Applicants state that these provisions are derived substantially from the *pro forma* Appendix I and from comparable agreements and tariff provisions previously approved by the Commission, including the ITC Midwest Appendix I Agreement.³⁴⁹ Applicants state that with respect to the

³⁴⁴ Application at 60.

³⁴⁵ *Id.* at 61.

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 60.

³⁴⁸ *Id.* at 63. *See also* Application, Exhibit No. ITC-800: Wrenbeck Test. at 18.

³⁴⁹ Application at 64.

planning functions, the New ITC Operating Companies intend to participate fully in the MISO Transmission Expansion Planning (MTEP) process.³⁵⁰

156. Applicants also state that the Entergy-ITC Transaction will result in the independent ownership and operation of the transmission assets by the New ITC Operating Companies, and that the Entergy-ITC Transaction (including the proposed exchange trust election)³⁵¹ has been structured to address any potential Commission concerns regarding ITC Holdings' independence from market participants.³⁵² Applicants state that Entergy will have no ability to control or influence ITC Holdings' in any respect as a consequence of the trust, but instead the trustee will be obligated to vote the shares it holds in trust in the same proportion as all other ITC Holdings shares are voted.³⁵³ Applicants explain that since Entergy will not own any ITC Holdings shares, it will have no ability to affect the way that the shares held by the trustee are voted.³⁵⁴

157. Applicants state that the New ITC Operating Companies will be fully independent transmission companies within MISO.³⁵⁵ Applicants explain that ITC Holdings adheres to stringent requirements to secure and preserve its independence and that of its jurisdictional operating companies.³⁵⁶ Applicants also reiterate that the New ITC

³⁵⁰ *Id.*

³⁵¹ As part of their requests under FPA section 203, Applicants state that, under the terms of the Merger Agreement and as part of the Entergy-ITC Transaction, Entergy may make an exchange trust election. Applicants explain that, at least 30 days prior to the closing of the Entergy-ITC Transaction, Entergy may elect to retain and subsequently transfer to an irrevocable trust (the Exchange Trust) the number of limited liability company membership common units in Entergy Mid South that would convert in the Entergy-ITC Transaction to up to 4.99 percent of the total number of shares of ITC Holdings common stock outstanding immediately following consummation of the Proposed Transaction. *See* Application, Exhibit No. ETR-100: Direct Testimony of Theodore H. Bunting, Jr. on Behalf of Entergy Corporation and its Subsidiaries (Bunting Test.) at 33:18-23 to 34:1-3.

³⁵² Application at 61.

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.* at 62.

³⁵⁶ *Id.*

Operating Companies will not be affiliated with a traditional public utility company or an affiliated associate company that engages in sales and distribution of electric power to captive retail customers or others³⁵⁷ and that the New ITC Operating Companies will not be affiliated with a traditional public utility company that owns or operates generation assets.³⁵⁸ Applicants point out that the Commission found that the composition of ITC Holdings' Board of Directors and structure of corporate governance were sufficient to demonstrate ITC Midwest's independence and eligibility for Appendix I membership in MISO in 2007.³⁵⁹ Applicants explain that these standards of independence stem from the ITC Holdings Articles of Incorporation, which ensure that no market participant acquires or votes five percent or more of any class of ITC Holdings stock.³⁶⁰ Applicants state that if an entity owns more than five percent of any class of ITC Holdings stock, it is investigated by ITC Holdings' Board of Directors to determine if the entity is a market participant, and the Board of Directors has the right to redeem shares in excess of five percent, and such shares may not be voted by a market participant.³⁶¹ Applicants note that ITC Holdings is required to advise the Commission if it receives a notification that a market participant has acquired five percent or more of any class of ITC Holdings stock so the Commission may conduct its own independent investigation of the entity's market status.³⁶²

158. Applicants state that all of the safeguards now in place to protect the independence of ITC Holdings will remain in place after the Entergy-ITC Transaction is completed.³⁶³ Applicants explain that ITC Holdings adheres to a more rigorous standard of independence than the Commission's Independence Policy Statement,³⁶⁴ and that the Commission has previously found ITC Holdings' standards of independence sufficient to

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.* (citing *ITC Midwest*, 121 FERC ¶ 61,229 at P 87).

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.* at 61.

³⁶⁴ *Id.* (citing *Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission*, 111 FERC ¶ 61,473 (2005)).

demonstrate an independent transmission company's independence.³⁶⁵ Applicants state that new employees are required to divest any stock held in market participants within six months,³⁶⁶ and that this divestiture requirement will be applied to the Entergy employees that join ITC Holdings as a result of the Entergy-ITC Transaction.³⁶⁷ Applicants assert that with these safeguards, the New ITC Operating Companies satisfy the independence requirements under Appendix I to the MISO TOA, and qualify for Appendix I membership in MISO.³⁶⁸

159. Applicants further explain that another purpose of the Appendix I Agreement is to facilitate integration of the former Entergy transmission assets into MISO upon the closing of the Entergy-ITC Transaction. Applicants state that they have developed an integration plan that will enable the New ITC Operating Companies to become Transmission Owners in MISO and to place the transmission facilities under MISO's functional control upon closing. Applicants explain that MISO will then become the transmission provider and reliability coordinator for the New ITC Operating Companies' transmission systems. Applicants state that because the Entergy-ITC Transaction is expected to close before the Entergy Operating Companies join MISO as market participants in December 2013, it is necessary to create a mechanism for MISO's provision of transmission service on the New ITC Operating Companies facilities during the short period of time between closing of the Entergy-ITC Transaction and the Entergy Operating Companies' entry into MISO.³⁶⁹ To establish this mechanism, Applicants state that: (1) MISO will file temporary amendments to its Tariff (new Module B-1) for Commission approval;³⁷⁰ (2) via the Appendix I Agreement, MISO will delegate certain

³⁶⁵ *Id.* at 62 (citing *ITC Midwest*, 121 FERC ¶ 61,229 at P 87).

³⁶⁶ *Id.* at 62-63.

³⁶⁷ *Id.* at 63.

³⁶⁸ *Id.*

³⁶⁹ *Id.* at 64.

³⁷⁰ Applicants state that Module B-1, which was proposed in the Module B-1 Filing and is the subject of an order issued concurrently with this order, will be used to retain certain methodologies and business practices currently used under the Entergy OATT until the Entergy Operating Companies are fully integrated into the MISO market. Applicants state that these provisions of Module B-1 relate to the provision of ancillary services; processing of transmission service requests; Weekly Procurement Process; transmission service request and loss compensation procedures; transmission planning

(continued...)

functions of Module B-1 to the New ITC Operating Companies;³⁷¹ and (3) Entergy will file with the Commission a stand-alone Ancillary Services Tariff under which the Entergy Balancing Authority Area Operator will provide ancillary services to customers taking service under the proposed Module B-1 during the transition period.

