

128 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Entergy Services, Inc.

Docket No. ER07-985-000

ORDER APPROVING CONTESTED SETTLEMENT

(Issued September 24, 2009)

1. Entergy Services, Inc. (Entergy) acting as agent and on behalf of the Entergy Operating Companies¹ and the Settling Parties² (collectively, the Parties) filed a Settlement Agreement (Settlement) and Explanatory Statement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.³ The Parties assert⁴ that the Settlement resolves all issues set for hearing in this proceeding.⁵ Trial Staff (Staff) supports the Settlement. In addition, Entergy states that the Mississippi Public Service Commission and the Council of the City of New Orleans do not oppose the Settlement. However, according to Entergy, the Arkansas Public Service Commission (Arkansas

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

² According to Entergy, the Settling Parties are: The Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, and the Public Service Commission of Yazoo City.

³ 18 C.F.R. § 385.602 (2009).

⁴ See Settlement at 1.

⁵ *Entergy Services, Inc.*, 120 FERC ¶ 61,089 (2007) (July 26 Order), *order on reh'g*, 122 FERC ¶ 61,059 (2008) (January 25 Rehearing Order), *order on reh'g*, 124 FERC ¶ 61,203 (2008) (August 28 Order Rejecting Rehearing Request).

Commission), the Louisiana Public Service Commission (Louisiana Commission) and Occidental Chemical Corporation do not support the Settlement.⁶

2. On June 20, 2008, the Settlement Judge filed a report to the Commission and the Chief Judge stating that the proposed Settlement is contested⁷ and on June 24, 2008, the Chief Judge issued an order terminating settlement judge procedures, and forwarding the Settlement to the Commission.⁸

3. In this order, we approve the Settlement as just and reasonable.

I. Background

4. On May 30, 2007, Entergy filed to amend section 30.12 of Service Schedule MSS-3 to the System Agreement⁹ to exclude, for bandwidth calculation purposes, the amount of storm cost accruals recorded in FERC Account No. 924 from the calculation of each Operating Company's actual production costs. Entergy stated that the Commission in Opinion No. 480 ordered Entergy to follow the methodology in Exhibits ETR-26 and ETR-28 for purposes of calculating production cost comparisons among the Operating Companies.¹⁰ In the Commission order accepting its subsequent compliance filing, the Commission further explained that Entergy would have to make a section 205 filing if it

⁶ The Arkansas Commission and the Louisiana Commission filed comments in opposition to the Settlement, but only opposed the timing of the proposed amendment. Occidental Chemical Corporation did not file any comments.

⁷ *Entergy Services, Inc.*, Docket No. ER07-985-000, June 20, 2008 (unpublished report).

⁸ *Entergy Services, Inc.*, Docket No. ER07-985-000, June 24, 2008 (unpublished report).

⁹ The Entergy system has operated for over fifty years under the System Agreement and its predecessor System Agreements, which acts as an interconnection and pooling agreement, provides for the joint planning, construction and operation of the Operating Companies' facilities, allocates costs among the Entergy Operating Companies, and maintains a coordinated power pool among them.

¹⁰ *Citing Louisiana Pub. Svc. Comm'n v. Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 33 (2005) (Opinion No. 480), *aff'd*, *Louisiana Pub. Svc. Comm'n v. Entergy Services, Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005) (Opinion No. 480-A). Exhibits ETR-26 and ETR-28 reflect the historical production costs on the Entergy system and were used to develop the formula for determining the actual annual production costs for each Operating Company.

desired to make any changes to the methodology in Exhibits ETR-26 and ETR-28.¹¹ Entergy contended that the proposed amendment is reasonable because these costs are predominantly transmission and distribution costs and not production costs.

