

168 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Entergy Arkansas, Inc.

Docket No. ER19-211-000

ORDER ACCEPTING JOINT OWNERSHIP AND OPERATING AGREEMENT

(Issued September 30, 2019)

1. On October 29, 2018, Entergy Services, LLC (Entergy Services) on behalf of itself and its affiliates, the Entergy Operating Companies¹ (collectively, Applicants), submitted for filing pursuant to Federal Power Act (FPA) section 205,² a Joint Ownership and Operating Agreement (Ownership Agreement) that identifies the terms and conditions pursuant to which the Entergy Operating Companies will jointly own undivided interests in two Transmission Control Centers (Control Centers) after their acquisition and pursuant to which Entergy Services will continue to provide Control Center operations and maintenance services to the Entergy Operating Companies. In this order, we accept the Ownership Agreement to become effective, as requested, on the date the Entergy Operating Companies acquire undivided ownership interests in the Control Centers from Entergy Services.

I. Background

2. Entergy Services states that it is a centralized service company³ that provides support services to the Entergy Operating Companies. Entergy Services states that the

¹ The Entergy Operating Companies are Entergy Arkansas, LLC, Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, LLC (Entergy Mississippi), Entergy New Orleans, LLC, and Entergy Texas, Inc.

² 16 U.S.C. § 824d (2018).

³ The Commission's regulations define "centralized service company" as a "service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal, or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. Centralized service companies are different from other service companies that only provide a discrete good or service." 18 C.F.R. § 367.1(a)(7) (2019).

Control Centers are facilities located in Jackson, Mississippi and Little Rock, Arkansas that Entergy Services currently owns and operates to monitor the status of the Entergy Operating Companies' transmission system, coordinate transmission system outages for maintenance or repair, and remotely operate transmission switches and breakers at substations, all of which Entergy Services does subject to the authority of the Midcontinent Independent System Operator, Inc. (MISO).⁴ Prior to the Control Centers being placed into service in 2016 and 2017, Entergy Services operated, and the Entergy Operating Companies owned, five transmission operations centers and a systems operations center, which Entergy Services elected to replace with the two Control Centers because of the "need to modernize, standardize, and improve the reliability of the transmission and system operational facilities for the Entergy Transmission System."⁵

3. Entergy Services states that it recovers the costs of operating and maintaining the Control Centers from the Entergy Operating Companies pursuant to its centralized service company agreements with each of the Entergy Operating Companies (Service Company Agreements) that are on file with the Commission.⁶

4. Entergy Services states that on September 19, 2018, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint (Complaint) in Docket No. EL18-201-000 contending that the Entergy Operating Companies' failure to include in their wholesale transmission rates 100 percent of the Control Center costs is unjust, unreasonable, and unduly discriminatory because it requires native load customers to subsidize the use of the transmission system by third party wholesale transmission customers. Entergy Services states that Applicants agree with the Louisiana Commission's characterization of the Control Centers as transmission facilities, and, as a result, propose to transfer ownership of them to the Entergy Operating Companies to allow those companies to account for their ownership of the Control Centers as transmission plant, and to recover the costs of the Control Centers through their formula rates.⁷

⁴ Transmittal at 2 & n. 2 (Transmittal).

⁵ *Id.* at 3.

⁶ *Id.*

⁷ On the same date that Entergy Services filed the Ownership Agreement in the present docket (October 29, 2018), it filed, on behalf of itself and the Entergy Operating Companies, an application in Docket No. EC19-18-000 pursuant to section FPA section 203 (203 Application) requesting that the Commission authorize the transfer of undivided ownership interests in the Control Centers from Entergy Services to the

II. Ownership Agreement

5. Entergy Services states that the Ownership Agreement identifies the terms and conditions pursuant to which the Entergy Operating Companies will jointly own undivided interests in the Control Centers and pursuant to which Entergy Services will continue to provide Control Center operations and maintenance services to the Operating Companies. Further, it identifies the undivided ownership interests in the Control Centers that each Entergy Operating Company will own.⁸

6. The Ownership Agreement establishes the ownership share allocation for the Control Centers for each Entergy Operating Company according to the Entergy Operating Companies' 2017 coincident peak load.⁹ Entergy Services asserts that allocation according to the peak load allocation factor is just and reasonable and that the Commission previously has accepted a cost allocation methodology based on peak system usage where the Commission concluded that the facilities provide reliability benefits to customers in rough proportion to their use of the facilities.¹⁰ Entergy Services also notes that the peak load allocation factor is consistent with the Responsibility Ratio that the Entergy Operating Companies used under the now-terminated Entergy System Agreement to allocate the costs of transmission system improvements that provided benefits to the entire Entergy transmission system. Entergy Services states that the peak load allocation factor is a just and reasonable means to allocate undivided ownership interests in the Control Centers given that these facilities provide benefits to the entire Entergy transmission system and that all users of the Entergy transmission system share in those benefits.¹¹

