

154 FERC ¶ 61,197  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, and Tony Clark.

Entergy Gulf States Louisiana, L.L.C.	Docket Nos. ER14-1640-000
Entergy Louisiana, LLC	ER14-1641-000
Entergy Mississippi, Inc.	ER14-1642-000
Entergy New Orleans, Inc.	ER14-1643-000
Entergy Texas, Inc.	ER14-1644-000 (Consolidated)

ORDER APPROVING CONTESTED SETTLEMENT

(Issued March 17, 2016)

1. On January 6, 2015, as superseded and replaced by a corrective filing on January 13, 2015, Entergy Services, Inc. (Entergy) filed a Settlement Agreement (Settlement), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,<sup>1</sup> on behalf of the Entergy Operating Companies participating in the Entergy System Agreement (System Agreement).<sup>2</sup> The Settlement addresses Entergy's April 1, 2014 filing proposing revisions to footnote 1 of section 30.12 (Actual Production Cost) of Service Schedule MSS-3 of the System Agreement to include energy costs under

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<sup>1</sup> 18 C.F.R. § 385.602 (2015).

<sup>2</sup> The Entergy Operating Companies participating in the System Agreement at the time of the Settlement are: Entergy Gulf States Louisiana; Entergy Louisiana, LLC; Entergy Mississippi, Inc. (Entergy Mississippi); Entergy New Orleans, Inc.; and Entergy Texas, Inc. Entergy Mississippi is no longer a party to the System Agreement as of November 8, 2015. Entergy Arkansas, Inc. is no longer a party to the System Agreement as of December 18, 2013, and is not a party to this Settlement. On December 29, 2015 the Commission approved a settlement agreement terminating the System Agreement effective August 31, 2016. *Entergy Ark., Inc.*, 153 FERC ¶ 61,347 (2015).

certain power purchase agreements (PPA) at a lower price than is currently paid under those PPAs. As discussed below, we approve the Settlement, effective May 31, 2014.

## **I. Background**

2. On April 1, 2014, in the above-referenced dockets, Entergy filed on behalf of the participating Entergy Operating Companies a proposed addition to the end of footnote 1 of section 30.12 of Service Schedule MSS-3 of the System Agreement.<sup>3</sup> Specifically, Entergy proposed to add the following:

and (6) repricing of energy associated with the Rain CII Carbon power purchase contract for [Entergy Gulf States Louisiana] based on the average annual Service Schedule MSS-3 rate paid by [Entergy Gulf States Louisiana], and (7) repricing of energy associated with the Agrilectric power purchase contract for [Entergy Gulf States Louisiana] based on the average annual Service Schedule MSS-3 rate paid by [Entergy Gulf States Louisiana].<sup>4</sup>

3. In its filing, Entergy stated that Rain CII Carbon LLC (Rain) is the owner of an existing calcined petroleum coke facility in Sulphur, Louisiana, which generates 36.4 megawatts (MW) (gross) of power through a waste heat recovery project. A small portion of the electricity generated by the project is used to meet on-site requirements for the calcining plant, with the remainder deliverable under a proposed long-term PPA with Entergy Gulf States Louisiana. The Rain CII Carbon facility was certified by the Commission as a qualifying facility (QF) pursuant to the provisions of the Public Utility

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<sup>3</sup> Service Schedule MSS-3 of the System Agreement provides the bandwidth formula which is used to roughly equalize production costs among the operating companies. Section 30.12 of Service Schedule MSS-3 contains the component of the bandwidth formula that determines each participating Entergy Operating Company's actual variable production costs and actual fixed production costs for use in calculating bandwidth payments and receipts. Footnote 1 details certain retail regulatory adjustments made in the formula calculation.

<sup>4</sup> Entergy April 1, 2014 Filing, Attach. 4.

Regulatory Policies Act of 1978 (PURPA).<sup>5</sup> Entergy also stated that Entergy Gulf States Louisiana sought and received approval from the Louisiana Commission to enter into a 20-year PPA with Rain for the purchase of 28 MW of baseload capacity, capacity-related benefits, energy, other electric products, and environmental attributes.<sup>6</sup>

4. In addition, Entergy stated that Agrilectric Power Partners, LP (Agrilectric) owns a refurbished rice hull-fueled electric generation facility in Lake Charles, Louisiana that is also certified by the Commission as a QF under PURPA. Entergy stated that Entergy Gulf States Louisiana sought and received approval from the Louisiana Commission to enter into a 20-year agreement with Agrilectric for the purchase of 8.5 MW of baseload capacity, capacity-related benefits, energy, other electric products, renewable and environmental attributes.<sup>7</sup>

5. Entergy stated that in approving the PPAs, the Louisiana Commission determined that resources such as these PPAs met the stated policy objectives set forth in section 2 of the Renewable Energy Pilot Program (REP Program) Implementation Plan approved by the Louisiana Commission's General Order dated December 9, 2010 (Docket No. R-28271 Subdocket B) and recognized that "resources resulting from the [Louisiana Commission]-mandated renewable-specific [request for proposals] may be priced at above-market costs."<sup>8</sup> Entergy explained that in light of the REP Program's purpose it is appropriate to re-price the energy associated with the Rain CII Carbon and

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<sup>5</sup> 16 U.S.C. § 824a-3 (2012).

<sup>6</sup> Entergy April 1, 2014 Filing at 6 (citing *In re: Application for Approval of a 20-Year Contract with Rain CII Carbon LLC for the Purchase of Capacity and Energy from Sulphur, LA Heat Recovery Project and Request for Timely Treatment*, Order No. U-32557 (Louisiana Commission Jan. 11, 2013) (Rain CII Carbon Order)).

<sup>7</sup> *Id.* at 5 n.10 (citing *In re: Application for Approval of a 20-Year Contract with Agrilectric Power Partners, LP for the Purchase of Capacity and Energy and Request for Timely Treatment*, Order No. U-32785 (Louisiana Commission Aug. 15, 2013) (Agrilectric Power Partners Order)).

<sup>8</sup> *Id.* at 4-5 (citing Rain CII Carbon Order at ordering para. 11; Agrilectric Power Partners Order at ordering para. 11).

Agrilectric PPAs such that the costs of these agreements that are “above market” are not included in the bandwidth formula.<sup>9</sup> Entergy stated that this is consistent with the treatment that the Commission approved for the re-pricing of Entergy Louisiana’s Vidalia Hydroelectric Plant (Vidalia) PPA for purposes of the bandwidth formula.<sup>10</sup>

6. On May 30, 2014, the Commission issued an Order Accepting and Suspending Proposed Tariff Amendments and Establishing Hearing and Settlement Judge Procedures, and Consolidating Proceedings.<sup>11</sup> The Commission set the matter for a trial-type evidentiary hearing, but held the hearing in abeyance and encouraged the parties to settle any disputes before the hearing procedures commenced.<sup>12</sup> This process culminated in the Settlement.

