

124 FERC ¶ 61,100  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

July 29, 2008

In Reply Refer To:  
Entergy Services, Inc.  
Docket No. ER07-927-000

Entergy Services, Inc.  
101 Constitution Avenue, N.W.  
Suite 200 East  
Washington, DC 20001

Attn: Andrea Weinstein, Esq.  
Attorney for Entergy Services, Inc.

Dear Ms. Weinstein:

1. On March 7, 2008, Entergy Services, Inc. (Entergy) filed an offer of settlement to resolve all issues in this rate redetermination proceeding between Entergy and the other signatories to the instant settlement.<sup>1</sup> The other signatories to the settlement are: Cleco Power, LLC; City of Prescott, Arkansas; West Memphis Utilities Commission; The Conway Corporation; Mississippi Delta Energy Agency; Public Service Commission of Yazoo City, Mississippi; Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi; East Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; Tex-La Electric Cooperative of Texas, Inc.; and City of Jonesboro, Arkansas. Comments in support of the offer of settlement were filed by Commission Trial Staff on March 27, 2007. No reply comments were filed. On March 31, 2007, the settlement was certified to the Commission as uncontested.<sup>2</sup>

2. The settlement agreement is in the public interest and is hereby approved, as conditioned below. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The instant settlement resolves all issues in this proceeding. Moreover Article VIII of the settlement provides:

This Settlement Agreement may only be amended by the agreement in writing of all the Parties hereto. The standard of review for any modifications to this Settlement Agreement that are not agreed to by all the

---

<sup>1</sup> *Entergy Services, Inc.*, 120 FERC ¶ 61,104 (2007).

<sup>2</sup> *Entergy Services, Inc.*, 122 FERC ¶ 63,017 (2008).

Parties, including any modifications resulting from the Commission acting *sua sponte*, shall be the “public interest” standard under the *Mobile-Sierra* Doctrine. The Parties to this Settlement Agreement acknowledge that the Commission’s rights under section 206 of the Federal Power Act are not abridged except as indicated herein with respect to the standard that would be used in such a proceeding. The Parties also acknowledge that the “public interest” standard, as such is applicable to this Settlement Agreement, shall not extend to apply to any future ESI rate redetermination filings or adversely impact any Party’s or non-party’s ability to challenge such future filings under a just and reasonable standard.

3. In light of *Maine Pub. Util. Comm’n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), the Commission may not accept the standard of review as currently written. As such, the settlement is approved conditioned on the settling parties revising the standard of review applicable to non-settling third parties. An acceptable substitute provision applicable to non-settling third parties would be the “most stringent standard permissible under applicable law.”

4. Within thirty (30) days from the date of this letter, any amounts collected in excess of the settlement rates shall be refunded together with interest computed under section 35.19a of the Commission’s regulations, 18 C.F.R. § 35.19a (2008). Within fifteen (15) days after making such refunds, Entergy shall file with the Commission a compliance refund report showing monthly billing determinants, revenue receipt dates, revenues under the present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period. Entergy shall furnish copies of the report to the affected customers and to each state commission within whose jurisdiction the affected wholesale customers distribute and sell electric energy at retail.

5. This order terminates Docket No. ER07-927-000.

By direction of the Commission. Commissioners Wellinghoff and Kelly  
dissenting in part with a separate joint statement  
attached.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

Docket No. ER07-927-000

(Issued July 29, 2008)

WELLINGHOFF and KELLY, Commissioners, dissenting in part:

The instant settlement states that the “public interest” standard of review will apply to any modification to the settlement that is not agreed to by all of the settling parties, including any modification resulting from the Commission acting *sua sponte*.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,<sup>1</sup> the Commission may not accept the standard of review set forth in the instant settlement. Therefore, the majority approves the settlement conditioned on the settling parties revising the standard of review applicable to non-settling third parties. The majority also states that language applying the “most stringent standard permissible under applicable law” to non-settling third parties would be “[a]n acceptable substitute provision.”

We continue to disagree with the majority’s characterization of the D.C. Circuit’s holding in *Maine PUC* as to the applicability of the “public interest” standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC*<sup>2</sup> and *Westar Energy, Inc.*,<sup>3</sup> we respectfully dissent in part.

---

Jon Wellinghoff  
Commissioner

---

Sudeen G. Kelly  
Commissioner

---

<sup>1</sup> 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

<sup>2</sup> 123 FERC ¶ 61,201 (2008).

<sup>3</sup> 123 FERC ¶ 61,252 (2008).