7. Entergy Services states that, upon acquiring the ownership interests in the Control Centers, the Entergy Operating Companies will account for the Control Center costs as transmission plant and place them into their rate bases.¹² Entergy Services explains that

Entergy Operating Companies (Proposed Transaction). Concurrently with this order, the Commission is issuing orders on the Complaint and on the 203 Application.

⁸ Transmittal at 4.

⁹ *Id.* at 3.

¹⁰ *Id.* at 6 (citing *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230, at P 114 (2012), *order on reh'g*, 142 FERC ¶ 61,216 (2013)).

¹¹ *Id.* at 7-8.

¹² Entergy Services states in the 203 Application that the Control Centers would be functionalized as transmission in the Entergy Operating Companies' formula rates and

the Entergy Operating Companies will then recover their shares of the Control Center costs through their transmission formula rates in the MISO Tariff. Entergy Services states that the Ownership Agreement also provides that Entergy Services will continue to provide operations and maintenance services for the Control Centers and will allocate these service costs to the Entergy Operating Companies pursuant to the Service Company Agreements.¹³ For this reason, Entergy Services contends that the Ownership Agreement does not establish rates for any Commission-jurisdictional service.¹⁴ Entergy Services requests that the Ownership Agreement become effective when Entergy Services transfers ownership of the Control Centers to the Entergy Operating Companies.¹⁵

III. Notice of Filing and Responsive Filings

8. Notice of the filing of the Ownership Agreement was published in the *Federal Register*, 83 Fed. Reg. 55,357 (2018), with interventions and protests due on or before November 19, 2018. The Council of the City of New Orleans, Louisiana, the Arkansas Public Service Commission, and the Public Utility Commission of Texas filed notices of intervention. Cooperative Energy filed a timely motion to intervene. The Mississippi Public Service Commission and Mississippi Public Utilities Staff (together, Mississippi Intervenors) filed a joint notice of intervention and protest and the Louisiana Commission filed a notice of intervention and protest. Mississippi Intervenors filed a motion to consolidate this proceeding with the 203 Application proceeding and the proceeding in Docket No. ER19-227-000 involving Entergy Services' filing of a notice of succession notifying the Commission it had changed its name from Entergy Services, Inc. to Entergy Services, LLC. On December 3, 2018, Mississippi Intervenors submitted an answer to the Louisiana Commission's protest. On December 4, 2018, Entergy Services submitted an answer to Mississippi Intervenors' and the Louisiana Commission's protests (Entergy Services Answer). Also on December 4, 2018, the Louisiana Commission filed a response in support of Mississippi Intervenors' protest and motion to consolidate. On

will be transferred to the Entergy Operating Companies at net book value. 203 Application at 5. This price term is not part of the Ownership Agreement.

¹³ Transmittal at 5.

¹⁴ *Id.* at 6. For example, one of the Service Company Agreements between Entergy Services and Entergy Louisiana, Rate Schedule 435-J, provides that Entergy Services will provide, among other things, “[m]aintenance of computer systems, analysis tools, applications, documents data, and other records necessary to perform the engineering assessments and analysis according to established requirements” and “[s]uch other and different services as [Entergy Louisiana] may request in support of its transmission planning and reliability activities.”

¹⁵ *Id.* at 3-4.

December 6, 2018, Arkansas Electric Cooperative Corporation filed an out-of-time motion to intervene. On December 19, 2018, the Louisiana Commission and Mississippi Intervenors submitted answers to Entergy's December 4, 2018 answer. On April 24, 2019, the Louisiana Commission filed a supplemental protest. On May 13, 2019, Entergy Services filed a response to the Louisiana Commission's supplemental protest. On May 28, 2019, the Louisiana Commission filed an answer to Entergy Services' May 13, 2019 answer.

