

184 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Big River Steel LLC and Entergy Arkansas, LLC

Docket No. IN23-11-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 21, 2023)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), Big River Steel LLC (BRS) and Entergy Arkansas, LLC (EAL). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation (Investigation) under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2022), into whether BRS's participation in a Midcontinent Independent System Operator (MISO) demand response program between September 2016 and April 2022 (the Relevant Period) violated MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) or Commission regulations.
2. BRS agrees to: (a) disgorge \$15,940,399 it received through its participation as a Demand Response Resource-Type 1 (DRR-1) unit in MISO during the Relevant Period; (b) pay a civil penalty of \$6,000,000 to the United States Treasury; and (c) provide compliance training to its traders if it intends to participate again as a DRR-1 unit in MISO.
3. EAL agrees to: (a) disgorge \$5,033,780 it received, and credited to retail customers, in connection with BRS's participation as a DRR-1 unit in MISO; and (b) coordinate as necessary with the Arkansas Public Service Commission (APSC) to ensure the prompt return to its customers of the net amount (\$8,181,899) they were charged in connection with BRS's participation as a DRR-1 unit in MISO.
4. BRS and EAL stipulate to the facts set forth in Section II of the Agreement, but neither admit nor deny the alleged violations in Section III of the Agreement.

I. Facts

5. BRS operates a steel mill that uses as much as 300 megawatts (MW) to operate electric arc furnaces and other equipment. The mill is in Osceola, Arkansas, within MISO's footprint. BRS's load levels at its mill rise and fall in the normal course of business as it turns smelters and other equipment on and off.

6. EAL is a Load Serving Entity (LSE), providing distribution service to approximately 725,000 retail electric customers, primarily in Arkansas.
7. MISO administers Day Ahead and Real Time electricity markets for Energy.¹ MISO allows two types of Demand Response Resource (DRR) units to participate in its Energy markets: DRR-1 and DRR-2 units. DRR-1 units, such as BRS during the Relevant Period, are expected to supply a specific quantity of Energy through behind-the-meter generation or controllable load. For the Relevant Period, BRS participated in MISO as a DRR-1 unit.
8. Section 38.2.5.d.ii.e of the MISO Tariff requires a “Market Participant selling Energy” to “respond to [MISO’s] directives to start, shutdown, or change output levels of Resources, in accordance with the terms specified in the Offer” MISO pays DRR-1 units at the Locational Marginal Price (LMP) for the difference between the unit’s “baseline” load and its actual load. The baseline method that BRS used is called the Calculated Baseline method, which is based on the average load over certain days within the past 45 days.
9. EAL served as the Market Participant for BRS’s participation as a DRR-1 unit in MISO. As a result, BRS submitted its demand response offers through EAL and received payments from MISO through EAL. Nevertheless, it was BRS that decided what offers to submit in MISO’s Day Ahead and Real Time markets and what BRS would do if its offers were accepted.
10. EAL sponsored BRS’s DRR-1 participation under a 2014 agreement between the parties entitled “Amended and Restated Agreement for Electric Service” (PSA). The PSA provides that, in connection with BRS’s participation as a DRR-1 unit, EAL receives a 10% administrative fee and a charge for energy not consumed. EAL reduced the payments it otherwise made to BRS by those two amounts.
11. In 2016, BRS and EAL entered into a supplemental agreement to give BRS direct access to the MISO web portal. This agreement makes BRS responsible for “reducing the electric demand or load of the Facility in accordance with MISO instructions, directions, or other notifications and the MISO Rules, including MISO instructions, directions, and other notifications communicated through the MISO Portal.”
12. BRS participated in MISO as a DRR-1 unit throughout the Relevant Period. With the exception of a seven-day period during Winter Storm Uri (Feb. 16-22, 2021), BRS did not change mill operations to alter energy consumption levels when MISO accepted its demand response offers. Instead, BRS operated its mill at the same load levels as it would have if it had not been a DRR-1 unit.
13. A presentation to BRS by MISO staff in 2016, when BRS began to operate as a DRR-1 unit, stated that “planned outages can be utilized by offering into the energy

¹ The MISO Tariff defines “Energy” as “[a]n amount of electricity that is Bid or Offered, produced, purchased, consumed, sold, injected, withdrawn, or transmitted over a period of time and measured or calculated in megawatt hours (MWh).” MISO Tariff, Definitions – E. “Energy” is used herein as defined in the Tariff.

market.” From 2016 until mid-2020, BRS tried to anticipate when there would be outages, put in offers that roughly corresponded to the expected outages, and received DRR-1 payments for those outages. In 2019, BRS told MISO staff that it sought to be paid as a DRR-1 unit for a specific previous planned outage for which it had not received a DRR-1 payment. In response, MISO staff told BRS to “file a settlement dispute.”