5. Entergy explained that section 30.12 provides the formula for determining each Entergy Operating Company's actual variable and fixed production costs. According to Entergy, the production cost formula includes Administrative and General Operation and Maintenance (O&M) Expenses recorded in FERC Account Nos. 920 through 935. Entergy further explained that one category of costs included in FERC Account No. 924 is the amounts collected to fund the Operating Companies' storm reserve, which are used to fund the non-capital portion of storm restoration activities. These funds, according to Entergy, predominantly have related to restoration of transmission and distribution plant due to the fact that overhead transmission and distribution facilities are most susceptible to storm events such as hurricanes and ice storms. Furthermore, it pointed out, self-insurance is necessary for these assets because commercial insurance is generally not available at reasonable rates. Because these storm-related costs relate primarily to transmission and distribution, and not to production, Entergy proposed to modify section 30.12 of Service Schedule MSS-3 to exclude the storm accrual expense recorded in FERC Account No. 924 from the formula used to calculate each Operating Company's actual production costs. Specifically, Entergy proposed to add the following language to the end of the definition for Administrative and General O&M Expense: "excluding Storm Accrual Expense recorded in FERC Account 924."¹²

6. In the July 26 Order, the Commission found that Entergy's proposed amendment raised issues of material fact that were more appropriately addressed in hearing and settlement judge procedures.¹³ Therefore, the Commission accepted it for filing, and suspended it for a nominal period, to become effective July 30, 2007, subject to refund, and established hearing and settlement judge procedures.¹⁴ After several settlement conferences, the Parties submitted the Settlement.

¹¹ *Citing Louisiana Pub. Svc. Comm'n v. Entergy Services, Inc.*, 117 FERC ¶ 61,203, at P 69 (2006) (Compliance Order).

¹² The entire definition would read: "AG = Administrative and General (A&G) O&M Expense recorded in FERC Accounts 920 through 935 excluding Storm Accrual Expense recorded in FERC Account 924."

¹³ July 26 Order, 120 FERC ¶ 61,089 at P 12.

¹⁴ *Id.* P 13.

A. Settlement

7. Section 1 of the Settlement amends section 30.12 of Service Schedule MSS-3 to the Entergy System Agreement to exclude the amount of storm cost accrual expense recorded in FERC Account No. 924 from the Administrative and General O&M expenses allocated to the production function in the calculation of each Operating Company's actual production costs (Storm Cost Accrual Amendment). Section 2 of the Settlement provides that the Settlement and the Storm Cost Accrual Amendment are not intended to have any direct or indirect effect on or implication for the rates charged under Entergy's Open Access Transmission Tariff (OATT), which includes the determination of allowable FERC Account No. 924 storm cost accrual expense under in such rates. Section 3 of the Settlement provides that consistent with the Commission's holding in the January 25 Rehearing Order, the Storm Cost Accrual Amendment "will apply for the first time to the computation of bandwidth payments based on calendar year 2007 production cost data and the computation will be effective June 1, 2008."¹⁵

8. Sections 4, 5 and 6 of the Settlement contain standard provisions relating to waiver, binding effect on successors and assigns, approval by the Commission in its entirety, non-precedential effect, status of the Settlement as containing the Parties' entire agreement and other matters. The just and reasonable standard of review in any future proceeding involving the Settlement is established in section 7 of the Settlement.

B. Comments on the Settlement

9. On June 9, 2008, Staff filed comments in support of the Settlement, while the Arkansas Commission and the Louisiana Commission both filed comments opposing the Settlement. On June 19, 2008, Staff and Entergy filed reply comments to the initial comments filed in opposition to the Settlement by the Arkansas Commission and the Louisiana Commission. The Arkansas Commission and the Louisiana Commission filed reply comments. Entergy filed reply comments in response.

1. Initial Comments**a. Staff**

10. Staff asserts that the Settlement is fair, reasonable and in the public interest and, as such, supports the acceptance of the Settlement as filed. Staff agrees with Entergy's contention that its storm damage reserve is largely unrelated to production costs and thus its removal from the formula would improve its conceptual accuracy. Although Staff acknowledges that if the provision proposed by the Arkansas Commission is adopted (*see*

¹⁵ January 25 Rehearing Order, 122 FERC ¶ 61,059 at P 20.

discussion *infra*), the Settlement would affect the implementation date of all future filings by Entergy to amend its Service Schedule MSS-3 bandwidth formula, Staff states that such a result would be premature and unwise. It further states that the timing issue is best decided in the context of whatever future proceedings arise in this area.