IV. Motions and Pleadings

A. Louisiana Commission Protest

9. The Louisiana Commission states that, prior to the repeal of the Public Utility Holding Company Act (PUHCA), the U.S. Securities and Exchange Commission (SEC) exercised jurisdiction over transactions between holding company affiliates and centralized service companies owned by the holding companies. The Louisiana Commission states, however, that with the 2005 repeal of PUHCA, this jurisdiction transferred to the Commission and that the Commission adopted rules governing transactions and accounting regulations for service companies. The Louisiana Commission states that, in doing so, the Commission distinguished between traditional service companies, which provide accounting, tax, regulatory, and similar services to affiliates, and special purpose companies, which "provide generally a single input to utility operations, such as fuel supply, construction, or real estate."¹⁶

10. According to the Louisiana Commission, in Order No. 667, the Commission stated that "when a service company that is a special-purpose company within a holding company . . . provides non-power goods or services to one or more public utilities in the same holding company system," an issue arises of "whether the public utility's costs incurred in purchasing from the affiliate are prudently incurred and just and reasonable."¹⁷ The Louisiana Commission states that the Commission determined that it would apply its market standard for special purpose affiliates, but that it would "not require traditional, centralized service companies currently using the SEC's at-cost

¹⁶ Louisiana Commission Protest at 9 (quoting *Repeal of Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 113 FERC ¶ 61,248, at n.178 (2005)).

¹⁷ Order No. 667, 113 FERC ¶ 61,248 at P 168.

standard to comply with the Commission's market standard for their sales of non-fuel, non-power goods and services to regulated affiliates."¹⁸

11. The Louisiana Commission argues that, even though Entergy Services' construction of and attempted transfer of the Control Centers exceed the functions of a traditional centralized services company, Entergy makes no attempt to show that the Control Centers were constructed and transferred at a cost lower than market, and that Entergy fails to address the Commission's standards for affiliate transfers.¹⁹ The Louisiana Commission thus argues that if Entergy Services seeks to become a specialized construction company that serves affiliates, it should request a declaration of that status from the Commission and comply with market-based rules.²⁰

12. Furthermore, the Louisiana Commission argues that the Service Company Agreements do not permit Entergy Services to construct the Control Centers and transfer them to its affiliates.²¹ Additionally, the Louisiana Commission considers Entergy Services' proposal outside the scope of permitted activities previously approved by the Commission.²² The Louisiana Commission argues that when Entergy Services filed the Service Company Agreements for Commission approval to serve as FERC rate schedules in 2006, it relied on the authority previously granted for "at cost" pricing for traditional centralized service companies and that Entergy Services has never sought Commission approval to operate as a special-purpose company such as a construction company.²³ Regarding this point, the Louisiana Commission argues that the Ownership Agreement conflicts with Entergy Services' role as a traditional service company and that the Commission can only approve the Ownership Agreement if Entergy Services demonstrates that the Ownership Agreement passes the market test applicable to affiliate transactions of this type. It further argues that the Commission would have to revoke Entergy Services' "at cost" status as a condition of approval of the Ownership Agreement because Entergy Services has unreasonably mixed functions to avoid the Commission's rules and retail regulation scrutiny. For this reason, it asks the Commission to either

¹⁸ *Id.* P 169. As examples of services provided by centralized service companies, the Commission referred to "accounting, human resources, legal, [and] tax." *Id.*

¹⁹ Louisiana Commission Protest at 12.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 13.

²³ *Id.* (citing *Entergy Servs., Inc.*, 117 FERC ¶ 61,288, at P 7 (2006)).

reject the Ownership Agreement or set it for an investigation into all of Entergy Services' construction activities that would result in plant transfers to affiliates.²⁴

13. Additionally, the Louisiana Commission argues that there is no rate at issue in the Ownership Agreement to consider under FPA section 205, only a transfer of ownership, which will indirectly increase retail and wholesale rates while providing no public benefit. Thus, the Louisiana Commission contends that the only purpose of the Proposed Transaction is to evade the "at cost" rule and permit the Entergy Operating Companies to earn a rate of return on the investment.²⁵

14. For these reasons, the Louisiana Commission asserts that the Ownership Agreement is an improper use of FPA section 205 for Entergy Services, a centralized service company, to transfer the Control Centers to the Entergy Operating Companies to place them on the Entergy Operating Companies' books so those companies may earn a return on equity.²⁶ The Louisiana Commission thus argues that the Ownership Agreement is not just and reasonable.²⁷ It argues that Entergy Services can continue to perform all the expected functions without transferring ownership of the Control Centers, and that granting the Louisiana Commission's Complaint will accomplish the inclusion of the Control Center costs in wholesale transmission rates without the "detrimental effects" presented by the Proposed Transaction.²⁸

15. The Louisiana Commission also argues that the Proposed Transaction seeks to avoid retail regulatory review of the costs and the cost allocation. It argues that if the Commission approves the Proposed Transaction and the Ownership Agreement, the determination would preempt state ratemaking.²⁹ The Louisiana Commission thus asks the Commission to reject the Ownership Agreement.