7. The Council of the City of New Orleans (New Orleans Council) submitted initial comments supporting the Settlement on January 30, 2015. Trial Staff and the Public Utility Commission of Texas (Texas Commission) submitted initial comments in support of the Settlement on February 2, 2015. On the same date, the Louisiana Commission submitted a protest contesting the Settlement. Entergy, New Orleans Council, and Trial Staff submitted reply comments on February 12, 2015. The Settlement Judge reported the Settlement as contested on February 20, 2015.<sup>13</sup> On March 13, 2014, the Chief Judge terminated settlement judge procedures.<sup>14</sup>

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<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* (citing *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 117 FERC ¶ 61,203 (2006), *order on reh’g and compliance*, 119 FERC ¶ 61,095 (2007).

<sup>11</sup> *Entergy Gulf States La., L.L.C.*, 147 FERC ¶ 61,165 (2014) (Hearing Order).

<sup>12</sup> *Id.* P 28.

<sup>13</sup> *Entergy Gulf States La., L.L.C.*, Docket No. ER14-1640-000 (Feb. 20, 2015) (unpublished report).

<sup>14</sup> *Entergy Gulf States La., LLC*, Docket No. ER14-1640-000 (Mar. 11, 2015) (unpublished order).

## II. Settlement

8. Section 1 of the Settlement provides that the parties<sup>15</sup> agree to the amendment of footnote 1 of section 30.12 of Service Schedule MSS-3 to the System Agreement. Specifically, Entergy's April 1, 2014 proposed addition to footnote 1 of Service Schedule MSS-3, section 30.12 is replaced with the following:

6) re-pricing of the Rain CII Carbon power purchase contract, the Agrilectric power purchase contract, and all other agreements for the purchase of capacity and/or energy ("PPAs") for renewable resources entered into subsequent to May 31, 2014, which PPAs are entered into to satisfy state or local jurisdictional policy requirements, (each a "Renewable Agreement"), on an annual basis as follows: The energy rate of the respective Renewable Agreement shall be equal to the average annual energy rate paid per MWh by all Entergy Operating Companies participating in the System Agreement pursuant to the Exchange Energy provisions of Service Schedule MSS-3, or the average annual energy rate paid per MWh paid pursuant to the respective Renewable Agreement, whichever is lower. The values used to effectuate this provision shall be as reported annually in Account 555, Purchased Power, of each Operating Company's FERC Form [No.] 1.

9. Section 2 of the Settlement notes that Entergy is providing as attachments a clean version and a redline version of the tariff sheets incorporating the revisions and notes that the tariff sheets submitted with the Settlement supersede in their entirety the tariff sheets submitted in Entergy's April 1, 2014 filing.

10. Section 3 of the Settlement provides that the effective date of the revised tariff sheets is May 31, 2014, and shall apply to the computation of bandwidth payments based on calendar year 2013 production cost data. Section 3 also provides that beginning with the 2015 MSS-3 bandwidth formula annual filing, Entergy will highlight in the transmittal letter the re-pricing of any additional PPAs for the purchase of capacity and/or energy for renewable resources that are entered into to satisfy state or local jurisdictional requirements during the test year.

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<sup>15</sup> The Settlement does not define "parties." However, we note that the Commission granted notices and motions to intervene to the following entities, who also participated in settlement discussions: the Entergy Operating Companies, Louisiana Commission, New Orleans Council, and Texas Commission.

11. Sections 4 through 9 address procedural aspects of the Settlement including rights reserved under the agreement, the scope of the agreement, waiver and amendments under the agreement, and approval and effectiveness of the agreement. Specifically, section 7 notes that the standard of review for any modifications to the Settlement that are not agreed to by all the Parties, including any modifications resulting from the Commission acting *sua sponte*, will be the just and reasonable standard of review.

### **III. Initial and Reply Comments**

#### **A. Initial Comments**

##### **1. New Orleans Council**

12. The New Orleans Council states that the eligible renewable resource PPAs are being re-priced in order to avoid exporting to other jurisdictions the above-market costs of power that are paid by an Entergy Operating Company in furtherance of local and state policy interests.<sup>16</sup> The New Orleans Council adds that purchases made pursuant to a renewable resource PPA will not be re-priced for purposes of the annual bandwidth calculation to the extent that costs paid under that PPA are at or below market rates. Based on these attributes of the Settlement, the New Orleans Council urges that the Commission approve it.

##### **2. Texas Commission**

13. The Texas Commission states that the Settlement will benefit all the Operating Companies and their customers by allowing each Entergy retail regulator to achieve its local economic and environmental policy objectives without affecting the objectives of other Entergy retail regulators.<sup>17</sup> The Texas Commission also highlights that the approach taken in the Settlement is consistent with the re-pricing treatment of the Vidalia and Toledo Bend PPAs, and therefore does not result in any unduly discriminatory treatment.

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<sup>16</sup> New Orleans Council Initial Comments at 2.

<sup>17</sup> Texas Commission Initial Comments at 2.

### 3. Trial Staff

14. Trial Staff states that the Settlement is fair, reasonable, and in the public interest, and that if approved, would resolve all the issues set for hearing by the Commission.<sup>18</sup> Trial Staff states that the REP Program, which compelled Entergy Gulf States Louisiana to enter into the Rain CII Carbon and Agrilectric PPAs, is focused on local aims: diversifying Louisiana's fuel mix per the REP Program Implementation Plan, developing in-state renewable resources, and encouraging job creation and job retention as policy objectives of the program.<sup>19</sup> In addition, Trial Staff states that the REP Program intends to spur research into renewable energy technologies that appear to be promising for Louisiana.

15. Trial Staff notes that the scope of the REP Program is limited; it does not necessarily confer benefits on the Entergy system. According to Trial Staff the Settlement recognizes that the PPAs entered into pursuant to the REP Program are intended to benefit Louisiana. Accordingly, Trial Staff states that the costs incurred by those PPAs should stay in Louisiana. Trial Staff adds that the Settlement equitably shifts the costs of the Rain CII Carbon and Agrilectric PPAs and all similar Renewable Agreements to the local beneficiaries of the programs while maintaining the functionality of the bandwidth formula for the rest of the Entergy system.