11. Staff states that the issues involved here are not of first impression and, as presently structured, the Settlement covers only a limited issue related to the categorization of storm cost accruals and thus will not have precedential effect or policy implications involving other proceedings. In addition, Staff points out that no reversals of policy are involved here and the Settlement will be governed by the just and reasonable standard of review.

b. Arkansas Commission

12. The Arkansas Commission does not oppose the substance of the Settlement, but contends that the Settlement is unjust and unreasonable because it fails to establish that future section 205 amendments to the Service Schedule MSS-3 bandwidth formula assigned an effective date after May 31 by the Commission cannot be applied until the next annual bandwidth filing.

13. The Arkansas Commission requests that the Commission provide some level of rate certainty for ratepayers by clarifying how amendments to Service Schedule MSS-3 will be treated for purposes of the bandwidth calculation. The Arkansas Commission asserts that the Settlement will put the parties and the Commission at risk of having resources continuously and needlessly invested in each proceeding in disagreement over the effective date of any modifications to Service Schedule MSS-3.

14. Specifically, the Arkansas Commission requests that the following language be added to the Settlement:

Implementation Date of Future Amendments

With regard to the implementation date of future amendments to the MSS-3 bandwidth formula proposed by ESI [Entergy] under Section 205 of the FPA, the Parties agree that any amendment assigned an effective date after May 31 by the Commission cannot be applied until the next annual bandwidth filing, i.e., there will be no pro rata treatment of an amendment to the MSS-3 bandwidth formula in the year the filing is made if the effective date assigned by the Commission is after May 31.

The Arkansas Commission states that the requested language would apply the same clarification granted by the Commission in the January 25 Rehearing Order to future amendments.

15. The Arkansas Commission argues that the Commission cannot approve the Settlement absent language resolving the effective date to future amendments to Service Schedule MSS-3. It further states that the Commission can approve a contested Settlement only if the benefits outweigh the objection and the contesting party's interest is too attenuated. The Arkansas Commission emphasizes that it has a great interest in these proceedings, as only its ratepayers have been burdened with payments under the bandwidth computation. It states that the change to Account No. 924 as provided in the Settlement, which does not have a *pro rata* implementation, results in Arkansas ratepayers shouldering a higher bandwidth payment without any offsetting benefit to those ratepayers. The Arkansas Commission contends that there is no meaningful alternative forum in which it can raise its contentions because if they are not addressed here, it will have to wait and raise these issues in the next filing to modify Service Schedule MSS-3.

c. Louisiana Commission

16. The Louisiana Commission supports the exclusion of transmission and distribution storm cost accruals from the calculation of production costs by removing those costs from Account No. 924, but opposes the timing proposed for the amendment, which would allow the settled rates to affect bandwidth remedy payments made beginning in 2008 based on 2007 production cost data. It argues that such transactions would allow Entergy to put rates into effect more quickly than changes to the bandwidth remedy formula allowed under section 206 filings. It contends that changes to the bandwidth remedy should be treated consistently between section 205 and section 206 decisions. To be consistent with the Commission's prior orders, it suggests that the Commission should permit the change in methodology proposed in the Settlement to take effect only for a future calendar year test period, i.e., on a prospective basis.¹⁶

17. The Louisiana Commission notes that it appealed the Commission's Opinion Nos. 480 and 480-A in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) and the D.C. Circuit granted its petition for review on this issue and remanded the matter to the Commission for future proceedings.¹⁷ Although it notes that

¹⁶ See the Louisiana Commission's Initial Comments at 2, *citing* Opinion Nos. 480 and 480-A; *see also* Compliance Order (the Commission found that changes to the tariff may only be implemented on a "prospective" basis, and required that any change be applied for the first time in a future rather than a past, test period.).

¹⁷ *Louisiana Pub. Serv. Comm'n v. FERC*, 522 F.3d 378, 400 (D.C. Cir. 2008).

the Commission has not yet taken action on the remand, the Louisiana Commission urges the Commission to implement the change to Account No. 924 on a prospective basis only; therefore, since the first calendar year following Entergy's filing in this case is 2008, any payments should not occur until 2009 if the modifications to the Settlement are approved.