16. The Louisiana Commission also argues that Entergy Services' proposed peak load allocation method is inconsistent with cost causation, and that allocation by transmission

²⁴ *Id.* at 14.

²⁵ *Id.* at 14-15.

²⁶ *Id.* at 15.

²⁷ *Id.* at 17.

²⁸ *Id.* at 16.

²⁹ *Id.* at 18 (citing *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988)).

line miles is cost causative and should be used instead.³⁰ The Louisiana Commission asserts that the peak load method is appropriate for generation used to serve load, but not for monitoring, repair, coordination of outages, and similar activities.³¹ It argues that the cost allocation method memorialized in the Ownership Agreement unduly discriminatory, and allocates about 50 percent more costs to Entergy Louisiana than is appropriate.³²

17. Finally, the Louisiana Commission argues that Entergy Services has increased its construction allocations “in recent years” and no longer operates as a traditional service company.³³ It suggests that Entergy Services’ strategy is to add plant to the regulated rate base and “pump up” earnings without regulatory scrutiny.³⁴ The Louisiana Commission asks the Commission to investigate and determine whether Entergy Services should still qualify as a traditional service company and whether Entergy’s apparent strategy regarding Entergy Services is a permissible use of service company allocation methods, and make clear that capital allocations using these methods do not preempt retail regulation.³⁵

B. Mississippi Intervenors Protest and Motion to Consolidate

18. Mississippi Intervenors ask the Commission to reject the Ownership Agreement, or, in the alternative, set it for hearing.³⁶ Mississippi Intervenors argue that the Ownership Agreement conflicts with the Service Company Agreements. They point specifically to current Rate Schedules 435-A, 435-C, 435-D, 435-E, 435-F, 435-G, 435-H, 435-I, 435-J, 435-K, 435-L, and 435-M, pursuant to which Entergy Services provides planning, operational support, administrative, and general support services to the Entergy Operating Companies.³⁷ Mississippi Intervenors state that, in contrast, the Ownership Agreement sets the terms and conditions for Entergy Services to provide operations and

³⁰ *Id.* at 19.

³¹ *Id.* at 20.

³² *Id.*

³³ *Id.* at 21-25.

³⁴ *Id.* at 24.

³⁵ *Id.* at 25.

³⁶ Mississippi Intervenors Protest at 8.

³⁷ *Id.* at 3.

maintenance services to the Entergy Operating Companies for the Control Centers. Mississippi Intervenors also state that Entergy agrees that the Control Centers are transmission facilities. Mississippi Intervenors assert, however, that Exhibit 1 of Rate Schedule 435-F states that Entergy Services will provide “[t]echnical and engineering support for [Entergy Mississippi’s] transmission planning functions or other transmission-related requirements as required by applicable tariff and business practice requirements.”³⁸

19. Mississippi Intervenors argue that the interaction between the services provided pursuant to the Ownership Agreement and the services covered by the Service Company Agreements is unclear and that there is no way to know the effect of the Ownership Agreement.³⁹ They further argue that nothing in the Service Company Agreements authorizes Entergy Services to construct and transfer transmission facilities to the Entergy Operating Companies.

20. Mississippi Intervenors also argue that the Ownership Agreement contains no rates or charges, which Entergy Services acknowledges. Mississippi Intervenors point to instances in which a party protested a service agreement for a lack of any rate provisions, and the Commission found that rates under a new agreement were not shown to be just and reasonable and set the agreement for hearing.⁴⁰ Mississippi Intervenors also argue that the Ownership Agreement is deficient because it does not fulfill the filing requirements of section 35.13 of the Commission’s regulations,⁴¹ that utilities that file a change to a rate schedule tariff or service agreement include sufficient information to support the change, such as cost of service information and information relating to the effect of the rate change, which here would include describing which costs will be allocable using the peak load allocator method.⁴²

21. Finally, Mississippi Intervenors contend that the Ownership Agreement suggests potential FPA violations. They argue that “[u]nder the guise” of providing a remedy to the Complaint, Entergy Services has designed a route to allow the service company to

³⁸ *Id.* at 4 (quoting from Rate Schedule 435-F, as filed by Entergy in Docket No. ER19-277-000, discussed below).

³⁹ *Id.*

⁴⁰ *Id.* at 6 (citing *ITC Midwest LLC*, 133 FERC ¶ 61,179, at P 21 (2010); *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at PP 40, 45 (2013)).