### 4. Louisiana Commission

16. The Louisiana Commission protests the Settlement and requests that the Commission reject it. The Louisiana Commission states that the Settlement is unjust and unreasonable because it does not include the only protesting party (i.e., the Louisiana Commission) and because it increases the injury to customers in Louisiana.<sup>20</sup> The Louisiana Commission contends that the Settlement is only a partial settlement, entered into by Entergy and the parties who agreed with, or did not oppose, Entergy's April 1, 2014 filing. The Louisiana Commission further states that it was the only entity that protested Entergy's April 1, 2014 filing, as it would amend the System Agreement to change the actual costs incurred by Entergy Gulf States Louisiana for electricity from renewable resources to an imputed cost. The Louisiana Commission contends that the proposed change would serve the interests of Entergy and the participating Operating Companies other than Entergy Gulf States Louisiana.

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<sup>18</sup> Trial Staff Initial Comments at 1.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> Louisiana Commission Initial Comments at 1.

17. The Louisiana Commission continues that the parties that agreed with the proposed revisions in Entergy's April 1, 2014 filing prior to the Commission setting it for hearing and settlement procedures now seek to impose the proposed revisions on the sole protesting party through a purported Settlement.<sup>21</sup> According to the Louisiana Commission, the Settlement abuses the Commission's settlement process.<sup>22</sup> The Louisiana Commission states that the Commission's settlement procedures are not supposed to be used to allow allies on an issue to agree they are right, and impose an unjust and unreasonable rate on the opposing party. The Louisiana Commission argues that this is particularly true if the allies all agree to make the penalty imposed on the protesting party worse than what was proposed in the original filing. The Louisiana Commission argues that approving the Settlement in these circumstances would be an abuse of the Commission's settlement procedures.

18. The Louisiana Commission states that the Commission found there were issues of material fact that had to be resolved before Entergy's filing could be approved as just and reasonable, or disapproved. However, according to the Louisiana Commission, the Settlement does not resolve any disputed issue of material fact and raises another issue: whether a one-way repricing is unduly discriminatory to Entergy Gulf States Louisiana and its customers and unduly preferential to the other Operating Companies.<sup>23</sup>

19. In regard to its contention that the Settlement seeks to impose a greater hardship on Entergy Gulf States Louisiana customers than Entergy originally proposed, the Louisiana Commission states that the original proposal "sought to reprice [Entergy Gulf States Louisiana's] renewable resources by imputing the average annual Service Schedule MSS-3 costs to energy received from the units."<sup>24</sup> The Louisiana Commission states that now the settling parties have agreed to reprice the energy under the two PPAs only if the energy costs are above the average MSS-3 rate, and if the energy costs are below the average MSS-3 rates then no imputation will be made, and the ratepayers of other participating Entergy Operating Companies will benefit. The Louisiana Commission argues that this is an asymmetrical approach that is not just and reasonable.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.* at 2.

20. The Louisiana Commission states that Entergy filed no factual support for its claim that the PPAs should be priced at levels other than actual costs or why the two PPAs should be treated similarly to the Vidalia PPA.<sup>25</sup> The Louisiana Commission argues that the two PPAs at issue in this docket should be treated no differently than any other PPA on the Entergy system, and no basis exists to price the two PPAs at any level other than their actual costs. The Louisiana Commission states that in the Rain CII Carbon Order<sup>26</sup> and Agrilectric Power Partners Order<sup>27</sup> it found, based on testimony for Entergy Gulf State Louisiana witnesses, that in addition to meeting renewable requirements, the two PPAs serve baseload and fuel diversity needs, thus providing system-wide benefits.<sup>28</sup> According to the Louisiana Commission, Entergy Gulf States Louisiana's retail customers will pay and have paid 100 percent of the costs of the two PPAs, including all capacity and energy-related costs.

21. Additionally, the Louisiana Commission states that the PPAs in question do not possess the characteristics of the Vidalia PPA that prompted the Commission to reprice the Vidalia PPA.<sup>29</sup> The Louisiana Commission states that the Commission held that Vidalia warranted Service Schedule MSS-3 pricing for the following four reasons:

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<sup>25</sup> *Id.*

<sup>26</sup> The Louisiana Commission states that with regard to the Rain CII Carbon PPA it held that “[t]he Company provided testimony that the PPA is suited to serve [Entergy Gulf States Louisiana’s] baseload deficiency and is relatively economical when measured against the cost of other renewable resources. In addition, the resource will help to diversify [Entergy Gulf States Louisiana’s] fuel mix and will allow the Company to gain valuable experience with a new type of generating resource.” *Id.* at 3 (quoting Rain CII Carbon Order at 2).

<sup>27</sup> The Louisiana Commission states that with regard to the Agrilectric PPA, it held that “[t]he Company provided testimony that the PPA is suited to serve [Entergy Gulf States Louisiana’s] baseload needs and is relatively economical when measured against the cost of other renewable resources. In addition, the resource will help to diversify [Entergy Gulf States Louisiana’s] fuel mix and allow the Company to contract with a resource that has no additional conventional fuel consumption.” *Id.* (quoting Agrilectric Power Partners Order).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 4.

The distinguishing factors that we consider crucial are discussed in more detail below: (1) the unusual structure of the Vidalia contract, including the Louisiana Commission's finding of prudence and the guaranteed flow through of costs; (2) the significant cost shifts that would occur if the Vidalia contract were fully reflected; (3) Vidalia was not built as part of Entergy's overall system planning and (4) subsequent to the contract being approved, the Louisiana Commission entered into a settlement with [Entergy Services, Inc.] under which significant tax benefits have flowed through directly to the retail customers of Louisiana.<sup>[30]</sup>

22. According to the Louisiana Commission, the circumstances surrounding the Vidalia PPA and supporting its pricing treatment do not exist for the two PPAs at issue here because: no significant cost shifts will occur as a result of the two PPAs and Entergy initially provided no price information regarding the two PPAs, which consist of 36.5 MW in total; Entergy provides no information on how the two PPAs were considered for Entergy's planning purposes; and there is no special tax settlement for the two PPAs as was the case for Vidalia PPA. For these reasons, the Louisiana Commission states that the Vidalia PPA repricing treatment does not support the requested treatment of the two PPAs at issue here.<sup>31</sup> The Louisiana Commission argues that there is no evidence presented that these contracts necessarily will be above market. The Louisiana Commission states that "[i]n fact, the Louisiana Commission believes it can demonstrate that some costs will be below the MSS-3 rate, and the change agreed upon by other parties in the 'Settlement' confirms that this is the case."<sup>32</sup>

23. The Louisiana Commission also states that the Settlement proposes that the re-pricing be applicable not just to the two PPAs, but also to "all other agreements for the purchase of capacity and/or energy ('PPAs') for renewable resources entered into subsequent to May 31, 2016 [sic], which PPAs are entered into to satisfy state or local