160. Applicants explain that this approach is necessary to enable the Entergy-ITC Transaction to close as contemplated in June 2013 upon receipt of all necessary regulatory approvals and the satisfaction of all other conditions precedent under the Merger Agreement.³⁷² Applicants assert that the integration of the transmission assets into MISO at closing of the Entergy-ITC Transaction will accelerate the benefits of ITC Holdings' independent model, enhanced credit quality and operational excellence resulting from ITC Holdings' singular focus on transmission.³⁷³ Applicants further explain that it will also enable the earliest possible implementation of ITC Holdings' proven approaches to transmission system operations, maintenance and planning. Additionally, Applicants state that it would enable the Entergy Transmission assets to become part of the MISO MTEP 2014 planning process upon its commencement in June 2013.³⁷⁴

ii. Protests

161. Joint Customers state that many of the responsibilities under the Appendix I Agreement between the New ITC Operating Companies and MISO are proposed to be permanently assigned to ITC Holdings even though those responsibilities are reserved solely for MISO as the independent operator of transmission in the other MISO footprint areas. In particular, Joint Customers are concerned with the following functions being

process; financial and other rights associated with supplemental upgrades; and reporting and stakeholder involvement. *Id.* at 65-66.

³⁷¹ Applicants state that section 4 of Appendix I includes the New ITC Operating Companies' responsibilities such as: calculation of available flowgate capability; Weekly Procurement Process; transmission planning; financial payments associated with supplemental upgrades; and loss compensation during the effective period of Module B-1. *Id.* at 66-67. *See also* Application, Exhibit No. ITC-800: Wrenbeck Test. at 17-20.

³⁷² Application at 67.

³⁷³ *Id.* at 67-68.

³⁷⁴ *Id.* at 68.

assigned to ITC Holdings: (1) the right of first refusal to perform system impact studies, generation interconnection studies, or other studies to evaluate the ability of the New ITC Operating Companies to provide service for transactions in these pricing zones; and (2) the responsibility for any facility study required to evaluate resolution of a constraint within these pricing zones. Joint Customers assert that any transfer of these responsibilities for the Midsouth area from MISO to ITC Holdings will erode the status of MISO and place undue authority in the hands of a transmission stakeholder that has a vested, non-independent interest in the outcome with regard to the planning and operation of the Midsouth area transmission grid. Joint Customers contend that MISO should not be permitted to make such a delegation of its duties and responsibilities as a result of the Entergy-ITC Transaction.³⁷⁵

162. Joint Customers also take issue with special provisions in the proposed Appendix I Agreement that will only apply during the Interim Period, before the Entergy Operating Companies are fully integrated into the MISO balancing authority area. Joint customers point out several additional responsibilities assigned to the New ITC Operating Companies such as: (1) calculating short term Available Flowgate Capacity; (2) conducting the Weekly Procurement Process; (3) completing the 2012-2018 Construction Plan; and (4) paying parties that funded Supplemental Upgrades under the Entergy OATT. Joint Customers argue that it is not clear that the tariff rates of the New ITC Operating Companies and MISO properly reflect this assignment of functions and responsibilities to the New ITC Operating Companies.³⁷⁶ Joint Customers also question whether the New ITC Operating Companies will double recover for performing the assigned functions and whether the MISO charges will be the same whether or not the New ITC Operating Companies are Appendix I companies.³⁷⁷

iii. Answer

163. Applicants contend that Joint Customers fail to appreciate that Appendix I membership in MISO is only available to fully independent transmission companies. Applicants disagree with Joint Customers that certain provisions of the Appendix I Agreement erode MISO's independent status as well as ITC Holdings' independence from market participants with vested interests. Applicants state that the Application provides detailed protections to ensure that ITC Holdings remains fully independent,

³⁷⁵ Joint Customers Jan. 22 Protest of Application at 94-96, Docket No. ER12-2681-000.

³⁷⁶ *Id.* at 98.

³⁷⁷ *Id.*

which will not be diminished by Entergy shareholders holding 50.1 percent of the shares of ITC Holdings upon closing of the Entergy-ITC Transaction. As Applicants note, the 50.1 percent ownership of ITC Holdings by Entergy shareholders at closing will only be momentary, and will immediately change as trading occurs in ITC Holdings stock on the New York Stock Exchange.³⁷⁸ Lastly, Applicants point out that the specific provisions of Appendix I that Joint Customers take issue with are from Appendix I to the MISO TOA, and thus are a collateral attack on the Commission-approved TOA Appendix I provisions.³⁷⁹

iv. Commission Determination

164. We accept Applicants' proposed Appendix I Agreement to the MISO TOA as just and reasonable and not unduly discriminatory or preferential. Appendix I of the MISO TOA provides a framework for an independent transmission company to assume certain rights and responsibilities that would otherwise belong to MISO. The rights, responsibilities, and the operational procedures under which MISO and the independent transmission company would coordinate their operations are determined on a case-by-case basis.³⁸⁰ As MISO has previously acknowledged, Appendix I of the MISO TOA "specifically provides that [MISO] remains the ultimate authority on matters of regional grid security."³⁸¹ Further, the functions that ITC Holdings will perform will be done so under the supervision of or in coordination with MISO.³⁸²

165. As Applicants point out, the provisions that Joint Customers challenge are consistent with Appendix I to the MISO TOA, which the Commission has approved.³⁸³ Joint Customers are concerned that MISO is inappropriately delegating its duties as the independent transmission system operator to ITC Holdings. We disagree. As Applicants explain in their answer, Appendix I membership in MISO is only available to fully independent transmission companies. And, as the Commission has previously

³⁷⁸ Application, Exhibit No. ETR-100: Bunting Test. at 26: 7-9.

³⁷⁹ Applicants Feb. 22 Answer at 53-54, Docket No. ER12-2681-000.

³⁸⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,246, at P 3 (2008).

³⁸¹ *Commonwealth Edison Co.*, 90 FERC ¶ 61,192, at 61,627 (2000).

³⁸² *International Transmission Co.*, 97 FERC ¶ 61,328 (2001).

³⁸³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, order on reconsideration, 85 FERC ¶ 61,250, order on reh'g, 85 FERC ¶ 61,372 (1998).

determined, ITC Holdings' ownership structure will prevent market participants from being able to influence or control one of its operating companies and thus undermine its independence.³⁸⁴ ITC Holdings has to be fully independent in order to participate in Appendix I membership in MISO under the MISO TOA. As such, if Joint Customers wish to challenge these specific provisions of Appendix I of the MISO TOA, they must raise such issues in an FPA section 206 complaint.