⁴¹ 18 C.F.R. § 35.13 (2019).

⁴² Mississippi Intervenors Protest at 6.

construct facilities, without state or Commission authorization, and then transfer those facilities to the Entergy Operating Companies to ensure a return on investment.⁴³ Mississippi Intervenors argue that, if the Control Centers are jurisdictional transmission facilities, then potentially Entergy Services became a public utility as soon as the Control Centers became operational. If that is the case, Mississippi Intervenors argue that Entergy Services may have violated numerous FPA requirements applicable to public utilities. Additionally, Mississippi Intervenors argue that Entergy Services may have violated state requirements that require a notification and issuance of a certificate of need to construct transmission facilities.⁴⁴ Furthermore, Mississippi Intervenors argue that Entergy Services may have violated the Service Company Agreements, which do not expressly authorize the construction and transfer of transmission facilities to the Entergy Operating Companies.⁴⁵ Mississippi Intervenors conclude that if, however, the Control Centers provide centralized service company service, they should remain under Entergy Services' ownership and Entergy Services should continue to recover the depreciation and debt interest from the Entergy Operating Companies.⁴⁶

22. Separately, Mississippi Intervenors moved to consolidate this proceeding with the 203 Application and a proceeding involving a filing of a notice of succession to change Entergy Services, Inc. to Entergy Services, LLC in numerous agreements, including the Service Company Agreements. Mississippi Intervenors filed the motion in all three proceedings (Docket Nos. EC19-18-000, ER19-211-000, and ER19-227-000, respectively).⁴⁷

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 8.

⁴⁷ On December 28, 2018, the Commission issued a letter order in Docket No. ER19-227-000 accepting the notice of succession filed by Entergy Services notifying the Commission that it had changed its name from Entergy Services, Inc. to Entergy Services, LLC. *Entergy Servs., LLC*, 165 FERC ¶ 61,274 (2018) (Notice of Succession Order). In that order the Commission also denied Mississippi Intervenors' motion to consolidate that proceeding with this proceeding and the 203 Application proceeding. *Id.* P 12.

C. Answers

23. The Louisiana Commission states that it supports Mississippi Intervenors' protest and motion to consolidate.⁴⁸ Mississippi Intervenors support the Louisiana Commission's protest, except they oppose the Louisiana Commission's proposed alternative method for allocating Control Center costs, arguing that the Louisiana Commission has offered no evidence to support its transmission mile allocation method proposal. Mississippi Intervenors also argue that the proposed allocation based upon coincident peak demand is a "historically approved methodology."⁴⁹

24. In response to the Louisiana Commission's argument that the Service Company Agreements do not allow Entergy Services to acquire property and transfer it to the Entergy Operating Companies, Entergy argues that the Louisiana Commission overlooks, for example, Section 1 of Rate Schedule 435-A, which provides that "Entergy Services will . . . provide to Client Company such other services not described in Exhibit 1 as Client Company may request and which Entergy Services is competent to perform."⁵⁰ Entergy also points to Rate Schedule 435-J, pursuant to which Entergy Services provides "a variety of support services . . . in support of [the relevant Entergy Operating Company's] transmission planning and reliability obligations."⁵¹ While Entergy Services maintains that the Service Company Agreements are "not at issue" in this proceeding, it argues that the Louisiana Commission and Mississippi Commission fail to recognize that these agreements permit Entergy Services to provide a "broad range of centralized services."⁵² Entergy Services further states that many of the issues raised by protestors in this proceeding are "wildly beyond" the scope of the Ownership Agreement, and that the Commission should decline to consider them in this proceeding.⁵³

25. In response to Mississippi Intervenors' allegations of deficiencies in the Ownership Agreement, Entergy Services argues that the Ownership Agreement is the vehicle through which the Entergy Operating Companies will appoint Entergy Services to

⁴⁸ Louisiana Commission Answer to Mississippi Intervenors at 1-4.

⁴⁹ Mississippi Intervenors Answer to the Louisiana Commission at P 2.

⁵⁰ Entergy Services Answer at 5 (citing Entergy Services, LLC, Rate Schedule 435-A, Section I).

⁵¹ *Id.*

⁵² *Id.* at 5-6.