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<sup>30</sup> *Id.* (citing *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, at P 173, *order on reh'g*, *La. Pub. Serv. Comm'n v. Entergy Servs., Inc.*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *order on compliance*, 117 FERC ¶ 61,203 (2006), *order on reh'g and compliance*, 119 FERC ¶ 61,095 (2007), *aff'd in part and remanded in part, sub nom. La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378 (D.C. Cir. 2008), *order on remand*, 137 FERC ¶ 61,047), *order dismissing reh'g*, 137 FERC ¶ 61,048 (2011), *order on reh'g*, 146 FERC ¶ 61,152, and *order rejecting compliance filing*, 146 FERC ¶ 61,153 (2014)).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 6.

jurisdictional policy requirements.”<sup>33</sup> The Louisiana Commission states that Entergy does not demonstrate why renewable resources should be treated differently than other resources which the Louisiana Commission states are presumably generated from non-traditional fuel sources, but ultimately are production costs that benefit the system by providing capacity, energy, and fuel diversity. Further, the Louisiana Commission argues that Entergy does not demonstrate why renewable PPAs should be treated differently than other renewable (e.g., self-build) resources. The Louisiana Commission adds that assuming that renewable resources are always going to be above-market (which the Louisiana Commission states is unsupported) there are many other resources on the Entergy system that are likewise above market including, for example, Entergy’s older legacy units. The Louisiana Commission argues that at any given time, there will always be some generation resources that are above-market and others that are below but the fact that a resource is above-market does not provide a basis to price that resource at other than actual cost for purposes of the bandwidth remedy.<sup>34</sup>

24. Finally, the Louisiana Commission argues that the PPAs should be priced at actual cost, explaining that differential pricing is only allowed when a sufficient basis demonstrably exists to justify the differential pricing.<sup>35</sup> Otherwise, the Louisiana Commission argues, the re-pricing proposal is unduly discriminatory. The Louisiana argues that all of Entergy’s purported reasons supporting the re-pricing fail and the two PPAs are not similar to the Vidalia PPA and the rationale used to justify the treatment of the Vidalia PPA cannot justify the Settlement’s proposed amendment to Service Schedule MSS-3. The Louisiana Commission adds it is Commission policy to support renewables, and the re-pricing of renewable PPAs discourages reliance on these resources, in violation of that policy. The Louisiana Commission concludes that there is no basis to approve the Settlement, and it should be rejected.

## **B. Reply Comments**

### **1. Entergy**

25. Entergy states that the Louisiana Commission’s protest amounts to an attempt by the Louisiana Commission to export to the other participating Operating Companies above-market costs that were incurred to fulfill Louisiana Commission policy goals. Entergy argues that the Louisiana Commission’s protest fails to raise a valid

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<sup>33</sup> *Id.* at 7 (quoting Settlement § 1).

<sup>34</sup> *Id.* at 8.

<sup>35</sup> *Id.*

disagreement with the Settlement and provides no basis for withholding approval of the Settlement without modification or condition.

26. Entergy states that the Louisiana Commission's assertions that there was an abuse of process in arriving at the Settlement are false.<sup>36</sup> Entergy points out that in connection with the instant proceeding, the parties and Trial Staff, under the guidance of a Commission-appointed settlement judge, engaged in settlement discovery, participated in settlement conferences, and reached a proposed resolution of the issues that emerged during the settlement discussions.

27. Entergy states that the principal thrust of the Louisiana Commission's protest is that PPAs entered into pursuant to the REP Program should be treated no differently than other PPAs on the Entergy system. Entergy further states that the Louisiana Commission willfully overlooks that the PPAs are different from other PPAs on the Entergy system. According to Entergy, the PPAs at issue in the Settlement were selected and entered into not because they were the least cost option, but because they fulfill stated retail policy goals, are "relatively economical when measured against the cost of other renewable resources," and were specifically authorized by the Louisiana Commission for a "cost recovery mechanism that includes specific ratemaking treatment for above-market capacity costs."<sup>37</sup> Entergy argues that the basis for approval of the two PPAs was not that they were the most economical manner in which Entergy Gulf States Louisiana's resource needs could be met. Entergy argues that instead, these PPAs arose from a Louisiana Commission-required REP Program and were selected because they were among the more economical qualifying renewable resources that met the stated goals articulated in the Louisiana Commission's REP Program. Entergy adds that the REP Program and the resulting PPAs fulfill the Louisiana Commission's interests of investment and economic development, job creation and job retention, and local quality of life improvement, interests the Louisiana Commission specifically acknowledges may come at a price that is above-market relative to traditional capacity and energy products.<sup>38</sup>

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<sup>36</sup> Entergy Reply Comments at 5.

<sup>37</sup> *Id.* at 6 (quoting Louisiana Commission Initial Comments at 3).

<sup>38</sup> *Id.* (quoting Rain CII Carbon Order at 1, 4; Agrilectric Order Power Partners Order at 1, 4).

28. Entergy states that since the establishment of the bandwidth formula, above market costs undertaken to advance local interests have been repriced.<sup>39</sup> Entergy states that for the Louisiana Commission to now protest that above-market renewable resource costs that it approved should be fully reflected in the bandwidth formula because only 36.5 MW of above-market costs would be included (which the Louisiana Commission argues would not constitute “significant cost shifts” as contemplated in regards to the Vidalia PPA) is disingenuous and would establish a bad precedent.<sup>40</sup> Entergy states that acceptance of such an argument has the potential to incent local regulators to undertake various policies that could export costs to other participating Entergy Operating Companies so long as those costs did not meet some threshold amount. Entergy further states that the “[Louisiana Commission]’s position is particularly disingenuous because the Louisiana Commission committed that it would not protest that re-pricing.”<sup>41</sup>

29. Entergy states that during the Commission’s consideration of the inclusion of the price of the Vidalia PPA in the bandwidth formula, no party ever contended power was not received from the hydroelectric facility or that the level of power received should be the determining factor for whether to re-price energy from the resource.<sup>42</sup> What was argued, Entergy contends, was that the price paid for energy from the resource was above-market, served a stated local purpose, and was approved by the Louisiana Commission for retail recovery, notwithstanding the above-market price. Entergy argues that those same factors apply to and support the re-pricing of renewable PPAs entered into pursuant to retail-mandated programs.

30. Finally, Entergy states that the Louisiana Commission’s assertion that “[i]f the PPAs are re-priced, the re-pricing should be imposed on all above-market contracts regardless of the nature of those contracts,” is a weak attempt to pull into this proceeding issues that were not set for hearing.<sup>43</sup> Specifically, Entergy asserts that the Commission did not set for hearing, and the Louisiana Commission did not file a complaint requesting, the re-pricing of all above-market contracts. According to Entergy, the

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<sup>39</sup> *Id.* at 7 (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 175; *Entergy Servs., Inc.*, 124 FERC ¶ 61,020 (2008)).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 8 (citing Rain Order CII Carbon Order at ordering para. 11; Agrilectric Order Power Partners Order at ordering para. 11).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 9 (quoting Louisiana Commission Initial Comments at 7).