166. Additionally, in response to protestors' arguments that the New ITC Operating Companies may double recover for functions they are assigned under the Appendix I Agreement, we clarify that parties may raise in the hearing ordered above whether the New ITC Operating Companies should recover their costs associated with performing RTO functions under Appendix I directly from their customers or through other means.³⁸⁵

3. Other Issues

a. Through-and-out Rate Issues

167. On November 28, 2011, in Docket No. ER12-480-000, MISO and the MISO Transmission Owners proposed amendments to the MISO Tariff to provide for a five-year transition period for the integration of Entergy into the MISO transmission planning and cost allocation process (Entergy Cost Allocation Proceeding). The Commission conditionally accepted those tariff amendments on April 19, 2012.³⁸⁶

i. Protests

168. Associated Electric Cooperative asserts that Applicants fail to clearly identify the impact the Entergy-ITC Transaction will have on Associated Electric Cooperative's point-to-point transmission service across Entergy's transmission system, and that the Commission should require MISO and ITC Holdings to confirm that the transition plan approved in the Entergy Cost Allocation Order will apply to all of Entergy's point-to-point transmission service customers.³⁸⁷ Associated Electric Cooperative states that it is concerned that it will face a significant increase in its point-to-point transmission rate

³⁸⁴ *ITC Holdings Corp.*, 111 FERC ¶ 61,149 at P 25.

³⁸⁵ *Ameren Services Company*, 101 FERC ¶ 61,320, at P 141 (2002).

³⁸⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,056 (Entergy Cost Allocation Order), *order on reh'g and compliance*, 141 FERC ¶ 61,128 (2012).

³⁸⁷ Associated Electric Cooperative Jan. 22 Protest of Application at 5, Docket No. ER12-2681-000.

across Entergy's transmission system, in violation of the "no-cost-sharing" principle of the transition plan submitted and approved in the Entergy Cost Allocation Order.³⁸⁸ Associated Electric Cooperative explains that it currently has 206 MW of long-term firm point-to-point transmission service across the Entergy transmission system, for which it pays \$3.6 million per year.³⁸⁹ Associated Electric Cooperative states that, according to MISO's pricing information dated December 1, 2012, MISO's current charge for firm point-to-point drive through service is \$31.12 kW-year. According to Associated Electric Cooperative, based on that rate, its 206 MW of service would cost as much as \$6.4 million per year – a 78 percent increase over the rates Associated Electric Cooperative currently pays Entergy.³⁹⁰ Thus, Associated Electric Cooperative argues that, in order to avoid an unjust and unreasonable transmission rate increase, the Commission should confirm that ITC Holdings and MISO will apply the Entergy transition plan for Multi-Value Project (MVP) and non-MVP network upgrade costs to the transmission rates of all of Entergy's customers, including point-to-point customers such as Associated Electric Cooperative.³⁹¹

ii. Answer

169. Applicants state that any changes to the transmission charges paid by Associated Electric Cooperative, which are the subject of its protest, will result from the Entergy Operating Companies' integration into MISO and adoption of the MISO Tariff.³⁹² Applicants argue that, to the extent that the concerns raised by Associated Electric Cooperative have any validity, those concerns should be raised in the proceedings initiated by the Commission to review the rate effects of the Entergy Operating Companies' integration into MISO.³⁹³

iii. Response

170. Associated Electric Cooperative responds that Applicants do not rebut its argument that Entergy's integration into MISO will result in an unjust, unreasonable, and

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.* at 5-6.

³⁹¹ *Id.* at 6.

³⁹² Applicants Feb. 22, 2013 Answer at 62, Docket No. ER12-2681-000.

³⁹³ *Id.*

unduly discriminatory 78 percent increase in its point-to-point transmission service across Entergy's transmission system.³⁹⁴

iv. Commission Determination

171. We deny Associated Electric Cooperative's request that the Commission confirm that ITC Holdings and MISO will apply the Entergy transition plan for MVP and non-MVP network upgrade costs to the transmission rates of all of Entergy's customers, including point-to-point customers like Associated Electric Cooperative. We find that Associated Electric Cooperative's request to receive similar treatment as that provided in the Entergy Cost Allocation proceeding is beyond the scope of this proceeding. We further note that this issue is being addressed currently in the Entergy Cost Allocation Proceeding.³⁹⁵ We also disagree with Associated Electric Cooperative's assertion that it is not being treated comparably to other Entergy transmission customers. Associated Electric Cooperative is being treated comparably with other similarly situated customers, i.e., those customers requesting drive-through service on MISO's transmission system, because any other transmission customer seeking drive-through service across Entergy's transmission system would be charged the same rate that Associated Electric Cooperative will be charged. Associated Electric Cooperative, however, appears to be comparing its service to service of other Entergy customers who will receive service within the boundaries of MISO transmission pricing zones on the Entergy transmission system.

³⁹⁴ Associated Electric Cooperative Mar. 4 Answer at 6, Docket No. ER12-2681-000.

³⁹⁵ Entergy Cost Allocation Order, 139 FERC ¶ 61,056 at P 100:

Moreover, sections IV.B.4 and IV.B.5 do not address the cost responsibility of external entities with export and wheel-through transactions in the Planning Areas and, therefore, it is unclear how these transactions could be "adjusted" accordingly. Consistent with the requirements of the April 19 Order, we will require Filing Parties to submit Tariff revisions to Attachments FF-6 and/or MM to: 1) provide how individual MVP usage rate components would be adjusted during the eight-year phase-in period; and 2) ensure that the eight-year phase-in period will apply to export and wheel-through transactions by external entities, excluding those that sink in PJM.

b. Impact on Existing Agreements**i. Proposal**

172. Applicants state that they will honor all existing agreements.³⁹⁶ Applicants further explain this commitment in witness testimony:

Yes, pre-existing transmission agreements under Entergy's OATT, interconnection agreements and Grandfathered Agreements (GFAs) will be assigned to ITC. These agreements will continue to be honored. Likewise any existing agreements that allow entities to obtain transmission service will continue to be honored.³⁹⁷

ii. Protests

173. Joint Customers assert that Applicants must provide an assurance that the underlying arrangements will not be disturbed, and explain how, where applicable, the GFAs involving not only transmission services but other services (e.g., generation-related and wholesale distribution services) will be addressed.³⁹⁸

174. Associated Electric Cooperative states that it, Entergy, and Union Electric Company (d/b/a Ameren Missouri) (Ameren) have been parties to an Interchange Agreement since 1977.³⁹⁹ Associated Electric Cooperative explains that the Interchange Agreement sets forth the terms and conditions for the exchange of energy among the parties along the Missouri-Arkansas EHV Interconnection.⁴⁰⁰ Associated Electric Cooperative states that the Missouri-Arkansas EHV Interconnection is the physical path that interconnects MISO and Entergy.⁴⁰¹ Associated Electric Cooperative further

³⁹⁶ Application at 23.

³⁹⁷ Application, Exhibit No. ITC-100: Prepared Direct Testimony and Exhibits of Joseph L. Welch on Behalf of ITC Holdings Corp. (Welch Test.) at 41.

³⁹⁸ Joint Customers Jan. 22 Protest of Application at 86-87, Docket No. ER12-2681-000.