⁵³ *Id.* at 6.

provide Control Center operations and maintenance services and that Entergy Services will do so in accordance with the rates, terms, and conditions embodied in the Service Company Agreements. Thus, Entergy Services argues that there is no conflict between the Ownership Agreement and the Service Company Agreements.⁵⁴ It further argues that the Ownership Agreement's terms and conditions are consistent with other joint ownership and operating agreements for jointly-owned Entergy Operating Company facilities.⁵⁵

26. Entergy Services also denies the Louisiana Commission's allegation that the Ownership Agreement seeks to evade retail regulatory review. Nonetheless, Entergy Services also argues that such an argument is outside the scope of this proceeding. Finally, it contends that the peak load allocation method is a commonly accepted allocation method and comports with the Entergy Operating Companies' historical, Commission-authorized cost allocation methods.⁵⁶

27. In its December 19, 2018 reply to Entergy Services, the Louisiana Commission raises several issues related to the 203 Application and reiterates arguments in its protest, alleging that Entergy Services exceeded its authority as a centralized service company, and challenging the Ownership Agreement's peak load allocation method.⁵⁷ In its December 19, 2018 reply, Mississippi Intervenors reiterate arguments from their protest and raise issues related to the 203 Application and the proceeding in Docket No. ER19-227-000, which as noted above the Commission has already acted upon. On April 24, 2019, the Louisiana Commission filed a supplemental protest. The Louisiana Commission states that information, provided in an amendment to the 203 Application filed in response to a staff deficiency letter, confirms that the proposed transfer is outside the authorized scope of activities of a traditional service company permitted under the Commission's affiliate pricing rules and beyond the scope of the Commission-approved functions for Entergy Services.⁵⁸

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* at 8 (citing Entergy Services, Inc., Docket Nos. ER16-885-000 and ER16-885-001 (Apr. 22, 2016) (delegated order accepting agreements for filing); Entergy Services, Inc., Docket No. ER10-216-000 (Dec. 16, 2009) (delegated order accepting agreements for filing)).

⁵⁶ *Id.* at 9.

⁵⁷ Louisiana Commission Answer at 7-8, 10-11.

⁵⁸ Louisiana Commission Supplemental Protest at 4.

28. In its response to the Louisiana Commission's supplemental protest, Entergy Services argues that the Proposed Transaction does not violate the Commission's affiliate cross-subsidization rules requiring that a franchised public utility may only purchase or receive non-power goods or services from a centralized service company at cost. Entergy Services states that the Proposed Transaction will be at cost. Entergy Services also asserts that the Louisiana Commission does not support its assertion that the Proposed Transaction should be subject to a market test. Additionally, Entergy Services states that, if the Proposed Transaction is considered a provision of specialized service provided by Entergy Services to the Entergy Operating Companies, the Commission will rebuttably presume that the proposed cost-based price for the Proposed Transaction is reasonable.⁵⁹ Entergy Services also states that the Proposed Transaction will not be undertaken pursuant to the Service Company Agreements.⁶⁰

29. Entergy Services states that the Ownership Agreement establishes the peak load allocation factor for purposes of the Proposed Transaction. Entergy Services states that, contrary to the Louisiana Commission's contentions, it is not seeking to apply the peak load allocation factor pursuant to the Service Company Agreements. Entergy Services also asserts instead that the Service Company Agreements permit Entergy Services to allocate to the Entergy Operating Companies the costs that Entergy Services incurs in providing transmission planning and reliability services on behalf of the Entergy Operating Companies.⁶¹

30. The Louisiana Commission responds that Entergy Services' argument that its proposal allocates the ownership in the Control Centers pursuant to the peak load allocation factor in the Ownership Agreement and not pursuant to the Service Company Agreements is incorrect and undermines the reasonableness of its own filing. The Louisiana Commission states that Entergy Services' position is that the allocation of ownership in the Control Centers is made pursuant to the Ownership Agreement but that the Ownership Agreement requires the allocation of ownership to have already occurred before it becomes effective. The Louisiana Commission argues that Entergy Services' position is untenable. The Louisiana Commission states that each of the Service Company Agreements contains a provision that prohibits the allocation of the Control

⁵⁹ Entergy Services Response to Louisiana Commission Supplemental Protest at 5-6.

⁶⁰ *Id.* at 4-6.

⁶¹ *Id.* at 6-9.