14. Starting in mid-2020, if it had no reason to expect an outage the next day, BRS normally offered 100 MW into MISO for the next day. The BRS employee who led BRS’s DRR-1 participation during this period stated that BRS did so based on the theoretical possibility of an unplanned reduction in load of that size the next day. In addition, BRS made DRR-1 offers for planned outages during this period.

15. For the entirety of the Relevant Period, with the exception of the seven days during Winter Storm Uri, MISO made DRR-1 payments whenever BRS cleared its offers and BRS’s load was below its calculated baseline in the normal course of mill operations. Those MISO payments were made to BRS, through EAL, with EAL retaining the 10% administrative fee and charge for energy not consumed, and passing those amounts through to retail customers.

16. Starting in 2019, BRS began making very small (1 MW) Day Ahead offers every day as well as increased MW offers in Real Time that were often higher than 1 MW. These offers had the effect of increasing the volume of MWs that BRS cleared in Real Time and was paid for when its consumption was below its baseline. It thereby allowed BRS to obtain increased revenues from MISO for its participation as a DRR-1 unit. Under the MISO Tariff, the baseline calculation method used by BRS was based on the average of the loads on certain days among the previous 45 days.² Normally, any day on which the unit received a DRR-1 award would be excluded from consideration in calculating the baseline. But by submitting small Day Ahead offers every day, BRS received DRR-1 awards every day. When that happened, the MISO Tariff’s baseline calculation method looked to the five highest days across the entire 45-day period, rather than only the five highest days when BRS did not receive an award.

17. Excluding the days when BRS went on outage during Winter Storm Uri in February 2021, MISO paid a total of \$20,974,179 for BRS’s participation as a DRR-1 unit during the Relevant Period. Based on the fees and charges provided for in the PSA, EAL’s share of this amount was \$5,033,780. BRS received the remainder: \$15,940,399.

18. Under its Tariff, MISO charges LSEs for all amounts paid for a DRR-1 unit’s participation in MISO. To cover the amounts paid out by MISO for BRS’s participation as a DRR-1 unit, MISO assessed charges totaling \$20,974,179 to LSEs in MISO: EAL (in Arkansas); LSEs in Louisiana, Mississippi, and Texas owned by EAL’s parent company; and non-Entergy LSEs. As confirmed by MISO, EAL paid the largest share (63.01%) of these amounts; other Entergy affiliates paid 8.68%; and non-Entergy LSEs paid 28.31%.

² MISO Tariff, Attachment TT (Measurement and Verification), Section 3(i)(b).

19. Both the amount that EAL received from MISO as its share of payments for BRS's participation as a DRR-1 unit (\$5,033,780), and the amount it was charged by MISO for BRS's participation as a DRR-1 unit (\$13,215,679), were passed on to EAL's retail customers through the state regulatory process. The net amount paid by EAL retail customers as a result of BRS's participation as a DRR-1 unit is the difference between these two amounts, or \$8,181,899.

20. BRS and EAL have fully cooperated with Enforcement during the Investigation.

II. Violations

21. MISO Tariff § 38.2.5.d.ii.e requires Market Participants to respond to MISO directives to provide the Energy they have offered to provide:

A Market Participant selling Energy . . . shall . . . (e) respond to the Transmission Provider's directives to start, shutdown, or change output levels of Resources, in accordance with the terms specified in the Offer" (emphasis added).

22. EAL was (as the Market Participant for BRS) selling Energy, in the form of reduced energy usage, in MISO's Day Ahead and Real Time markets. BRS did not (with the exception of seven days in February 2021) reduce energy consumption levels in response to MISO accepting its demand response offers. Instead, BRS operated at the load levels at which it would have operated if it were not a DRR-1 unit.

23. Enforcement concludes that this conduct violated § 38.2.5(d)(ii)(e) of the MISO Tariff because BRS did not "respond to [MISO] directives to . . . change output levels" by reducing its load below what it would otherwise have been.

24. Because EAL was the Market Participant for BRS's participation as a DRR-1, Enforcement concludes that EAL is responsible for BRS's conduct that violated the MISO Tariff. The MISO Tariff makes a Market Participant "financially responsible to [MISO] for all of its Market Activities and obligations. . . ." MISO Tariff, Definitions – M.