³⁹⁹ Associated Electric Cooperative Jan. 22 Protest of Application at 2, Docket No. ER12-2681-000.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

explains that the Interchange Agreement contains numerous provisions that are important to Associated Electric Cooperative and its operations to serve its members' load.⁴⁰² Associated Electric Cooperative explains that the Interchange Agreement states that, in the event the Missouri-Arkansas EHV Interconnection is unavailable, Entergy will provide, or cause to be provided, at no cost⁴⁰³ to Associated Electric Cooperative firm transmission service on a secondary path, subject to the availability of adequate capacity on the Entergy transmission system.⁴⁰⁴ Associated Electric Cooperative requests that the Commission confirm that the Entergy-ITC Transaction will not alter or impair Associated Electric Cooperative's firm capacity rights on the Missouri-Arkansas EHV Interconnection or cause Associated Electric Cooperative to incur any charges related to transmission provided under the Interchange Agreement.⁴⁰⁵

iii. Answer

175. Applicants respond that protestors' arguments are misplaced.⁴⁰⁶ Applicants explain that they are not requesting authority to amend or abrogate any of their existing contracts.⁴⁰⁷ Applicants argue that it is not the function of the Commission, in an FPA section 203 review, to rule in advance exactly how every existing contract will be implemented after a merger.⁴⁰⁸ Applicants further assert that, after the Entergy-ITC Transaction has closed, to the extent that Joint Customers, Associated Electric, or any other party to a GFA believes that its contract has been breached, each party will have the full ability to file an FPA section 206 complaint at the Commission to seek redress for

⁴⁰² *Id.*

⁴⁰³ *Id.* (citing Ameren Rate Schedule No. 94, at Art. III, § 4).

⁴⁰⁴ Associated Electric Cooperative Jan. Protest of Application at 2-3, Docket No. ER12-2681-000.

⁴⁰⁵ *Id.* at 3.

⁴⁰⁶ Applicants Feb. 22 Answer at 60, Docket No. ER12-2681-000.

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

that violation.⁴⁰⁹ Thus, Applicants maintain that there is no reason for the Commission to address these issues at this time as part of its review of the Entergy-ITC Transaction.⁴¹⁰

176. In response, Associated Electric Cooperative states that it appreciates Applicants' concession that the Entergy-ITC Transaction will not alter the rights and obligations contained within the Interchange Agreement between Associated Electric Cooperative, Entergy, and Ameren.⁴¹¹

iv. Commission Determination

177. We accept the commitment by Applicants, particularly ITC Holdings, to honor *all* existing agreements. While this commitment provides some certainty, we remind Applicants that they will need to file notices of succession to the existing agreements to memorialize the Entergy-ITC Transaction. Parties will have the opportunity to raise any concerns at that time.

c. Ancillary Service Agreements

i. Distribution-Transmission Interconnection Agreement

(a) Proposal

178. Applicants state that the Distribution-Transmission Interconnection Agreement provides for the interconnection of the New ITC Operating Companies' transmission facilities with the Entergy Operating Companies' distribution facilities and establishes the rights, responsibilities and obligations of the parties. Applicants state that a separate distribution-transmission interconnection agreement will be executed between each New ITC Operating Company and its corresponding Entergy Operating Company. Applicants state that the Commission has approved similar agreements in the past to provide for

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ Associated Electric Cooperative Mar. 4 Answer at 4, Docket No. ER12-2681-000.

clear assignment of rights and responsibilities when transmission is transferred from an integrated electric utility to an independent transmission system operator.⁴¹²

(b) **Commission Determination**

179. We will accept the Distribution-Transmission Interconnection Agreement as filed. We note that the Commission has previously accepted similar agreements.⁴¹³

ii. **Generator Interconnection Agreement**

(a) **Proposal**

180. Applicants state that they have agreed on a generator interconnection agreement to govern the continued interconnection and operation of Entergy's existing generating facilities with the New ITC Operating Companies' transmission systems. Applicants explain that most of the Entergy Operating Companies' generating facilities do not have interconnection agreements because they were built and interconnected prior to Order No. 2003 and when Entergy owned both the generation and transmission. Applicants state that after the Entergy-ITC Transaction, the New ITC Operating Companies will own the transmission facilities formerly owned by the Entergy Operating Companies and therefore a separate generator interconnection agreement will be executed for each Entergy Operating Company to govern the continued interconnection and operation of the existing generating facilities.⁴¹⁴ Applicants explain that these generator interconnection agreements will only include generating facilities that do not have existing interconnection agreements. Existing executed interconnection agreements of Entergy generating facilities will be assigned to the appropriate New ITC Operating Company and remain in effect.⁴¹⁵

181. Applicants state that the form generator interconnection agreement submitted with the Application is not subject to Order No. 2003 because the existing generating plants were interconnected before Order No. 2003 was issued. Applicants state that Order No. 2003 only applies to the interconnection of new generators and expansion of

⁴¹² Application at 68-69 (citing *ITC Midwest*, 121 FERC ¶ 61,229 at P 74). *See also* Application, Exhibit No. ITC-300: Prepared Direct Testimony of Jon E. Jipping on Behalf of ITC Holdings Corp.

⁴¹³ *See, e.g., ITC Midwest*, 121 FERC ¶ 61,229 at P 74.

⁴¹⁴ Application at 70.

⁴¹⁵ *Id.* at 71.

existing generators, and that generator interconnection arrangements pre-dating Order No. 2003 are grandfathered and not subject to the requirements of Order No. 2003.⁴¹⁶ As discussed further below, Order No. 2003 would only apply to Entergy's existing generating facilities that do not have an existing interconnection agreement, if there is an increase in capacity for that generating facility.

182. Applicants explain that even though the generator interconnection agreements to be executed are not subject to Order No. 2003, the Entergy Operating Companies and ITC Holdings have nevertheless made every effort to conform the generator interconnection agreements to the requirements of the MISO Tariff. Applicants state that the generator interconnection agreements will be three-party agreements among each Entergy Operating Company, the appropriate New ITC Operating Company, and MISO. Applicants explain that the generator interconnection agreements will consist of the *pro forma* Generator Interconnection Agreement in Appendix 6 of MISO's Generator Interconnection Procedures, with certain changes to the Recitals to clarify that the agreement applies to existing generating facilities that are already interconnected to the transmission system.⁴¹⁷

183. Applicants state that variances between the generator interconnection agreements and the terms and conditions in the MISO *pro forma* agreement have been kept to a minimum and are all contained in Appendix C, which governs the operating requirements for the existing generating facilities. Applicants note that the operating requirements contained in Appendix C that may vary from the requirements contained in the generator interconnection agreement include: section 1.2 (communication requirements applicable to existing generators); section 1.3 (metering installed for existing generators); section 1.8 (existing generator reliance on Transmission Owner's breakers for protection); section 1.11 (power factor capability); and section 1.13 (governance of existing nuclear plants).⁴¹⁸ Applicants assert that the Commission did not intend to subject existing generators to the standardized interconnection terms and conditions that apply to new generation under Order No. 2003. Applicants explain that each potential variance reflects the original configuration and historic operation of Entergy's existing generating facilities and that none of the variances have an adverse impact on system

⁴¹⁶ *Id.*

⁴¹⁷ *Id.* at 72.