Centers.⁶² The Louisiana Commission also argues that Entergy Services' claim is incorrect that the Commission should consider the construction and transfer of the Control Centers to be a "provision of a special service" that would be granted a rebuttable presumption of reasonableness. The Louisiana Commission argues that Entergy Services' actions fall within the activities allowed only for a special purpose company which is subject to a market test.⁶³

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant the Arkansas Electric Cooperative Corporation's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers submitted in this proceeding

⁶² Louisiana Commission Reply to Entergy Response at 3-6. The provision in question, which the Louisiana Commission states is similar to provisions in other Entergy Operating Companies rate schedules reads:

WHEREAS, [Entergy Arkansas] and Entergy Services seek to . . . provide greater assurance that the services identified herein are provided pursuant to and/or in accordance with the directives provided by [Entergy Arkansas] to Entergy Services in connection with these services and that there are no transmission planning activities or any coordination regarding transmission planning and reliability between [Entergy Arkansas] and any of the other public utility operating companies ("Operating Companies") other than such regional transmission and reliability planning activities conducted pursuant to applicable transmission provider tariffs and requirements and applicable reliability requirements for the bulk electric system.

Rate Schedule 435-D at 2.

⁶³ Louisiana Commission Reply to Entergy Response at 6-7.

because they have provided information that has assisted us in our decision-making process.

33. As noted above, in Docket No. ER19-227-000 the Commission denied the Mississippi Commission's motion to consolidate that filing with the instant proceeding and the proceeding on the Proposed Transaction.⁶⁴ There, the Commission stated that it generally only consolidates proceedings if a trial-type evidentiary hearing is necessary to resolve common issues of law and fact, and consolidation will ultimately result in greater administrative efficiency.⁶⁵ In denying the motion to consolidate, the Commission noted that it was not setting the notice of succession filing for hearing and that the ministerial nature of the proceeding raises no common issues with the other dockets. We again conclude that consolidating this proceeding with the FPA section 203 proceeding on the Proposed Transaction and the notice of succession is not appropriate because there are no issues related to the Ownership Agreement that need to be set for a trial-type evidentiary hearing. Moreover, consolidating the proceedings would not ultimately result in greater administrative efficiency.

B. Substantive Matters

34. We accept the Ownership Agreement, to be effective as of the date the Entergy Operating Companies acquire undivided ownership interests in the Control Centers from Entergy Services. Accordingly, we direct Entergy Services and the Entergy Operating Companies to make a compliance filing, within five days from the date of the consummation of the Proposed Transaction, updating the tariff record with notice of the actual effective date for the Ownership Agreement.⁶⁶

35. We find that the Louisiana Commission's arguments regarding whether Entergy Services' past actions with respect to construction of the Control Centers were appropriately within the role of a centralized service company or a special-purpose service company are outside the scope of this proceeding. These arguments relate to whether the costs associated with construction of the Control Centers should be subject to a market test before being charged to the Operating Companies. However, the Ownership Agreement itself does not give rise to or memorialize the "at cost" treatment of the Control Centers. Those costs are not specified or established in the Ownership

⁶⁴ Notice of Succession Order, 165 FERC ¶ 61,274 at P 12.

⁶⁵ See, e.g., *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 33 (2011); *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 44, n.74 (2010); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008).

⁶⁶ Such notice should be submitted in eTariff using Type of Filing Code 80 – Compliance.

Agreement, and the issue before us in this proceeding is the justness and reasonableness of the Ownership Agreement. The Ownership Agreement concerns only the allocation of such costs among the Entergy Operating Companies and the role of Entergy Services as Control Center operator on behalf of the Entergy Operating Companies. The Ownership Agreement sets forth the allocation factors to be used to allocate the costs and ownership of the Control Centers among the Entergy Operating Companies, with such allocation factors to be applied formulaically to the costs incurred for the Control Centers. These Control Center costs will then become inputs to the Entergy Operating Companies' existing formula rates under the MISO Tariff. The costs incurred to acquire the Control Centers serve as an input to the formulas that is not specified or established in the Ownership Agreement. The reasonableness of such costs for inclusion as an input to those formulas is not before us here.

36. We also find that arguments that the Service Company Agreements did not permit Entergy Services to construct and to now transfer the Control Centers are outside the scope of this proceeding. These arguments pertain to interpretation of the Service Company Agreements, not to whether the Ownership Agreement filed in this proceeding is just and reasonable. We also disagree with the Louisiana Commission that the Ownership Agreement constitutes an improper use of FPA section 205 to transfer ownership of the Control Centers to the Entergy Operating Companies. The Ownership Agreement memorializes the cost allocation method that will be used if the Commission approves the Proposed Transaction.

37. With regard to the use of the proposed coincident peak cost allocation method, the Commission has previously stated that public utility transmission providers have traditionally relied on the demand of "transmission customers at [a] system's coincident peak to determine" the allocation of transmission costs and that proposals to "adopt a different approach . . . must [be] adequately support[ed]." ⁶⁷ Entergy has not proposed to deviate from this allocation approach here. Consequently, we find that such an allocation is just and reasonable because the Control Centers operate for the benefit of the entire Entergy transmission system, and peak load allocation reasonably reflects the system benefits that all load on the system receive from the reliable operation of the system provided by the Control Centers.