III. Stipulation and Consent Agreement

25. Enforcement, BRS, and EAL have resolved the investigation by means of the attached Agreement.

26. BRS and EAL stipulate to the facts set forth in Section II of the Agreement, but neither admit nor deny the alleged violations set forth in Section III of the Agreement.

27. BRS agrees to disgorge \$15,940,399 it received through its participation as a DRR-1 unit in MISO during the Relevant Period.

28. BRS agrees to pay a civil penalty of \$6,000,000 to the United States Treasury.

29. BRS agrees to provide compliance training to its traders if it intends to participate again as a DRR-1 unit in MISO.

30. EAL agrees to disgorge \$5,033,780 it received, and credited to retail customers, in connection with BRS's participation as a DRR-1 unit in MISO.

31. BRS and EAL agree to reasonably cooperate with MISO to ensure that the amounts disgorged under the Agreement will be returned to the market participants that were charged those amounts.

32. Within ten business days after the Effective Date, EAL shall provide a copy of this Agreement, and of any Commission order approving the Agreement, to the Managing Counsel for the APSC. Thereafter, EAL shall make an appropriate filing with the APSC to ensure that customers are credited the net amount (\$8,181,899), with interest from the date that MISO transmits funds to EAL under the Agreement, that the customers were charged in connection with BRS's participation as a DRR-1 unit in MISO. EAL shall provide Enforcement with a copy of the relevant filing and any orders the APSC may issue relating to EAL's filing or the credit to customers.

IV. Determination of Appropriate Sanctions and Remedies

33. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,³ including the fact that both BRS and EAL cooperated with Enforcement during the Investigation.

34. Enforcement also considered that an informal MISO presentation to BRS may have suggested that planned outages could qualify to receive demand response payments.⁴ Although Enforcement did not consider this to be a defense to a tariff violation,⁵ Enforcement considered it in evaluating the appropriate penalty.

35. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

36. The Commission also concludes that BRS's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.

³ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

⁴ Agreement at P 11; *compare PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,257 (2008) ("when an economic load response participant reduces its load due to normal operations and not in response to price, a demand response payment is unwarranted").

⁵ *New York Indep. Sys. Operator, Inc. v. Astoria Energy, LLC*, 118 FERC ¶ 61,216, at P 36 (2007) ("[U]nder our precedent, informal communications between the parties, such as phone calls and e-mails, do not take precedence over the language of the filed tariffs" with respect to unambiguous tariff provisions); *see MMC Energy, Inc. v. California Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,251, at P 84 n.56 (2008) (quoting *Astoria Energy*).

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37. The Commission directs BRS to satisfy disgorgement and pay the civil penalty as required under the Agreement within thirty days of the Effective Date of the Agreement.

38. The Commission directs EAL to satisfy disgorgement as required under the Agreement within thirty days of the Effective Date of the Agreement.

39. The Commission directs BRS and EAL to reasonably cooperate with MISO to assist MISO in its efforts to ensure that the amounts disgorged under the Agreement will be returned to the market participants that were charged those amounts.

40. The Commission directs EAL to take the steps described in paragraph 32 above to ensure that its ratepayers are credited with the net amount (\$8,181,899), with interest from the time EAL receives the refund from MISO, that its ratepayers were charged in connection with BRS's participation as a DRR-1 unit in MISO. The Commission also directs BRS to comply with the provisions in the Agreement requiring it to provide compliance training to its traders if it intends to participate again as a DRR-1 unit in MISO.

41. MISO shall return the amounts disgorged under this Agreement to the market participants that were charged those amounts by MISO during the Relevant Period.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Big River Steel LLC and Entergy Arkansas, LLC

Docket No. IN23-11-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), Big River Steel LLC (BRS), and Entergy Arkansas, LLC (EAL) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2022), into whether BRS's participation in a Midcontinent Independent System Operator (MISO) demand response program between September 2016 and April 2022 (the Relevant Period) violated MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) or Commission regulations. EAL was the Market Participant for BRS related to BRS's participation in the demand response program.

2. BRS and EAL stipulate to the facts in Section II but neither admit nor deny the violations alleged in Section III. BRS agrees to: (a) disgorge \$15,940,399 it received through its participation as a Demand Response Resource-Type 1 (DRR-1) unit in MISO during the Relevant Period; (b) pay a civil penalty of \$6,000,000 to the United States Treasury; and (c) provide compliance training to its traders if it intends to participate again as a DRR-1 unit in MISO. EAL agrees to: (1) disgorge \$5,033,780 it received, and credited to retail customers, in connection with BRS's participation as a DRR-1 unit in MISO, and (2) make an appropriate filing with the Arkansas Public Service Commission (APSC) to ensure that customers are credited the net amount (\$8,181,899) they were charged in connection with BRS's participation as a DRR-1 unit in MISO.

II. STIPULATIONS

Enforcement, BRS, and EAL hereby stipulate and agree to the following facts.

3. BRS operates a steel mill that uses as much as 300 megawatts (MW) to operate electric arc furnaces and other equipment. The mill is in Osceola, Arkansas, within MISO's footprint. BRS's load levels at its mill rise and fall in the normal course of business as it turns smelters and other equipment on and off.

4. EAL is a Load Serving Entity (LSE), providing distribution service to approximately 725,000 retail electric customers, primarily in Arkansas.

5. MISO administers Day Ahead and Real Time electricity markets for Energy.¹ MISO allows two types of Demand Response Resource (DRR) units to participate in its Energy markets: DRR-1 and DRR-2 units. DRR-1 units, such as BRS during the Relevant Period, are expected to supply a specific quantity of Energy through behind-the-meter generation or controllable load. For the Relevant Period, BRS participated in MISO as a DRR-1 unit.

6. Section 38.2.5.d.ii.e of the MISO Tariff requires a “Market Participant selling Energy” to “respond to [MISO’s] directives to start, shutdown, or change output levels of Resources, in accordance with the terms specified in the Offer” MISO pays DRR-1 units at the Locational Marginal Price (LMP) for the difference between the unit’s “baseline” load and its actual load. The baseline method that BRS used is called the Calculated Baseline method, which is based on the average load over certain days within the past 45 days.

7. EAL served as the Market Participant for BRS’s participation as a DRR-1 unit in MISO. As a result, BRS submitted its demand response offers through EAL and received payments from MISO through EAL. Nevertheless, it was BRS that decided what offers to submit in MISO’s Day Ahead and Real Time markets and what BRS would do if its offers were accepted.

8. EAL sponsored BRS’s DRR-1 participation under a 2014 agreement between the parties entitled “Amended and Restated Agreement for Electric Service” (PSA). The PSA provides that, in connection with BRS’s participation as a DRR-1 unit, EAL receives a 10% administrative fee and a charge for energy not consumed. EAL reduced the payments it otherwise made to BRS by those two amounts.

9. In 2016, BRS and EAL entered into a supplemental agreement to give BRS direct access to the MISO web portal. This agreement makes BRS responsible for “reducing the electric demand or load of the Facility in accordance with MISO instructions, directions, or other notifications and the MISO Rules, including MISO instructions, directions, and other notifications communicated through the MISO Portal.”

10. BRS participated in MISO as a DRR-1 unit throughout the Relevant Period. With the exception of a seven-day period during Winter Storm Uri (Feb. 16-22, 2021), BRS did not change mill operations to alter energy consumption levels when MISO accepted its demand response offers. Instead, BRS operated its mill at the same load levels as it would have if it had not been a DRR-1 unit.

11. A presentation to BRS by MISO staff in 2016, when BRS began to operate as a DRR-1 unit, stated that “planned outages can be utilized by offering into the energy market.” From 2016 until mid-2020, BRS tried to anticipate when there would be outages,

¹ The MISO Tariff defines “Energy” as “[a]n amount of electricity that is Bid or Offered, produced, purchased, consumed, sold, injected, withdrawn, or transmitted over a period of time and measured or calculated in megawatt hours (MWh).” MISO Tariff, Definitions – E. “Energy” is used herein as defined in the Tariff.

put in offers that roughly corresponded to the expected outages, and received DRR-1 payments for those outages. In 2019, BRS told MISO staff that it sought to be paid as a DRR-1 unit for a specific previous planned outage for which it had not received a DRR-1 payment. In response, MISO staff told BRS to “file a settlement dispute.”

12. Starting in mid-2020, if it had no reason to expect an outage the next day, BRS normally offered 100 MW into MISO for the next day. The BRS employee who led BRS’s DRR-1 participation during this period stated that BRS did so based on the theoretical possibility of an unplanned reduction in load of that size the next day. In addition, BRS made DRR-1 offers for planned outages during this period.

13. For the entirety of the Relevant Period, with the exception of the seven days during Winter Storm Uri, MISO made DRR-1 payments whenever BRS cleared its offers and BRS’s load was below its calculated baseline in the normal course of mill operations. Those MISO payments were made to BRS, through EAL, with EAL retaining the 10% administrative fee and charge for energy not consumed, and passing those amounts through to retail customers.

14. Starting in 2019, BRS began making very small (1 MW) Day Ahead offers every day as well as increased MW offers in Real Time that were often higher than 1 MW. These offers had the effect of increasing the volume of MWs that BRS cleared in Real Time and was paid for when its consumption was below its baseline. It thereby allowed BRS to obtain increased revenues from MISO for its participation as a DRR-1 unit. Under the MISO Tariff, the baseline calculation method used by BRS was based on the average of the loads on certain days among the previous 45 days.² Normally, any day on which the unit received a DRR-1 award would be excluded from consideration in calculating the baseline. But by submitting small Day Ahead offers every day, BRS received DRR-1 awards every day. When that happened, the MISO Tariff’s baseline calculation method looked to the five highest days across the entire 45-day period, rather than only the five highest days when BRS did not receive an award.

15. Excluding the days when BRS went on outage during Winter Storm Uri in February 2021, MISO paid a total of \$20,974,179 for BRS’s participation as a DRR-1 unit during the Relevant Period. Based on the fees and charges provided for in the PSA, EAL’s share of this amount was \$5,033,780. BRS received the remainder: \$15,940,399.

16. Under its Tariff, MISO charges LSEs for all amounts paid for a DRR-1 unit’s participation in MISO. To cover the amounts paid out by MISO for BRS’s participation as a DRR-1 unit, MISO assessed charges totaling \$20,974,179 to LSEs in MISO: EAL (in Arkansas); LSEs in Louisiana, Mississippi, and Texas owned by EAL’s parent company; and non-Entergy LSEs. As confirmed by MISO, EAL paid the largest share (63.01%) of these amounts; other Entergy affiliates paid 8.68%; and non-Entergy LSEs paid 28.31%.

² MISO Tariff, Attachment TT (Measurement and Verification), Section 3(i)(b).

17. Both the amount that EAL received from MISO as its share of payments for BRS's participation as a DRR-1 unit (\$5,033,780), and the amount it was charged by MISO for BRS's participation as a DRR-1 unit (\$13,215,679), were passed on to EAL's retail customers through the state regulatory process. The net amount paid by EAL retail customers as a result of BRS's participation as a DRR-1 unit is the difference between these two amounts, or \$8,181,899.

18. BRS and EAL have fully cooperated with Enforcement during the Investigation.

III. VIOLATIONS

19. Enforcement made the following determinations about violations.

20. MISO Tariff § 38.2.5.d.ii.e requires Market Participants to respond to MISO directives to provide the Energy they have offered to provide:

A Market Participant selling Energy . . . shall . . . (e) respond to the Transmission Provider's directives to start, shutdown, or change output levels of Resources, in accordance with the terms specified in the Offer"
(emphasis added).

21. EAL was (as the Market Participant for BRS) selling Energy, in the form of reduced energy usage, in MISO's Day Ahead and Real Time markets. BRS did not (with the exception of seven days in February 2021) reduce energy consumption levels in response to MISO accepting its demand response offers. Instead, BRS operated at the load levels at which it would have operated if it were not a DRR-1 unit.

22. Enforcement concludes that this conduct violated § 38.2.5(d)(ii)(e) of the MISO Tariff because BRS did not "respond to [MISO] directives to . . . change output levels" by reducing its load below what it would otherwise have been.

23. Because EAL was the Market Participant for BRS's participation as a DRR-1, Enforcement concludes that EAL is responsible for BRS's conduct that violated the MISO Tariff. The MISO Tariff makes a Market Participant "financially responsible to [MISO] for all of its Market Activities and obligations. . . ." MISO Tariff, Definitions – M.

IV. REMEDIES AND SANCTIONS

24. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to BRS's and EAL's conduct evaluated in Enforcement's Investigation, BRS and EAL agree with the facts as stipulated in Section II of this Agreement, but they neither admit nor deny the violations described in Section III of this Agreement. BRS and EAL further agree to undertake the obligations set forth in the following paragraphs.

A. Civil Penalty

25. BRS agrees to pay a civil penalty of \$6,000,000 to the United States Treasury, by wire transfer, within thirty days after the Effective Date of this Agreement, as defined herein.

B. Disgorgement

26. BRS agrees to satisfy disgorgement within thirty days of the Effective Date of this Agreement to MISO, by wire transfer, in the amount of \$15,940,399.

27. EAL agrees to satisfy disgorgement within thirty days of the Effective Date of this Agreement to MISO, by wire transfer, in the amount of \$5,033,780.

C. Compliance Training

28. If BRS resumes trading as a DRR-1 resource in MISO, it will (1) separately notify the MISO Independent Market Monitor by email and telephone within one week after initiating trading and (2) provide compliance training to the individuals conducting the trading before they begin trading. On the first anniversary of initiating trading, BRS will submit a compliance report to the Director of the Office of Enforcement, describing (i) all compliance measures and procedures in effect, instituted, or modified related to compliance with Commission regulations and (ii) all Commission-related compliance training that it administered prior to initiating trading and during the prior year. BRS will submit a similar report on the second anniversary of initiating trading, unless no trading has occurred after the first anniversary.

D. Cooperation with MISO and State Utility Commission

29. BRS and EAL agree to reasonably cooperate with MISO to assist MISO in its efforts to ensure that the \$20,974,179 disgorged under this Agreement will be returned to the LSEs that were charged those amounts.

30. Within ten business days after the Effective Date, EAL shall provide a copy of this Agreement, and of any Commission order approving the Agreement, to Justin Craig, Managing Counsel for the APSC. Thereafter, EAL shall make an appropriate filing with the APSC to ensure that customers are credited the net amount (\$8,181,899) they were charged in connection with BRS's participation as a DRR-1 unit in MISO. This will be accomplished through an annual EAL filing that shall take effect on April 1, 2024 (with interest on the refunded amounts accruing from the month in which the refunds are issued by MISO). EAL shall provide Enforcement with a copy of the relevant filing and any orders the APSC may issue relating to EAL's filing or the credit to customers. EAL shall promptly notify Enforcement of any orders the APSC may issue relating to EAL's proposal for returning this amount to customers.

V. TERMS

31. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to BRS and EAL and any parent or subsidiary company or affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

32. Commission approval of this Agreement without material modification shall release BRS and EAL and forever bar the Commission from holding BRS and EAL and any affiliated entity, parent or subsidiary company, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

33. Failure by BRS or EAL to make their respective disgorgement payments, failure by BRS to pay the civil penalty, or failure by either party to comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. § 792, et seq., and may subject BRS and/or EAL to additional action under the enforcement provisions of the FPA.

34. If BRS or EAL do not make the required disgorgement payments described above within the times agreed by the parties, or if BRS does not pay the required civil penalty described above within the times agreed by the parties, interest will be calculated pursuant to 18 C.F.R. § 35.19a(a)(2)(iii)(A), (B) from the date that payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

35. This Agreement binds BRS and EAL and their agents, successors, and assignees. This Agreement does not create any additional or independent obligations on BRS or EAL, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

36. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or by BRS or EAL has been made to induce the signatories or any other party to enter into the Agreement.

37. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor BRS nor EAL shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement, BRS, and EAL.

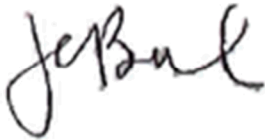
38. In connection with the disgorgement payments and civil penalty provided for herein, BRS and EAL agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order under 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). BRS and EAL waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

39. This Agreement can be modified only if in writing and signed by Enforcement, BRS, and EAL, and any modifications will not be effective unless approved by the Commission.

40. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

41. Each of the undersigned representatives of BRS and EAL affirm that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

42. This Agreement may be executed in counterparts, each of which shall be deemed an original.



Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: July 28, 2023



Big River Steel LLC
BY: Todd Mullins
Counsel for Big River Steel LLC

Date: July 28, 2023

Entergy Arkansas, LLC
BY:
Counsel for Entergy Arkansas, LLC

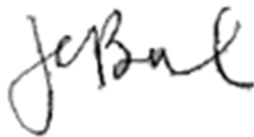
Date: __, 2023

39. This Agreement can be modified only if in writing and signed by Enforcement, BRS, and EAL, and any modifications will not be effective unless approved by the Commission.

40. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

41. Each of the undersigned representatives of BRS and EAL affirm that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

42. This Agreement may be executed in counterparts, each of which shall be deemed an original.



Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: July 28, 2023

Big River Steel LLC
BY:
Counsel for Big River Steel LLC

Date: July __, 2023

On behalf of Entergy Arkansas, LLC:



Entergy Services, LLC
Andrea Weinstein
VP, Deputy General Counsel - Federal

Date: August 2, 2023

Document Content(s)

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