⁴¹⁸ *Id.* at 72-73.

reliability. Additionally, Applicants state that they will remain fully compliant with all applicable NERC and Regional Reliability Organization reliability standards.⁴¹⁹

184. Applicants state that if an Entergy Operating Company constructs new generation or increases the capacity of its existing generation, the requirements of Order No. 2003 will apply to the new construction or increase in capacity. In such a case, Applicants state that MISO, the appropriate New ITC Operating Company and the applicable Entergy Operating Company will enter into a new generator interconnection agreement pursuant to the MISO Tariff that will govern the terms and conditions of the interconnection of the new construction or increase in capacity.⁴²⁰ Applicants request that the Commission accept the agreed-upon generator interconnection for filing, effective as of the closing date of the Entergy-ITC Transaction.

(b) Commission Determination

185. We will accept the Generation Interconnection Agreement. We find that the variations from the *pro forma* MISO Generation Interconnection Agreement are just and reasonable. We find that, because there are no proposed increases in capacity or material modifications of the characteristics of an existing generating facility, Order No. 2003 does not apply in this instance.⁴²¹ Accordingly, we accept Applicants' commitment to file a new generator interconnection agreement in the event that an Entergy Operating Company constructs new generation or increases capacity of its existing generation, to comply with the requirements of Order No. 2003.⁴²²

⁴¹⁹ *Id.* at 73.

⁴²⁰ *Id.* at 73-74.

⁴²¹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61, 270, at P 12 (2007) (finding that Order No. 2003 does not apply to changes to the LGIA that reflect only change in ownership of the existing generator, but no proposed increases in capacity or material changes to the operating characteristics of the existing generator plant); *New England Power Company*, 109 FERC ¶ 61,364, at P 13 (2004).

⁴²² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

d. Waiver of E-Tariff Filing Requirements

i. Proposal

186. Applicants state that compliance with the Commission's eTariff filing requirements dictates that the formula rates, as well as the rate schedules and jurisdictional agreements that require Commission approval under FPA section 205, be filed separately in eTariff format.⁴²³ Applicants request a limited partial waiver of the eTariff filing requirements in sections 35.7 and 35.9 of the Commission's regulations.⁴²⁴ According to Applicants, this request is limited to the filing of tariff sheets, rate schedules and agreements whose effectiveness is dependent upon the closing of the Entergy-ITC Transaction.⁴²⁵ Applicants explain that they are seeking delay in the eTariff requirements and commit that they will submit four Attachment O formula rate templates (one for each of the New ITC Operating Companies), rate schedules and jurisdictional agreements, as they may be revised by the Commission, in a filing in accordance with eTariff requirements prior to their proposed effective dates.⁴²⁶

187. Applicants contend that good cause exists for the Commission to grant the requested waiver because the proposed formula rates, rate schedules and jurisdictional agreements will not become effective until the closing of the Entergy-ITC Transaction.⁴²⁷ Applicants also state that closing is dependent on Commission approval under FPA section 203, as well as other regulatory approvals. Therefore, Applicants maintain that it is in the interests of administrative efficiency to defer eTariff filing until the necessary approvals have been obtained.⁴²⁸ The Entergy Operating Companies also make similar requests regarding their proposed Attachment O formula rates.⁴²⁹

⁴²³ Application at 74.

⁴²⁴ *Id.* at 47-48.

⁴²⁵ *Id.* at 48.

⁴²⁶ Application at 48.

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ TPZ Filing at 23.

ii. **Commission Determination**

188. We agree with Applicants that it is in the interest of administrative efficiency to defer filing the formula rates, as well as the rate schedules and jurisdictional agreements that require Commission approval under FPA section 205, in eTariff until the necessary regulatory approvals have been obtained for the Entergy Operating Companies' integration into MISO or the Entergy-ITC Transaction. We accept Applicants' commitments that they will file timely Attachment O formula rate templates, as they may be revised by the Commission, in accordance with eTariff requirements prior to the proposed effective date. Accordingly, we grant waiver of Order No. 714,⁴³⁰ in this instance, because either Applicants will file clean tariff sheets in eTariff prior to closing of the Entergy-ITC Transaction, or Entergy will file clean tariff sheets in eTariff if the Entergy-ITC Transaction is delayed or cancelled.

The Commission orders:

(A) Applicants' proposed Attachment O formula rate templates, Schedules 40, 41, 42-A, 42-B, and related agreements, and the OPEB filing, are hereby accepted for filing, suspended, and made effective subject to refund, to become effective on the date that the Entergy-ITC Transaction closes, as requested. We also set for hearing and settlement judge procedures, the remaining issues that were not summarily resolved in this order.

(B) The Entergy Operating Companies proposed Attachment O formula rates, and Schedules 40, 41, 42-A, 42-B are hereby accepted for filing, suspended and made effective subject to refund, to become effective on December 19, 2013 unless the Entergy-ITC Transaction closes prior to that date, as requested, subject to refund. We also set for hearing and settlement judge procedures, the remaining issues that were not summarily resolved in this order.

(C) The ITC Applicants and the Entergy Operating Companies are directed to file, within sixty (60) days of the date of this order, formula rate protocols that comply with the MISO Protocols Investigation Order, as discussed in the body of this order.

⁴³⁰ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008); 18 C.F.R. § 154.4 (2012).

(D) MISO is directed to file, on or by November 1, 2013, an informational filing that provides the status of the negotiations regarding revisions to existing JOAs or the development of new JOAs to address the loop flow concerns, as discussed in the body of this order.

(E) Applicants' request for waiver of Order No. 714 is hereby granted. Applicants are directed to file clean tariff sheets in eTariff prior to closing of the Entergy-ITC Transaction. In the event that the Entergy-ITC Transaction is delayed or cancelled, Entergy is directed to file clean tariff sheets in eTariff.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a hearing shall be held concerning, as described above, the proposed Attachment O formula rate templates filed by both the ITC Applicants and the Entergy Operating Companies, Schedules 40, 41, 42-A, and 42-B, and certain related agreements filed by Applicants, as well as the OPEB Filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (H) and (I) below.

(G) Docket Nos. ER12-2681-000, ER13-948-000, and ER13-782-000 are hereby consolidated for purposes of hearing and settlement judge procedures.

(H) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(I) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(J) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioners Norris and LaFleur are dissenting in part with a joint separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A: Motions to Intervene and Notices of Intervention

American Electric Power Service Corporation, on behalf of affiliates Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, American Electric Power), Docket Nos. ER12-2681-000, ER13-948-000

Arkansas Electric Cooperative Corporation (Arkansas Electric Cooperative), Docket Nos. ER12-2681-000, ER13-948-000, ER13-782-000

Arkansas Electric Energy Consumers, Inc. (Arkansas Consumers), Docket No. ER12-2681-000

Arkansas Public Service Commission (Arkansas Commission), Docket Nos. ER12-2681-000, ER13-948-000, ER13-782-000

Associated Electric Cooperative, Inc. (Associated Electric Cooperative), Docket No. ER12-2681-000

Calpine Corporation (Calpine), Docket No. ER12-2681-000

City of North Little Rock, Arkansas (City of North Little Rock), Docket No. ER12-2681-000

City of Springfield, Missouri (City of Springfield), Docket No. ER12-2681-000

Cleco Power LLC, Docket No. ER13-948-000

Consumers Energy Company (Consumers Energy), Docket No. ER12-2681-000⁴³¹

Conway Corporation; West Memphis Utilities Commission; City of Osceola, Arkansas; City of Benton, Arkansas; Hope Water & Light Commission; and City of Prescott, Arkansas (collectively, Arkansas Cities), Docket Nos. ER12-2681-000, ER13-948-000

Council of the City of New Orleans (City of New Orleans), Docket Nos. ER12-2681-000, ER13-948-000

⁴³¹ Consumers Energy filed an out-of-time motion to intervene but the motion was actually filed timely, before the intervention deadline.

Dairyland Power Cooperative (Dairyland), Docket No. ER12-2681-000

Detroit Edison Company (Detroit Edison), Docket No. ER12-2681-000

Dow Chemical Company (Dow Chemical), Docket No. ER12-2681-000

East Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc. (together, East Texas Cooperatives), Docket Nos. ER12-2681-000, ER13-948-000

Edison Mission Energy (Edison Mission), Docket No. ER12-2681-000

Empire District Electric Company (Empire District), Docket Nos. ER12-2681-000, ER13-948-000

Exelon Corporation (Exelon), Docket No. ER12-2681-000

Iberdrola Renewables, LLC (Iberdrola), Docket No. ER12-2681-000

Interstate Power and Light Company (Interstate Power and Light), Docket No. ER12-2681-000

ITC Holdings, Corp., ITC Arkansas LLC, ITC Louisiana LLC, ITC Texas LLC, and ITC Mississippi LLC, Docket No. ER13-948-000

Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, Kansas City Power & Light), Docket Nos. ER12-2681-000, ER13-948-000

Kansas Corporation Commission (Kansas Commission), Docket No. ER12-2681-000

Lafayette Utilities System (Lafayette Utilities), Docket Nos. ER12-2681-000, ER13-948-000

Lincoln Electric System (Lincoln Electric), Docket No. ER12-2681-000

Louisiana Energy and Power Authority (LEPA), Docket No. ER12-2681-000

Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, NRG Sterlington Power LLC, NRG Power Marketing, LLC, GenOn Energy Management, LLC and GenOn Wholesale

Generation, LP (collectively, NRG Companies), Docket Nos. ER12-2681-000, ER13-948-000

Louisiana Public Service Commission (Louisiana Commission), Docket Nos. ER12-2681-000, ER13-948-000, ER13-782-000

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (LS Power Transmission), Docket No. ER12-2681-000

MDEA; Clarksdale, and Yazoo City, Docket Nos. ER12-2681-000, ER13-948-000, ER13-782-000

MidAmerican Transmission, LLC (MidAmerican Transmission), Docket No. ER12-2681

MISO Transmission Owners, Docket No. ER13-948-000⁴³²

Mississippi Public Service Commission (Mississippi Commission), Docket Nos. ER12-2681-000, ER13-948-000

Missouri Joint Municipal Electric Utility Commission (Missouri Joint Municipal Commission), Docket No. ER12-2681-000

Municipal Energy Agency of Mississippi (MEAM), Docket Nos. ER12-2681-000, ER13-948-000

⁴³² The MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Municipal Energy Agency of Nebraska (MEAN), Docket No. ER12-2681-000

National Rural Electric Cooperative Association (NRECA), Docket No. ER12-2681-000

Nebraska Power Review Board (Nebraska Power Board), Docket No. ER12-2681-000

Nebraska Public Power District (Nebraska District), Docket No. ER12-2681-000

Occidental Chemical Corporation (Occidental), Docket No. ER12-2681-000

Oklahoma Gas and Electric Company (OG&E), Docket No. ER12-2681-000

Omaha Public Power District (Omaha Public Power), Docket No. ER12-2681-000

PJM Interconnection, L.L.C., Docket No. ER13-948-000

Public Utility Commission of Texas (Texas Commission), Docket Nos. ER12-2681-000, ER13-948-000

SERC Reliability Corp., Docket No. ER13-948-000

South Mississippi Electric Power Association (SMEPA), Docket Nos. ER12-2681-000, ER13-948-000, ER13-782-000

Southwest Power Pool, Inc. (SPP), Docket Nos. ER12-2681-000, ER13-948-000

Southwestern Electric Cooperative, Inc. (Southwestern Electric), Docket No. ER12-2681-000

Sunflower Electric Power Corporation (Sunflower Electric) and Mid-Kansas Electric Company, LLC (Mid-Kansas Electric), Docket No. ER12-2681-000

Tenaska Frontier Partners, Ltd. (Tenaska Frontier), Docket No. ER12-2681-000⁴³³

Tennessee Valley Authority (TVA), Docket Nos. ER12-2681-000, ER13-948-000

⁴³³ Tenaska Frontier filed an out-of-time motion to intervene but the motion was actually filed timely, before the intervention deadline.

Texas Industrial Energy Consumers, Docket No. ER12-2681-000

Union Power Partners, L.P. (Union Power), Docket No. ER12-2681-000

Westar Energy, Inc. (Westar), Docket No. ER12-2681-000

Western Farmers Electric Cooperative (Western Farmers), Docket No. ER12-2681-000

Xcel Energy Services, Inc. on behalf of Northern States Power Company Minnesota, Northern States Power Company Wisconsin, and Southwestern Public Service Company (collectively, Xcel Energy), Docket No. ER12-2681-000

Motions for Leave to Intervene Out-of-Time

City of North Little Rock, Arkansas (City of North Little Rock), Docket No. ER13-948-000

Ameren Services, on behalf of Ameren Illinois Company, Union Electric Company, and Ameren Energy Marketing Company (collectively, Ameren Companies), Docket No. ER12-2681-000

Appendix B: Motions, Comments, and Protests

Motions

Entergy Retail Regulators,⁴³⁴ Motion of the Entergy Retail Regulators for Extension of Comment Deadline (filed Oct. 4, 2012), Docket No. ER12-2681-000 (Entergy Retail Regulators Oct. 4 Motion for Extension of Comment Deadline)

Joint Customers,⁴³⁵ Motion to Direct the Filing of Additional Information or to Reject Filings and Motion for Expedited Consideration and Limited Time for Answer of Arkansas Electric Cooperative Corporation, South Mississippi Electric Power Association, and Arkansas Cities (filed Nov. 5, 2012), Docket No. ER12-2681-000.

Entergy Retail Regulators, Joint Motion of Louisiana Public Service Commission, Council of the City of New Orleans, Public Utilities Commission of Texas and Mississippi Public Service Commission for Additional 45 Day Extension of Intervention, Protest and Comment Deadline and for Shortened Response Time (filed Nov. 27, 2012),⁴³⁶ Docket No. ER12-2681-000 (Entergy Retail Regulators Nov. 27 Motion for Extension of Comment Deadline)

Entergy Retail Regulators,⁴³⁷ Motion of Entergy Retail Regulators for Extension of Comment Date (Feb. 26, 2013), Docket No. ER13-948-000 (Entergy Retail Regulators Feb. 26 Motion for Extension of Comment Deadline)

⁴³⁴ For purposes of this motion, the Entergy Retail Regulators consisted of the City of New Orleans, the Mississippi Commission, the Texas Commission, the Louisiana Commission, and the Arkansas Commission.

⁴³⁵ For purposes of this motion, Joint Customers consisted of the Arkansas Electric Cooperative Corp., SMEPA, and the Arkansas Cities.

⁴³⁶ For purposes of this motion, the Entergy Retail Regulators consisted of the Louisiana Commission, the City of New Orleans, the Mississippi Commission, and the Texas Commission.

⁴³⁷ For purposes of this motion, the Entergy Retail Regulators consisted of the Council of the City of New Orleans, the Mississippi Public Service Commission, and the Arkansas Public Service Commission.

Tennessee Valley Authority, Tennessee Valley Authority's Motion to Strike (Apr. 29, 2013), Docket No. ER13-948-000 (TVA Apr. 29 Motion to Strike)

Comments and Protests

American Electric Power Service Corporation, on behalf of affiliates Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, American Electric Power), Docket No. ER13-948-000

American Antitrust Institute (AAI), Docket No. ER12-2681-000⁴³⁸

Arkansas Electric Energy Consumers, Inc. (Arkansas Consumers), Docket No. ER12-2681-000

Arkansas Public Service Commission (Arkansas Commission), Docket Nos. ER12-2681-000, ER13-948-000

Associated Electric Cooperative, Inc. (Associated Electric Cooperative), Docket No. ER12-2681-000

Council of the City of New Orleans (City of New Orleans), Docket Nos. ER12-2681-000, ER13-948-000

Exelon Corporation (Exelon Corp.), Docket No. ER12-2681-000⁴³⁹

Interstate Power and Light Company (Interstate Power and Light), Docket No. ER12-2681-000

Joint Customers, Docket Nos. ER12-2681-000, ER13-948-000, ER13-782-000⁴⁴⁰

⁴³⁸ AAI's comments were filed out of time, on January 23, 2013.

⁴³⁹ Exelon Corp.'s comments were filed out of time, on January 30, 2013.

⁴⁴⁰ Joint Customers filed multiple protests in these proceedings. For purposes of the January 22, 2013 protest filed in Docket No. ER12-2681-000, Joint Customers consisted of Arkansas Electric Cooperative; Conway Corporation, the West Memphis Utilities Commission, the City of Osceola, Arkansas, the City of Benton, Arkansas, and the City of Prescott, Arkansas (collectively, the Arkansas Cities); Mississippi Delta Energy Agency (MDEA) and its two members, the Clarksdale Public Utilities Commission (Clarksdale) and the Public Service Commission of Yazoo City (Yazoo

(continued...)

Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, Kansas City Power & Light), Docket Nos. ER12-2681-000, ER13-948-000

Kansas Corporation Commission (Kansas Commission), Docket No. ER12-2681-000

Lafayette Utilities System (Lafayette Utilities), Docket Nos. ER12-2681-000, ER13-948-000

Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, NRG Sterlington Power LLC, NRG Power Marketing, LLC, GenOn Energy Management, LLC and GenOn Wholesale Generation, LP (collectively, NRG Companies), Docket No. ER12-2681-000

Louisiana Public Service Commission (Louisiana Commission), Docket Nos. ER12-2681-000,⁴⁴¹ ER13-948-000, ER13-782-000

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (LS Power Transmission), Docket No. ER12-2681-000

MISO Transmission Owners, Docket No. ER13-948-000⁴⁴²

City); and South Mississippi Electric Power Association (SMEPA). The Arkansas Cities did not join the February 8, 2013 protest filed in Docket Nos. ER12-2681-000 and ER13-782-000, nor did they join the March 22, 2013 protest filed in Docket No. ER13-948-000.

⁴⁴¹ The Louisiana Commission filed confidential and public versions of its protest in Docket No. ER12-2681-000.

⁴⁴² For this filing, the MISO Transmission Owners consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a

(continued...)

Municipal Energy Agency of Mississippi (MEAM), Docket Nos. ER12-2681-000, ER13-948-000

Public Utility Commission of Texas (Texas Commission), Docket Nos. ER12-2681-000, ER13-948-000

Southwest Power Pool, Inc. (SPP), Docket Nos. ER12-2681-000, ER13-948-000

Southwest Power Pool Transmission Owners, Docket No. ER12-2681-000⁴⁴³

Southwestern Electric Cooperative, Inc. (Southwestern Electric), Docket No. ER12-2681-000

Tennessee Valley Authority (TVA), Docket Nos. ER12-2681-000, ER13-948-000

Texas Industrial Energy Consumers, Docket No. ER12-2681-000

Westar Energy, Inc. (Westar), Docket No. ER12-2681-000

Xcel Energy Services, Inc. on behalf of Northern States Power Company Minnesota, Northern States Power Company Wisconsin, and Southwestern Public Service Company (collectively, Xcel Energy), Docket No. ER12-2681-000

Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁴⁴³ The Southwest Power Pool Transmission Owners consist of Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; American Electric Power Service Company, on behalf of Public Service Company of Oklahoma and Southwestern Electric Power Company; Lincoln Electric System; Omaha Public Power District; Nebraska Public Power District; Empire District Electric Company; Westar Energy; Sunflower Electric Power Corporation; Mid-Kansas Electric Company, LLC; City Utilities of Springfield, Missouri; and Oklahoma Gas and Electric Company.

Appendix C: Answers and Other Responsive Pleadings

ITC Holdings Corp., Entergy Services, Inc., Answer of ITC Holdings Corp. and Entergy Services, Inc. to Motion of the Entergy Retail Regulators for Extension of Comment Deadline (Oct. 9, 2012), Docket No. ER12-2681-000

ITC Holdings Corp., Entergy Services, Inc., Answer of ITC Holdings Corp. and Entergy Services, Inc. to Motion for Expedited Consideration and Limited Time for Answer (Nov. 7, 2012), Docket No. ER12-2681-000

Arkansas Electric Energy Consumers, Inc., Answer of Arkansas Electric Energy Consumers, Inc., to the Motion of Arkansas Electric Cooperative Corporation, South Mississippi Electric Power Association, and Arkansas Cities to Direct the Filing of Additional Information or to Reject Filings and Motion for Expedited Consideration and Limited Time for Answer (Nov. 20, 2012), Docket No. ER12-2681-000

East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., Answer to Motion to Direct the Filing of Additional Information or to Reject Filings of East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (Nov. 20, 2013), Docket No. ER12-2681-000

Joint Customers,⁴⁴⁴ Answer in Support of Motion for a 45 Day Extension of South Mississippi Electric Power Association, Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, Arkansas Cities and Municipal Energy Agency of Mississippi (Nov. 30, 2012), Docket No. ER12-2681-000

Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc., Motion for Leave to Answer and Answer of Entergy Services, Inc., (Dec. 11, 2012), Docket No. ER12-2681-000

⁴⁴⁴ For purposes of this answer, Joint Customers consisted of South Mississippi Electric Power Association, Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Service Utilities Commission, Public Service Commission of Yazoo City, Arkansas Cities, and Municipal Energy Agency of Mississippi.