38. We also disagree with Mississippi Intervenors' argument that the Ownership Agreement conflicts with the existing Service Company Agreements. Regarding, for example, "ESL O&M Services," ⁶⁸ the Ownership Agreement provides that:

⁶⁷ *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,136, at P 25 (2018); *see also PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 at P 114 ("[l]oad on the transmission system is a measure of the usage of reliable transmission service").

the [Entergy Operating Companies] shall be allocated, billed for, and pay the actual costs . . . incurred by (i) [Entergy Services] in connection with performance of the ESL O&M Services . . . in accordance with *the then-applicable allocation, billing, and payment processes* and methodologies utilized for billings . . . between and among the [Entergy Operating Companies] and [Entergy Services] . . . for facilities in which an [Entergy Operating Company] owns less than the entire facility and is responsible for operating and maintaining, directly or indirectly, the facility.⁶⁹

This language indicates that the existing Service Company Agreements and the Ownership Agreement work in tandem. The Ownership Agreement provides how the Operating companies will allocate the costs and ownership of, and appoint Entergy Services to continue to operate, the Control Centers, and the existing Service Company Agreements provide the *applicable* rates, terms and conditions pursuant to which Entergy Services will continue to operate the Control Centers.⁷⁰

39. In response to Mississippi Intervenors' and the Louisiana Commission's arguments that the Ownership Agreement does not satisfy the requirements of 18 C.F.R. § 35.13 in that it does not contain a rate term, we disagree. As explained above, the Ownership Agreement sets forth the allocation factors to be applied formulaically to the costs incurred for the Control Centers to allocate the costs and ownership of the Control Centers among the Entergy Operating Companies. The Control Center costs, that is, the net book value of the Control Centers that the Entergy Operating Companies will pay for the Control Centers, serve as an input to that formula, but are not specified in the Ownership Agreement. In addition, Entergy Services is not changing existing rates pursuant to the Ownership Agreement to provide recovery of the costs of the Control

⁶⁸ This term is defined as "those services that [Entergy Services] is authorized to perform, at the time the service is performed, on behalf of the [Entergy Operating Companies] with respect to the [Control Centers] and that apply to the operation, maintenance, management, or administration of the [Control Centers]." Agreement Art. I (Definitions).

⁶⁹ Agreement Art. 12.1(i) (Billing and Payment) (emphasis supplied). *See also* Entergy Services Answer at 7 (The "centralized service agreement rate schedules on file . . . contain the rates, terms, and conditions pursuant to which [Entergy Services] will recover its costs of providing [Control Center] operating and maintenance services").

⁷⁰ For example, pursuant to one of the Service Company Agreements, Rate Schedule 435-J, an agreement for transmission planning and reliability support services between Entergy Services and Entergy Louisiana, Entergy Louisiana agrees to pay Entergy Services as "compensation for services rendered" at "the cost of such services."

Centers. Instead, as a result of the Proposed Transaction, Entergy Services will add these Control Center costs as inputs to the Entergy Operating Companies' existing formula rate bases without the need to file for a formal rate change pursuant to FPA section 205. The Commission routinely approves such formulas to satisfy the filed rate requirements under FPA section 205 and part 35 of the Commission's regulations.⁷¹

40. Finally, we find the Louisiana Commission's arguments that Entergy Services seeks to avoid retail regulatory review of the Control Center costs to be outside the scope of this proceeding. Relatedly, we find Mississippi Intervenors' argument that Entergy Services may have violated state requirements that require a notification and issuance of a certificate of need to construct transmission facilities to be outside the scope of this FPA section 205 proceeding. Both of these arguments take issue with the fact that Entergy Services, rather than the Entergy Operating Companies, has constructed, owned, and operated the Control Center. However, these issues are independent of the question of whether the Ownership Agreement is just and reasonable. Consequently, we conclude that both of these arguments are outside the scope of this proceeding.

The Commission orders:

(A) The Ownership Agreement is hereby accepted, to become effective as of the date the Entergy Operating Companies acquire undivided ownership interests in the Control Centers from Entergy Services, as discussed in the body of this order.

(B) Entergy Services and the Entergy Operating Companies are hereby directed to submit a compliance filing, within five days from the date of consummation of the Proposed Transaction, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷¹ *Id.*