

156 FERC ¶ 61,101  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

August 9, 2016

In Reply Refer To:  
Louisiana Public Service Commission v.  
Entergy Services, Inc.  
Docket No. EL01-88-016

Entergy Services, Inc.  
101 Constitution Ave. NW, Suite 200 East  
Washington, DC 20001

Attn: Karis Gong Parnham, Esq.  
Senior Attorney for Entergy Services, Inc.

Dear Ms. Parnham:

1. On June 29, 2016, you submitted, in the above referenced proceeding, a joint offer of partial settlement (Settlement Agreement) between Entergy Services, Inc. (Entergy), on behalf of the Entergy Operating Companies,<sup>1</sup> and the following entities: Louisiana Public Service Commission (Louisiana Commission), Mississippi Public Service Commission, Public Utility Commission of Texas (Texas Commission), Arkansas Public Service Commission (Arkansas Commission), and Council of the City of New Orleans (collectively, Settling Parties).<sup>2</sup> On July 14, 2016, Commission Trial Staff filed

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<sup>1</sup> Entergy states that, during the period of time at issue in this proceeding, the five Entergy Operating Companies were Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc. *See* Entergy Services, Inc. June 29, 2016 Joint Offer of Partial Settlement at n.1 (Joint Offer of Partial Settlement).

<sup>2</sup> Entergy states that representatives of the Louisiana Commission, Texas Commission, and Arkansas Commission participated in settlement negotiations but that the representatives cannot bind these agencies to the Settlement Agreement until formally authorized to do so by their respective agencies. Entergy states that by August 31, 2016, counsel for these agencies each agree to provide the Commission with a report regarding the final status of whether the agency approved the Settlement Agreement, and if not, the status and anticipated timing to complete such approval process. *See* Joint Offer of Partial Settlement at n.2.

comments supporting the Settlement Agreement. No adverse comments were filed. On July 25, 2016, the Settlement Judge certified the Settlement Agreement to the Commission as an uncontested settlement.<sup>3</sup>

2. The Settlement Agreement addresses several issues related to calculating the bandwidth remedy for the seven-month test period between June 1, 2005 and December 31, 2005, as well as the bandwidth recalculation of the seven-month test period that will take place once related bandwidth proceedings are concluded.

3. With respect to the standard of review, section 7 of the Settlement Agreement provides that

[i]t is the intent of the Parties that, in any future proceeding involving this Settlement Agreement, the Parties and Commission shall be subject to the “just and reasonable” standard of review. Changes to this Settlement Agreement proposed by non-settling third-parties shall be subject to the most stringent standard of review permissible under applicable law.

4. Because the Settlement Agreement provides that the standard of review for changes to the Settlement Agreement proposed by non-settling third-parties shall be “the most stringent standard of review permissible under applicable law,” we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement Agreement.

5. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,<sup>4</sup> however, the D.C. Circuit Court determined that the Commission is legally authorized to impose a

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<sup>3</sup> *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 156 FERC ¶ 63,014 (2016).

<sup>4</sup> 707 F.3d 364, 370-71 (D.C. Cir. 2013).

more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

6. The Settlement Agreement resolves several disputed issues in partial resolution of this proceeding. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved.<sup>5</sup> The Commission’s approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission. Commissioner Honorable is not participating.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> The Settlement Agreement will become binding and effective once formally authorized by the state agencies whose representatives negotiated its terms as Settling Parties. *See supra* n.2.