

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket Nos. ER06-1088-000  
ER06-1088-001

ORDER ON UNCONTESTED SETTLEMENT

(Issued May 2, 2007)

1. On December 12, 2006, Entergy Services, Inc. (Entergy Services), acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc. and Entergy New Orleans, Inc. (collectively, Entergy), filed a settlement in the above-referenced docket.<sup>1</sup> The settlement describes modifications to Entergy Services' June 1, 2006 (as revised on October 2, 2006) annual informational filing containing the 2006 rate redetermination for Firm and Non-Firm Point-to-Point Transmission Service and Network Integration Transmission Service under Entergy Services' Open Access Transmission Tariff (OATT). In addition, Entergy Services included pertinent pages from its 2006 rate redetermination filing modified to reflect the

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<sup>1</sup> Signatories to the settlement include: Entergy Services, Inc.; City of Prescott, Arkansas, West Memphis Utilities Commission and the Conway Corporation; Arkansas Electric Cooperative Corporation; South Mississippi Electric Power Association; Mississippi Delta Energy Agency, Public Service Commission of Yazoo City, Mississippi and Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi; East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.; and the Louisiana Energy and Power Authority, the Lafayette Utilities System and Municipal Energy Agency of Mississippi.

settlement rates.<sup>2</sup> On January 3, 2007, the Commission Trial Staff filed comments in support of the settlement. No other comments were received. On January 9, 2007, the settlement was certified to the Commission as uncontested.

2. The Commission finds the proposed settlement to be fair and reasonable and in the public interest. Accordingly, the Commission approves the proposed settlement. As agreed to by the parties, the applicable standard of review for any changes to the resolution of the specific issues treated in the settlement that are not agreed to by all the parties, including any modifications resulting from the Commission acting *sua sponte*, is the *Mobile-Sierra* public interest standard.<sup>3</sup> The settlement also states that the parties to the agreement acknowledge that the Commission's rights under section 206 of the Federal Power Act (FPA)<sup>4</sup> are not abridged except as indicated therein with respect to the standard that would be used in such a proceeding. The settlement further states that the parties acknowledge that the public interest standard, as applicable to the settlement, shall not extend to apply to any future Entergy Services rate redetermination filings or adversely impact any party's or non-party's ability to challenge such future filings under the "just and reasonable" standard of FPA section 205.<sup>5</sup> The Commission's approval of this settlement does not constitute approval of or precedent regarding any principle or issue in this proceeding.

3. The settlement provides that, within thirty days from the Commission's approval of the settlement, any amounts collected in excess of the settlement rates shall be refunded together with interest computed under section 35.19a of the Commission's

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<sup>2</sup> Entergy Services notes that these pages are included for illustrative purposes only, as Entergy's annual rate redetermination is an informational filing and Rule 602(c)(2) is not implicated by the proposed settlement. Offer of Settlement, Transmittal Letter at 1 (citing 18 C.F.R. § 602(c)(2) (2006)).

<sup>3</sup> *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard should apply.

<sup>4</sup> 16 U.S.C. § 824e (2000).

<sup>5</sup> Offer of Settlement at § II.8 (referencing 16 U.S.C. § 824d (2000)).

Regulations.<sup>6</sup> The settlement also provides that, within fifteen days after making such refunds, Entergy Services shall provide a compliance report to the Commission concerning such refunds.<sup>7</sup> The compliance report must show monthly billing determinants, revenue receipt dates, revenues under the prior, 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 Services shall furnish copies of the report to the affected wholesale customers and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

4. The settlement provides that the terms and conditions from previous Entergy OATT update settlement agreements that continue to apply to subsequent annual informational filings will not be affected by the settlement. Specifically, the settlement provides that such pre-existing terms and conditions include, but are not necessarily limited to, the following: (1) Entergy Services will continue to identify changes in accounting policies that could have a meaningful impact on the rates proposed in future OATT update filings; (2) the settlement will not compromise or alter the rights of the customers to contest the inputs or application of the rate formula in future OATT rate update filings; and (3) Entergy Services will preserve and make available for inspection documents supporting the determination of its rates.<sup>8</sup>

5. This order terminates Docket Nos. ER06-1088-000 and ER06-1088-001. A new sub-docket will be assigned to Docket No. ER06-1088 upon receipt of the required compliance report.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>6</sup> *Id.* § II.9 (citing 18 C.F.R. § 35.19a (2006)).

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

<sup>8</sup> *Id.* § II.10.

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KELLY, Commissioner, *dissenting in part*:

The parties to this settlement have specified that the standard of review for any future change to the settlement considered by the Commission shall be the *Mobile-Sierra* “public interest” standard. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or by the Commission acting *sua sponte*, I do not believe the Commission should approve such a contract provision.

Accordingly, I must respectfully dissent in part from this order.

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Suedeem G. Kelly

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<sup>1</sup> *Transcontinental Gas Pipe Line Corporation*, 117 FERC ¶ 61, 232 (2006).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,<sup>1</sup> I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,<sup>2</sup> I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For this reason, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> 117 FERC ¶ 61,055 (2006).

<sup>2</sup> 117 FERC ¶ 61,149 (2006).