18. The Louisiana Commission notes that it "supported this proposed change, [Entergy's proposed amendment] on a prospective basis because, absent the amendment, [s]tates that funded storm cost reserves with securitization dollars would be penalized under the bandwidth remedy compared to [s]tates that chose traditional methods to fund those accruals."¹⁸ According to the Louisiana Commission, it approved Entergy's request to securitize storm reserves in August 2007 and it expected that the related bonds would be issued in late 2007. The Louisiana Commission states that the 2008 remedy payment should capture that change, however, Entergy's decision to pursue an alternate form of securitization with securitization bonds not being issued until summer of 2008 will cause the 2008 remedy payment to capture the change that Entergy is proposing here. The Louisiana Commission explains that implementing the proposed change in 2008 based upon 2007 production cost data will impact 2007 bandwidth payment figures and, according to the Louisiana Commission, it is not appropriate that the 2008 remedy payment capture that change due to the Commission's prior implementation timing rulings. Lastly, the Louisiana Commission states that section 206 of the FPA mandates that the Commission not delay section 206 remedies once discrimination is found.¹⁹

2. Reply Comments

a. Staff

19. Staff responds that neither the Louisiana Commission nor the Arkansas Commission raise factual issues in their comments and both support or do not oppose the central substantive purpose of the Settlement filed in this proceeding, which is the removal of storm cost accruals from Entergy's calculation of its production costs in Account No. 924 under Service Schedule MSS-3. Staff asserts that their opposition is limited to the timing aspect of the Settlement's implementation. Staff argues that the Commission can address the contesting party's contentions provided there is an adequate record and that this approach is appropriate where, as here, the contested issues are primarily policy issues or the parties have agreed that the record is sufficient to decide the issue on the merits.

¹⁸ The Louisiana Commission's Initial Comments at 4.

¹⁹ The Louisiana Commission's Initial Comments at 4, *citing* 16 U.S.C. § 824e(a) (2006).

20. Staff disagrees with the Arkansas Commission's proposal to modify the Settlement so as to broadly apply the timing adopted in this Settlement to all future amendments to Service Schedule MSS-3. Staff states that this issue is clearly a matter of policy. Staff contends that a Commission order addressing the issues set for hearing and resolved by this Settlement is an inappropriate vehicle for resolving the timing issue for any potential future amendments to Service Schedule MSS-3, particularly when this issue is pending in the remand proceeding concerning Opinion Nos. 480 and 480-A. At this time, Staff expresses no opinion on the Louisiana Commission's argument that implementation of the proposed amendments should be delayed until a full year of production cost data becomes available, other than to note that the Commission's rulings with respect to the remand of Opinion Nos. 480 and 480-A and the implementation date adopted in this Settlement should be analytically consistent.²⁰

21. Staff states that as there are no material contested issues of fact in this proceeding, it is inappropriate for the Commission to sever the Arkansas Commission or the Louisiana Commission and conduct an evidentiary hearing concerning their opposition to the Settlement. Staff urges that the Settlement be accepted and that the implementation date for this amendment to Service Schedule MSS-3 be determined with analytical consistency to the remand of Opinion Nos. 480 and 480-A.

b. Arkansas Commission

22. The Arkansas Commission states that it disagrees with Staff's comment that the issue of the effective date is best decided in the context of future proceedings as they arise. The Arkansas Commission states that significant resources have been expended on this and related proceedings in its dispute over timing of modifications to the bandwidth formula. Rather than waste resources, the Arkansas Commission suggests that its requested clarification is necessary and appropriate *in this proceeding*. The Arkansas Commission also suggests that the Commission reject the Louisiana Commission's arguments that bandwidth changes could only take effect for bandwidth remedy calculations for the calendar year of data after filing, which have already been rejected on rehearing in this proceeding. Further, it contends that the Louisiana Commission's argument that the Commission's ruling in the January 25 Rehearing Order should now be modified due to changed circumstances in the timing of a securitization is without merit and, as the Commission's ruling was not based on the timing of a securitization, it should not be modified for such an extraneous circumstance. Instead, the Arkansas Commission suggests that the Commission should keep with the ruling in the January 25 Rehearing

²⁰ Staff notes that the Settlement arose out of a section 205 filing by Entergy, however, the proceeding addressed in Opinion Nos. 480 and 480-A arose out of a section 206 complaint filed by the Louisiana Commission and the Council of the City of New Orleans against Entergy.

Order on this issue, and condition any approval of the Settlement on language, which the Arkansas Commission has submitted, that will apply this clarification to future amendments to Service Schedule MSS-3. The Arkansas Commission requests that the Commission either condition approval of the Settlement on inclusion of language to address the concern regarding *pro rata* amendments to Service Schedule MSS-3 or, alternatively, clarify that there can be no such *pro rata* amendments to Service Schedule MSS-3.

c. Louisiana Commission

23. The Louisiana Commission suggests that the Commission reject the Arkansas Commission's requested language amendment because it is inconsistent with rulings made by the Commission in Opinion Nos. 480 and 480-A, and the related Compliance Order. The Louisiana Commission reiterates its argument that Opinion Nos. 480 and 480-A state that changes to the tariff may only be implemented on a prospective basis and the orders require that any change be applied for the first time in a future, rather than a past, test period. As such, the Louisiana Commission contends that the language requested by the Arkansas Commission would not conform to this requirement. Until the timing issue is resolved on remand, the Louisiana Commission argues that no basis exists to approve a Settlement with the Arkansas Commission's requested language unless it is consistent with the Commission's previous orders related to the bandwidth remedy. It concludes that the earliest that the Settlement rates should go into effect is June 1, 2009 based upon 2008 data.

d. Entergy

24. Entergy states that the objections and requested relief of the Louisiana Commission and the Arkansas Commission are without merit and provide no basis to withhold timely certification and approval of the Settlement. Entergy reiterates that all issues related to the justness and reasonableness of the storm cost accrual amendment are resolved by the Settlement in this proceeding. Regarding the Louisiana Commission's arguments on the effective date issue, Entergy points out that the Commission did not set that issue for hearing in the July 26 Order. It further explains that the Commission explicitly assigned a July 30, 2007 effective date for the storm cost accrual amendment and that the Commission denied the Louisiana Commission's subsequent rehearing request of the effective date provisions of the July 26 Order. Therefore, Entergy contends that the Louisiana Commission's effective date criticism of the Settlement using the comment process is an attempt to get a second bite at the apple and should be summarily dismissed on procedural grounds.

25. In response to the Arkansas Commission's comments relating to the timing and implementation of future section 205 amendments to Service Schedule MSS-3, Entergy states that the Commission likewise did not set this issue for hearing in the July 26 Order. Entergy argues that the Arkansas Commission should have raised this issue in its initial

protest and/or filed a rehearing request of the July 26 Order. It did not do so and, therefore, Entergy contends that the Arkansas Commission should not be permitted to disrupt the Settlement over a single issue that is outside the scope of this proceeding and not supported by a majority of parties in this proceeding. Entergy states that the Arkansas Commission is always free to file a petition for declaratory order under the Commission's Rule 207 and, in addition, Entergy points out that while it has proposed two amendments to Service Schedule MSS-3 in the past few months, the Arkansas Commission intervened in both without raising the timing and implementation issue.

26. Entergy argues that the Arkansas Commission and the Louisiana Commission have not raised any genuine issues of material fact that preclude the approval of the Settlement and further contends that under Rule 602(h) of the Commission's Rules of Practice and Procedure, an offer of Settlement that is contested may be approved if "there is no genuine issue of material fact."²¹ In conclusion, Entergy urges the Commission to approve the Settlement notwithstanding the arguments of the Arkansas Commission and the Louisiana Commission.

II. Discussion

27. For the reasons discussed below, we find that this Settlement is just and reasonable and we approve the Settlement.²² In order to approve a contested settlement, the Commission must make "an independent finding supported by 'substantial evidence on the record as a whole' that the proposal will establish 'just and reasonable' rates."²³ Consistent with this requirement, Rule 602 (h)(1)(i) of the Commission's Rules of Practice and Procedure provides that the Commission may decide the merits of contested settlement issues if the record contains substantial evidence upon which to base a reasoned decision or the Commission finds that there is no genuine issue of material fact.²⁴

28. We agree with Entergy and Staff that the amendment to exclude storm cost accruals in Account No. 924 from Entergy's calculation of its production costs under

²¹ Entergy's Reply Comments at 6, *citing* 18 C.F.R. § 385.602(h) (2006).