ITC Holdings Corp., Entergy Services, Inc., MISO, Answer and Motion for Leave to Answer (Feb. 1, 2013), Docket No. ER12-2681-000 (Applicants Feb. 1 Answer)

Arkansas Public Service Commission, Motion for Leave to Answer and Answer of the Arkansas Public Service Commission (Feb. 6, 2013), Docket No. ER12-2681-000 (Arkansas Commission Feb. 6 Answer)

Council of the City of New Orleans, Motion for Leave to Respond and Response of the Council of the City of New Orleans (Feb. 6, 2013), Docket No. ER12-2681-000 (City of New Orleans Feb. 6 Response)

Southwest Power Pool Transmission Owners,⁴⁴⁵ Southwest Power Pool Transmission Owners' Motion for Leave to Answer and Answer (Feb. 14, 2013), Docket No. ER12-2681-000 (SPP Transmission Owners Feb. 14 Answer)

Public Utility Commission of Texas, Answer of the Public Utility Commission of Texas to the Motion to Consolidate of the Joint Customers (Feb. 19, 2013), Docket Nos. ER12-2681-000, ER13-782-000

ITC Holdings Corp., Entergy Services, Inc., Motion for Leave to Answer and Answer of ITC Holdings Corp. and Entergy Corporation to Protests and Comments (Feb. 22, 2013), Docket No. ER12-2681-000 (Applicants Feb. 22 Answer)

ITC Arkansas LLC, ITC Louisiana LLC, ITC Mississippi LLC, and ITC Texas LLC, Motion for Leave to Answer and Answer of ITC Arkansas, LLC, ITC Louisiana LLC, ITC Mississippi LLC, and ITC Texas LLC (Feb. 25, 2013), Docket Nos. ER12-2681-000, ER13-782-000

Associated Electric Cooperative, Inc., Answer of Associated Electric Cooperative, Inc. to Answer of ITC Holdings Corp. and Entergy Corporation (Mar. 4, 2013), Docket No. ER12-2681-000 (Associated Electric Cooperative Mar. 4 Answer)

⁴⁴⁵ For purposes of this pleading, the "Southwest Power Pool Transmission Owners" are members of SPP and consist of: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, American Electric Power Service Company on behalf of Public Service of Oklahoma and Southwestern Electric Power Company, Lincoln Electric System, Omaha Public Power District, Nebraska Public Power District, Empire District Electric Company, Westar Energy, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, LLC, City Utilities of Springfield, Missouri, and Oklahoma Gas and Electric Company.

Council of the City of New Orleans, Motion for Leave to Respond and Response of the Council of the City of New Orleans (Mar. 11, 2013), Docket No. ER12-2681 (City of New Orleans Mar. 11 Response)

Joint Customers,⁴⁴⁶ Answer to Applicants' Motion for Leave to Answer and Alternative Motion for Leave to Answer and Answer of Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, and South Mississippi Electric Power Association (Mar. 11, 2013), Docket No. ER12-2681-000 (Joint Customers Mar. 11 Answer)

Arkansas Cities,⁴⁴⁷ Answer to Applicants' Motion for Leave to Answer and Alternative Motion for Leave to Answer and Answer of Arkansas Cities (Mar. 12, 2013), Docket Nos. ER12-2681-000, ER13-948-000

Council of the City of New Orleans, Motion for Leave to Respond and Limited Response of the Council of the City of New Orleans to Joint Customers' March 11, 2013 Answer (Mar. 15, 2013), Docket No. ER12-2681-000

Joint Customers,⁴⁴⁸ Joint Customers' Answer to the Council for the City of New Orleans' Motion for Leave to Respond to Joint Customers' March 11, 2013 Answer (Apr. 1, 2013), Docket No. ER12-2681-000

Arkansas Public Service Commission, Motion for Leave to Answer and Answer of the Arkansas Public Service Commission (Apr. 8, 2013), Docket Nos. ER12-2681-000, ER13-948-000 (Arkansas Commission Apr. 8 Answer)

⁴⁴⁶ For purposes of this pleading, Joint Customers consist of Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two members, the Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City; and South Mississippi Electric Power Association.

⁴⁴⁷ The Arkansas Cities consist of the Conway Corporation; the West Memphis Utilities Commission; the City of Osceola, Arkansas; the City of Benton, Arkansas; and the City of Prescott, Arkansas.

⁴⁴⁸ For purposes of this pleading, Joint Customers consist of Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two members, the Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City; and South Mississippi Electric Power Association.

Council of the City of New Orleans, Council of the City of New Orleans' Motion to Leave to Respond and Response to Protests (Apr. 8, 2013), Docket No. ER13-948-000 (City of New Orleans Apr. 8 Response)

Entergy Services, Inc., Motion for Leave to Answer and Answer of Entergy Services, Inc. to Protests and Comments (Apr. 9, 2013), Docket No. ER13-948-000 (Entergy Operating Companies Apr. 9 Answer)

Entergy Services, Inc. and Midwest Independent Transmission System Operator, Inc., Motion for Leave to Answer and Answer (Apr. 16, 2013), Docket No. ER13-948-000 (Entergy and MISO Apr. 16 Answer)

Southwest Power Pool, Inc., Motion for Leave to Answer and Answer of Southwest Power Pool, Inc. (May 2, 2013), Docket No. ER13-948-000 (SPP May 2 Answer)

Entergy Services, Inc. and Midcontinent Independent Transmission System Operator, Inc., Joint Answer (May 8, 2013), Docket No. ER13-948-000 (Entergy and MISO May 8 Answer)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

| | | |
|--|-------------|--------------------------------|
| ITC Holdings Corp. Entergy Corporation Midwest Independent Transmission System Operator, Inc. | Docket Nos. | ER12-2681-000 |
| Entergy Services, Inc. | | ER13-948-000 |
| ITC Arkansas LLC ITC Texas LLC ITC Louisiana LLC ITC Mississippi LLC | | ER13-782-000 (consolidated) |

(Issued June 20, 2013)

LaFLEUR, Commissioner, and NORRIS, Commissioner, *dissenting in part*:

While we largely agree with the outcome of this order, we would delay the implementation of a 60/40 capital structure, consistent with our partial dissent in the ITC-Entergy merger order.⁴⁴⁹

Accordingly, we respectfully dissent in part.

Cheryl A. LaFleur
Commissioner

John R. Norris
Commissioner

⁴⁴⁹ *ITC Holdings Corp.*, 143 FERC ¶ 61,256 (2013).