Louisiana Commission's new assertion that all above-market contracts should be re-priced cannot serve as a basis for rejection of the Settlement. Entergy suggests that if the Louisiana Commission wants to argue that all above-market contracts should be re-priced, the Louisiana Commission should file a complaint with the Commission under FPA section 206 demonstrating that its proposal is just and reasonable. Entergy states that overall, the proposed amendment in the Settlement is just and reasonable because not only does it codify the treatment recognized by the Louisiana Commission and Entergy Gulf States Louisiana with respect to the above-market costs resulting from the Rain CII Carbon and Agrilectric PPAs, it provides for the identical treatment for other renewable resource PPAs entered into pursuant to retail-mandated programs.

## **2. New Orleans Council**

31. The New Orleans Council urges the Commission to find that there is no genuine issue of material fact remaining in this proceeding and to approve the Settlement. The New Orleans Council states that the Louisiana Commission is attempting to alter the scope of this proceeding by introducing an issue that was not before the Commission. The New Orleans Council states that as Entergy made clear in the April 1, 2014 filing, and as the Louisiana Commission itself explained to the Commission in its protest of that filing, the issue in this case was the re-pricing of certain retail-mandated above-market renewable resource agreements in order to avoid exporting to other jurisdictions those above-market costs incurred to fulfill local policy objectives.<sup>44</sup> The New Orleans Council states that the question of whether it is appropriate for any below-market costs associated with renewable resource PPAs to be artificially inflated for purposes of the bandwidth calculation has never been an issue in this proceeding. It states that despite the Louisiana Commission's claims to the contrary, the fact that the Settlement includes "whichever is lower" language does not inject below-market costs into the proceeding; rather, it simply makes clear that the focus of the re-pricing provision is solely for above-market renewable resource PPAs.

32. The New Orleans Council also argues that the Settlement complies with the Louisiana Commission's own orders approving the Rain CII Carbon and Agrilectric PPAs. Specifically, the New Orleans Council points out that in those orders the Louisiana Commission: (1) recognized that the costs associated with those renewable resource agreements might be above-market; (2) acknowledged that those above-market costs might be excluded from the bandwidth calculation; and (3) stated that it would not oppose the exclusion of the above-market costs of the Rain CII Carbon and Agrilectric PPAs from the bandwidth calculation as long as "other retail-mandated above-market renewable resource production costs are [also] excluded and/or re-priced for purposes of

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<sup>44</sup> New Orleans Council Reply Comments at 2.

the determination of bus bar production costs pursuant to FERC Opinion Nos. 480 and 480-A.”<sup>45</sup> In short, the New Orleans Council argues that the Louisiana Commission sought uniform treatment under the bandwidth formula for all similar retail-mandated above-market renewable resource agreements that might be executed by any of the Entergy System Agreement participants in the future.<sup>46</sup>

33. The New Orleans Council states that arguably the revisions proposed by Entergy in the April 1, 2014 filing limited any re-pricing to only the Rain CII Carbon and Agrilectric PPAs, leaving uncertain the treatment of future renewable resource agreements that other participating Entergy Operating Companies might execute pursuant to policy goals set forth by their respective regulators.<sup>47</sup> However, the New Orleans Council notes that the Settlement removes this uncertainty by modifying the language that specifically limited applicability of Entergy’s proposed amendment to the Rain CII Carbon and Agrilectric PPAs, and instead making the provision applicable to all similar eligible renewable resource PPAs.<sup>48</sup> The New Orleans Council concludes that the Settlement accomplishes the parity that the Louisiana Commission requested.

34. Responding to the Louisiana Commission’s claim that “no basis exists to price the [Rain CII Carbon and Agrilectric] PPAs at any level other than their actual costs,” the New Orleans Council contends that it is disingenuous for the Louisiana Commission to now question the rationale for re-pricing these PPAs.<sup>49</sup> According to the New Orleans Council, by objecting to the Settlement, the Louisiana Commission is asking this Commission to increase the price of any below-market renewable resource PPAs for purposes of the bandwidth calculation. The New Orleans Council argues that this would amount to a perversion of the intended purpose of the re-pricing provision by allowing a participating Entergy Operating Company to include costs in the bandwidth calculation where there are no such actual costs and shift them to the ratepayers of other jurisdictions.

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<sup>45</sup> *Id.* at 3 (citing Rain Order CII Carbon Order at Ordering P 11; Agrilectric Order Power Partners Order at Ordering P 11).

<sup>46</sup> *Id.* at 3-4.

<sup>47</sup> *Id.* at 4.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 4 (citing Louisiana Commission Initial Comments at 2).

35. The New Orleans Council disagrees with the Louisiana Commission's suggestion that the Settlement penalizes Entergy Gulf States Louisiana and its customers. The New Orleans Council argues that the Settlement prevents the customers in the Louisiana Commission's jurisdiction from paying the artificial costs of another jurisdiction's local policy goals, thereby addressing the primary concern raised by the Louisiana Commission regarding Entergy's April 1, 2014 filing.<sup>50</sup> Moreover, the New Orleans Council argues that the inclusion of these artificial costs would constitute a windfall for Entergy Gulf States Louisiana because these costs would be shifted to other Entergy Operating Companies through the bandwidth calculation. The New Orleans Council states that, therefore contrary to the Louisiana Commission's claims, there is no material issue of fact here that needs to be resolved in this case.

36. Finally, the New Orleans Council questions the Louisiana Commission's assertion that the Settlement is unduly discriminatory because it does not extend the re-pricing proposal to all above-market contracts, regardless of the nature of those contracts. The New Orleans Council reiterates that this claim exceeds the scope of this proceeding because the instant proposal is limited to the re-pricing of retail-mandated above-market renewable resource agreements.<sup>51</sup> The New Orleans Council concludes that the Louisiana Commission has failed to show that other above-market agreements are similarly situated such that they are entitled to the same re-pricing treatment.

### 3. Trial Staff

37. Trial Staff notes that Rule 602(h) of the Commission's Rules of Practice and Procedure<sup>52</sup> governs how the Commission examines contested settlements. Trial Staff adds that the Commission detailed four approaches that may be used to analyze contested settlements in *Trailblazer Pipeline Company*.<sup>53</sup> According to Trial Staff, in *Trailblazer*,

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<sup>50</sup> *Id.* at 5-6.

<sup>51</sup> *Id.* at 6.

<sup>52</sup> 18 C.F.R. § 385.602(h).