²² We retain the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

²³ *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1974); *see also Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998).

²⁴ 18 C.F.R § 385.602(h)(1)(i) (2009).

Service Schedule MSS-3 is just and reasonable because storm damage reserve is largely unrelated to production costs. The timing issues raised by the Louisiana Commission and the Arkansas Commission are beyond the scope of this proceeding, as discussed below, and provide no basis for not approving the Settlement.

29. With respect to those timing issues, we disagree with both parties. As to the Louisiana Commission's argument, we disagree that to be consistent with the Commission's prior orders the Commission should permit the change in methodology proposed in the Settlement to take effect only for a future calendar year test period, i.e., on a prospective basis. The Louisiana Commission raised the very same arguments in its protest and on rehearing of the July 26 Order, and the Commission rejected them.²⁵ While the Commission dismissed the Louisiana Commission's rehearing request as procedurally deficient, it nonetheless addressed the Louisiana Commission's arguments in the January 25 Rehearing Order and found them to be without merit. The Louisiana Commission again raised the same arguments in its request for rehearing of the January 25 Rehearing Order, which the Commission again denied as procedurally deficient.²⁶ As the Commission explained in the January 25 Rehearing Order:

[T]he holding in Opinion Nos. 480 and 480-A did not change the fundamental doctrine of section 205 of the FPA, which provides public utilities a statutory right to amend their rates and charges and to propose that, absent waiver, the amendments be made effective after 60 days' notice. In adhering to section 205 of the FPA, the Commission simply cannot and did not change that basic right accorded by the FPA. Accordingly, in the July 26 Order, the Commission held that the appropriate effective date for the proposed amendment was July 30, 2007, after 60 days' notice.^[27]

Accordingly, we deny the Louisiana Commission's arguments for the same reasons set forth in the January 25 Rehearing Order.²⁸

²⁵ January 25 Rehearing Order, 122 FERC ¶ 61,059 at P 14-17.

²⁶ August 28 Order Rejecting Rehearing Request, 124 FERC ¶ 61,203 at P 10-12.

²⁷ January 25 Rehearing Order, 122 FERC ¶ 61,059 at P 16.

²⁸ We note that the Louisiana Commission appealed its concerns with the timing of implementation of the bandwidth remedy adopted in Opinion Nos. 480 and 480-A to the United States Court of Appeals for the District of Columbia Circuit, *Louisiana Pub. Svc.*

30. We also reject the arguments made by the Arkansas Commission with respect to the timing and implementation of future section 205 amendments to Service Schedule MSS-3. The Arkansas Commission did not raise these arguments in its protest and the Commission did not set them for hearing. Indeed, the Commission rejected timing arguments made by the Louisiana Commission and established an effective date of July 30, 2007, which, we note, the Arkansas Commission did not challenge on rehearing. Moreover, on rehearing, the Commission explained: “Because Entergy’s proposed amendment became effective July 30, 2007, it will apply for the first time to the computation of bandwidth payments based on calendar year 2007 production cost data and the computation will be effective June 1, 2008.”²⁹

31. The Arkansas Commission failed to raise, at any point in this proceeding until the filing of this Settlement, any concerns with respect to the July 30, 2007 effective date of the proposed amendment or that it will apply for the first time to the computation of bandwidth payments effective June 1, 2008. It is too late for the Arkansas Commission to now attempt to raise its timing issues. If the Arkansas Commission desires to change the timing and implementation of future section 205 amendments, it may raise these issues in each section 205 or 206 proceeding in which amendment to the bandwidth formula is at issue.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Comm’n v. FERC, No. 05-1462 (D.C. Cir.), which remanded the matter to the Commission. That matter is currently pending before the Commission.

²⁹ January 25 Rehearing Order, 122 FERC ¶ 61,059 at P 20.