<sup>53</sup> 85 FERC ¶ 61,345 (1998) (*Trailblazer*), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999). As discussed more fully below, the four *Trailblazer* approaches are: (1) the Commission may make a decision on the merits of each contested issue; (2) the Commission may determine that the settlement provides an overall just and reasonable result; (3) the Commission may determine that the benefits of the settlement outweigh the nature of the objections, and the contesting parties' interests are too attenuated; or (4) the Commission may determine that the contesting parties can be severed.

the Commission recommended using the first approach to analyze contested settlements involving primarily policy issues and in this case the Commission's analysis of the Settlement should be guided by the first *Trailblazer* approach because the Louisiana Commission's opposition to the Settlement is based on policy considerations.<sup>54</sup>

38. Trial Staff states that the Settlement establishes an Entergy system-wide policy for re-pricing renewable energy agreements that are executed to satisfy state or local jurisdictional policy requirements and that the Louisiana Commission challenges the policy on the grounds that it only applies to the Rain CII Carbon and Agrilectric PPAs, Entergy Gulf States Louisiana, and its customers. Trial Staff asserts that the Louisiana Commission's contentions turn on policy questions rather than the facts underpinning the Settlement. Trial Staff adds that characterizing the Louisiana Commission's opposition to the Settlement as a policy dispute is further supported by the fact that the Louisiana Commission has not raised a genuine issue of material fact. Trial Staff explains that Rule 602(f)(4) of the Commission's Rules of Practice and Procedure requires parties contesting settlements to submit initial comments that "include an affidavit detailing any genuine issues of material fact by specific reference to documents, testimony, or other items in the offer of settlement, or items not included in the settlement, that are relevant to support the claim."<sup>55</sup> Trial Staff notes that the Louisiana Commission did not include such an affidavit with its initial comments, which supports the proposition that the Louisiana's contentions are policy issues.<sup>56</sup>

39. Trial Staff states that although the Louisiana Commission chose not to raise genuine issues of material fact, the Louisiana Commission does contest policy implications of the Settlement. Trial Staff states that the record in this proceeding, including Entergy's initial filing, the Louisiana Commission's protest, and the initial comments submitted by the parties, provides adequate evidence to repudiate the Louisiana Commission's objections to the Settlement. First, Trial Staff asserts that the Settlement does not single out the Rain CII Carbon and Agrilectric PPAs, but instead establishes a policy that is applicable to all renewable energy PPAs entered into by the Operating Companies to satisfy local or state mandates.<sup>57</sup> Trial Staff contends that the Louisiana Commission's objection is based on a truncated reading of the Settlement. Trial Staff contends that reading the Settlement in its entirety, rather than arbitrarily

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<sup>54</sup> Trial Staff Reply Comments at 6.

<sup>55</sup> *Id.* at 6.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 7.

disregarding certain provisions, demonstrates that the Settlement is not directed exclusively at Entergy Gulf States Louisiana, its ratepayers, or the Rain CII Carbon and Agrilectric PPAs. Trial Staff argues that thus the plain language of the Settlement refutes the Louisiana Commission's objection.

40. Trial Staff notes that the Settlement addresses an issue that the Louisiana Commission raised in its protest to Entergy's April 1, 2014 filing—i.e., that “Entergy has not alleged or demonstrated that other retail jurisdiction renewables have been excluded or similarly re-priced under the bandwidth formula.”<sup>58</sup> Trial Staff contends that the Settlement directly addresses this issue by providing a system-wide framework for local and state-mandated renewable resource PPAs that applies to all of the participating Entergy Operating Companies. Trial Staff further argues that the Settlement ensures that local and state-mandated renewable resources in jurisdictions other than Louisiana will also be re-priced under the bandwidth formula.

41. Next, Trial Staff states that the rationale for re-pricing the Vidalia PPA also applies to renewable energy PPAs mandated by local or state programs. Trial Staff asserts that the Settlement reinforces the principle that costs incurred in the pursuit of limited, local or state-mandated policies should not be foisted on the entire Entergy system. According to Trial Staff “[t]hat precedent was first articulated in Opinion Nos. 480 and 480-A, when the Commission precluded [Entergy Louisiana, Inc.] from including the full costs of the Vidalia PPA in the Bandwidth Formula.”<sup>59</sup> Trial Staff states that rather than entirely excluding the costs associated with the Vidalia PPA from the bandwidth formula, the Commission re-priced Vidalia's energy at the annual Service Schedule MSS-3 rate, and in a subsequent case, the Commission approved a similar re-pricing scheme for the Toledo Bend Agreement, in part, because the agreement in question addressed “a concern that is local in nature (i.e., wholly within a single state).”<sup>60</sup>

42. Trial Staff asserts that the factors that distinguished the Vidalia PPA and the Toledo Bend PPA from system-wide resources are also applicable to renewable energy PPAs like the Rain CII Carbon and Agrilectric PPAs. Trial Staff states that the Commission found the Vidalia PPA was “a unique accommodation between the Louisiana Commission and Entergy Louisiana, Inc. meant to facilitate local economic and political objectives of Louisiana.”<sup>61</sup> Trial Staff argues that the REP Program and the

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<sup>58</sup> *Id.* at 8-9 (citing Louisiana Commission Initial Comments at 3).

<sup>59</sup> *Id.* at 9.

<sup>60</sup> *Id.* (citing *Entergy Servs., Inc.*, 124 FERC ¶ 61,020 at P 11).

<sup>61</sup> *Id.* at 10 (citing Opinion No. 480, 111 FERC ¶ 61,311 at P 175).

PPAs that stem from it, such as the Rain CII Carbon and Agrilectric PPAs, are similarly focused on local aims. Trial Staff claims that the REP Program is not intended to provide system-wide benefits for all of the Operating Companies, but in contrast addresses Louisiana's concerns regarding the development of alternative power sources. Trial Staff states that the Louisiana Commission's claim might be more persuasive if the Settlement was limited to the Rain CII Carbon and Agrilectric PPAs. However, according to Trial Staff, the Settlement encompasses all current and future renewable energy PPAs that are entered into pursuant to any local or state-mandated program. Trial Staff notes that if additional jurisdictions devise initiatives like the REP Program, significant cost shifts across the Operating Companies could occur, and that the Settlement reflects a policy choice among Entergy and the other settling parties to plan for that contingency.

43. Trial Staff explains that system-wide planning was an important consideration in determining whether the Vidalia PPA's actual costs should be included in the bandwidth formula.<sup>62</sup> Trial Staff argues that in Opinion No. 480-A, the Commission observed that "there is no evidence in the record that Vidalia was part of any centralized and deliberate plan to increase the use of hydroelectric power for the benefit of the system as a whole" and that "the purchase of Vidalia power was initiated by the Town of Vidalia, rather than the Companies."<sup>63</sup> Trial Staff states that, similarly there is no indication that the Rain CII Carbon or Agrilectric PPAs are the products of the Operating Companies' centralized planning efforts. Instead, Trial Staff asserts, Entergy Gulf States Louisiana entered into these PPAs to comply with the requirements of Louisiana's REP Program. Trial Staff argues that while the Louisiana Commission implies that the lack of information on how these PPAs were considered for Entergy's planning purposes supports its objections to the Settlement, the dearth of information actually demonstrates that those PPAs were never part of the larger system-wide planning process.

44. Trial Staff states that the Louisiana Commission's contention that the Rain CII Carbon and Agrilectric PPAs served baseload and fuel diversity needs, thus providing system-wide benefits, does not warrant including the full costs of those PPAs in the bandwidth formula.<sup>64</sup> According to Trial Staff, under the Vidalia PPA precedent, the appropriate inquiry is not whether the PPA in question provides any benefit to the system, but rather what is the magnitude of that contribution. Trial Staff notes that in Opinion No. 480, the Commission conceded that the Vidalia PPA provided capacity to Entergy's system, but that the capacity was so small as to be inconsequential to the

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<sup>62</sup> *Id.* at 11.

<sup>63</sup> *Id.* at 12 (citing Opinion No. 480-A, 113 FERC ¶ 61,282 at P 74).

<sup>64</sup> *Id.*

overall system dynamics. Trial Staff states that the Rain CII Carbon and Agrilectric PPAs make minimal contributions (36.4 MW and 8.5 MW, respectively) to the Entergy system. Therefore, Trial Staff claims, these small renewable energy PPAs do not play an integral role in the overall operation of the Entergy system.

45. Finally, Trial Staff asserts “[w]hile the [Louisiana Commission] argues in favor of symmetrical re-pricing to the average Service Schedule MSS-3 Exchange Energy rate, Trial Staff opposes including artificial costs in the Bandwidth Formula for the sake of balance.”<sup>65</sup> Trial Staff explains that if a participating Entergy Operating Company enters into a renewable energy PPA that is less costly than the average Service Schedule MSS-3 Exchange Energy rate, its ratepayers and ratepayers in neighboring Entergy Operating Companies should realize the savings provided by more economical energy resources. Trial Staff concludes that it supports reporting of the Settlement for the Commission’s approval, and its acceptance by the Commission.

#### **IV. Commission Determination**

46. After considering the objections of the Louisiana Commission, we find that the Settlement may be approved for all parties as a just and reasonable resolution of the issues.

47. As an initial matter, we disagree with the Louisiana Commission’s argument that the Settlement should be rejected as an abuse of the Commission’s settlement procedures. In the Hearing Order, the Commission set the matter for a trial-type evidentiary hearing, but held the hearing in abeyance and encouraged the parties to settle any disputes before the hearing procedures commenced. The Louisiana Commission does not allege that the settlement process was not conducted in accordance with the Commission’s rules or the relevant procedural orders issued by the Chief Judge or settlement judge; from our review of the record, it is clear that the process was properly conducted, affording the Louisiana Commission the opportunity to fully participate in this proceeding. The fact that the Louisiana Commission was the only party that protested Entergy’s April 1, 2014 filing and ultimately contested the Settlement, does not constitute a *per se* abuse of the process. Furthermore, we note that the Commission’s *Trailblazer* analysis for reviewing contested settlements provides ample protection for parties, like the Louisiana Commission, who object to the terms of a settlement.<sup>66</sup> Accordingly, we reject the Louisiana Commission’s allegation of abuse in the settlement process.

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<sup>65</sup> *Id.* at 13.

<sup>66</sup> *Infra* P 49.

48. Turning to the substance of the matter presented here, the Commission has broad latitude under section 385.602(h) of our regulations to address contested settlements.<sup>67</sup> 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.<sup>68</sup> If the Commission finds that the record lacks substantial evidence or that the contesting parties or issues cannot be severed, the Commission may establish hearing procedures to supplement the record, or it may take other appropriate action.<sup>69</sup>

49. Under the Commission's *Trailblazer* approach for reviewing contested settlements, the Commission may approve a contested settlement under one or more of the following four approaches: (1) the Commission may make a decision on the merits of each contested issue; (2) the Commission may determine that the settlement provides an overall just and reasonable result; (3) the Commission may determine that the benefits of the settlement outweigh the nature of the objections, and the contesting parties' interests are too attenuated; or (4) the Commission may determine that the contesting parties can be severed.<sup>70</sup> In *Trailblazer* the Commission also explained that consideration of a contested settlement under the first approach was appropriate when the issues are primarily policy issues.<sup>71</sup> In applying these criteria to the Louisiana Commission's objections to the Settlement, the Commission concludes that the Settlement can be approved for all parties, including the Louisiana Commission, consistent with both the first and second approach authorized under *Trailblazer*.

50. With regard to the first *Trailblazer* approach, we find that the Louisiana Commission's arguments turn on policy, not factual issues, and do not warrant further proceedings. The Louisiana Commission alleges that the Settlement does not resolve any dispute of material fact; however, the Louisiana Commission does not identify any genuine issues of material fact that remain to be resolved in this proceeding, supported by

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<sup>67</sup> 18 C.F.R. § 385.602(h).

<sup>68</sup> *Id.* § 385.602(h)(1)(i).

<sup>69</sup> *Id.* § 385.602(h)(1)(ii).

<sup>70</sup> *Trailblazer*, 85 FERC at 62,342-44.

<sup>71</sup> *Id.* at 62,342.

evidence as required by the Commission's rules.<sup>72</sup> The Louisiana Commission contends that "there is no evidence presented that these contracts necessarily will be above market"<sup>73</sup> and that it "believes it can demonstrate that some costs will be below the MSS-3 rate."<sup>74</sup> Assuming *arguendo* that such inquiry is factual, the Louisiana Commission provides no affidavit supporting its belief by specific reference to documents, testimony, or other items included in the offer of settlement, or items not included in the settlement, that are relevant to support the claim.<sup>75</sup> Accordingly, we find that the Louisiana Commission raises policy-based issues, which as discussed below, lack merit.

51. In its April 1, 2014 filing, Entergy proposed to amend footnote 1 of section 30.12 of Service Schedule MSS-3 to reprice only the Rain CII Carbon and Agrilectric PPAs based on the average annual Service Schedule MSS-3 rate paid by Entergy Gulf States Louisiana. In its protest of that filing, the Louisiana Commission argued that Entergy's filing was not in accordance with the Louisiana Commission's orders approving the PPAs, and that it consented to the proposed pricing treatment under the condition that retail-mandated above-market renewable resources in other retail jurisdictions are also similarly re-priced under the bandwidth formula.<sup>76</sup>

52. Through the settlement process, the parties (except for the Louisiana Commission) agreed to revise the original proposed amendment to make it applicable to any renewable energy PPAs entered into by any of the participating Entergy Operating Companies subsequent to May 31, 2014, which are entered into to satisfy state or local jurisdictional policy requirements. Accordingly, the Settlement addresses in part the Louisiana Commission's concerns that retail-mandated, above-market, renewable

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<sup>72</sup> See 18 C.F.R. § 385.602(f)(4) ("Any comment that contests an offer of settlement by alleging a dispute as to a genuine issue of material fact must include an affidavit detailing any genuine issue of material fact by specific reference to documents, testimony, or other items included in the offer of settlement, or items not included in the settlement, that are relevant to support the claim").

<sup>73</sup> Louisiana Commission Initial Comments at 6.

<sup>74</sup> *Id.*

<sup>75</sup> See *supra* footnote 74.

<sup>76</sup> Louisiana Commission April 22, 2014 Protest at 3.

resources in other retail jurisdictions be similarly re-priced under the bandwidth formula.<sup>77</sup>

53. Furthermore, the Louisiana Commission argued in its protest to the April 1, 2014 filing and again in opposition to the Settlement, that Entergy provides no support for its requested treatment of the two PPAs other than its statement that the treatment is consistent with the treatment that the Commission has approved for the re-pricing of the Vidalia PPA for purposes of the bandwidth formula. However, we find that the PPAs at issue here share similarities to the Vidalia PPAs. We also find that the factors that the Commission considered in determining whether the contract price of energy from the Vidalia hydroelectric power plant should be fully reflected in the bandwidth formula are instructive to the Commission's consideration of the Settlement.<sup>78</sup> The Commission considered the unusual structure of the Vidalia contract, including the Louisiana Commission's finding of prudence and the guaranteed flow through of costs. The Commission found that the Vidalia contract was the product of a unique accommodation between the Louisiana Commission and Entergy Louisiana meant to facilitate the local economic and political objectives of Louisiana without exposing Entergy Louisiana (or the system) to the cost risks associated with a substantial generation project.<sup>79</sup> In addition, the Commission found that Vidalia was not built as part of Entergy's overall system planning and that there was no evidence that Vidalia was part of any centralized and deliberate plan to increase the use of hydroelectric power for the benefit of the system as a whole.<sup>80</sup> The Commission concluded that the Vidalia PPA was not entered into for the benefit of the Entergy system as a whole, and thus the inclusion of its energy at actual costs in the bandwidth formula was unjustified. Similarly, the record shows that

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<sup>77</sup> *Id.* at 3.

<sup>78</sup> These factors were: (1) the unusual structure of the Vidalia contract, including the Louisiana Commission's finding of prudence and the guaranteed flow through of costs; (2) the significant cost shifts that would occur if the Vidalia contract were fully reflected; (3) Vidalia was not built as part of Entergy's overall system planning; and (4) subsequent to the contract being approved, the Louisiana Commission entered into a settlement with Entergy Services, Inc. under which significant tax benefits have flowed through directly to the retail customers of Louisiana. Opinion No. 480, 111 FERC ¶ 61,311 at PP 173-174. While the Commission relied on these factors in Opinion No. 480, it did not find it necessary that all four factors exist in determining the level of costs associated with a PPA to be included in the bandwidth formula.

<sup>79</sup> *Id.* P 175.

<sup>80</sup> *Id.* P 180.

the Entergy Gulf States Louisiana entered into the Rain Carbon II and Agrilectric PPAs to meet the requirements of the REP Program for the benefit of Entergy Gulf States Louisiana's customers, rather than for the benefit of the Entergy system as a whole.

54. In addition, with regard to the Louisiana Commission's argument that Entergy does not demonstrate why renewable PPAs should be treated differently than other resources, we find that Entergy does not have to make such a demonstration in order for the Commission to find the Settlement to be just and reasonable. Entergy's original filing was intended to address a discrete issue, i.e., that the costs of the Rain Carbon II and Agrilectric PPAs, which were approved to further state policy objectives concerning the development of renewable resources, should not be improperly shifted to other jurisdictions through the System Agreement if those costs are above market. The Settlement adopts a broader re-pricing mechanism to partially address the concerns identified by the Louisiana Commission that similar renewable PPAs in other jurisdictions would not be subject to the same re-pricing treatment. The Louisiana Commission provides no evidence that above-market PPAs for other types of resources, executed to address state or local jurisdictional policy requirements, are being improperly passed through the System Agreement. We therefore conclude that the re-pricing provisions included in the Settlement are properly tailored to the scope of the issue documented in the record by Entergy and other parties.

55. Furthermore, we reject as unsubstantiated and speculative the Louisiana Commission's contention that the re-pricing of renewable PPAs under the Settlement discourages reliance on renewable resources in violation of Commission policy. The Commission's findings in this proceeding concern specific energy cost inputs to be used in the bandwidth formula.

56. We also find that the Settlement will provide an overall just and reasonable result, consistent with the second *Trailblazer* approach. Under section 1 of the Settlement, a re-pricing downward of renewable PPA costs in the bandwidth calculation avoids imposing on other participating Entergy Operating Company customers any above-market costs of PPA-generated power that are paid by Entergy Gulf States Louisiana (or any other participating Entergy Operating Company) when those PPAs are priced in furtherance of local and state policy interests. Any PPA costs that fall below-market are priced at their actual costs, as are all of Entergy Gulf States Louisiana's other power resource costs. By the same token, the Louisiana Commission's proposal to add "symmetrical pricing" language allowing for the re-pricing of below-market PPA costs upward would effectively increase the charge to the other participating Entergy Operating Companies' customers for Entergy Gulf States Louisiana's PPA-generated power by an amount that is greater than what the energy actually costs Entergy Gulf States Louisiana to buy from Rain and Agrilectric. In addition, the Louisiana Commission's proposal does not provide for Entergy Gulf States Louisiana to pay that amount, in turn, to Rain and Agrilectric, which could result in a windfall for Entergy Gulf States Louisiana's customers.

57. Further, we disagree with the Louisiana Commission's contention that the Settlement's repricing is unduly discriminatory to Entergy Gulf States Louisiana and its customers and unduly preferential to the other participating Entergy Operating Companies.<sup>81</sup> We note that the Settlement, and the proposed revision it approves, establishes a policy that is applicable to all similar renewable energy PPAs entered into by any of the participating Entergy Operating Companies.

58. Accordingly, we find that the Settlement may be approved for all parties as a just and reasonable resolution of the issues.

The Commission orders:

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

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>81</sup> Louisiana Commission Initial Comments at 7.