

122 FERC ¶ 61,232  
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 No. ER06-1555-000

ORDER CONDITIONALLY APPROVING CONTESTED SETTLEMENT AND  
ACCEPTING NETWORK INTEGRATION TRANSMISSION SERVICE  
AGREEMENT

(Issued March 17, 2008)

1. On April 30, 2007, Entergy Services, Inc. (Entergy),<sup>1</sup> Cleco Power, LLC (Cleco) and Louisiana Energy and Power Authority (LEPA) (collectively, the Parties) filed a Settlement and Explanatory Statement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.<sup>2</sup> The Parties also submitted a revised Network Integration Transmission Service Agreement (NITSA) between Entergy and Cleco. The Parties' assert<sup>3</sup> that the Settlement fully resolves all issues set for hearing in this proceeding.<sup>4</sup> On June 21, 2007, the Administrative Law Judge (ALJ) filed a report to the Commission that the proposed Settlement is contested<sup>5</sup> and on June 22, 2007, the Chief Judge issued an

---

<sup>1</sup> Acting as agent for Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; and Entergy New Orleans, Inc. (collectively, Entergy).

<sup>2</sup> 18 C.F.R. § 385.602 (2007).

<sup>3</sup> See Settlement at 1.

<sup>4</sup> *Entergy Services, Inc.*, 117 FERC ¶ 61,236 (2006) (November 28 Order), *order on clarification*, 119 FERC ¶ 61,006 (2007).

<sup>5</sup> *Entergy Services, Inc.*, Docket No. ER06-1555-000, June 21, 2007 (unpublished report).

order terminating settlement judge procedures, and forwarding the Settlement to the Commission.<sup>6</sup>

2. Upon consideration of the comments filed by Commission Staff (Staff) and parties, we decide the contested issues on their merits. We find that the Settlement, as modified, is just and reasonable. Based on these findings, we conditionally approve the Settlement, as discussed below. We also accept for filing the revised NITSA between Entergy and Cleco to become effective December 1, 2006.

### **I. Background**

3. On September 1, 1955, Louisiana Power & Light Company (now known as Entergy Louisiana) and Cleco entered into a Coordination Agreement (1955 Coordination Agreement), which provided for the coordination of Entergy Louisiana's and Cleco's facilities in Louisiana. It allowed Entergy and Cleco to provide transmission and substation facilities for the use of the other party at specific rates and contained operational provisions to ensure the parallel operation of Entergy's and Cleco's systems. In an effort to roll over the service provided to Cleco under the 1955 Coordination Agreement into a service under Entergy's Open Access Transmission Tariff (OATT), Entergy filed, on September 29, 2006, a Notice of Cancellation of the 1955 Coordination Agreement and submitted to the Commission an executed NITSA between Entergy and Cleco.

4. The November 28 Order accepted the Notice of Cancellation for the 1955 Coordination Agreement and accepted the NITSA, suspended it for a nominal period, made it effective December 1, 2006, subject to refund, and established hearing and settlement judge procedures.<sup>7</sup> The single issue set for hearing was "whether Entergy properly allowed the rollover of the 1955 Coordination Agreement into the NITSA without performing any transmission studies, including whether Entergy included new receipt and delivery points."<sup>8</sup> After several settlement conferences, the Parties submitted the instant Settlement.

#### **A. Settlement**

5. The Parties explain that Arkansas Electric Cooperative Corporation and Staff, while not parties to the Settlement, also participated in the negotiations that led to the

---

<sup>6</sup> *Entergy Services, Inc.*, Docket No. ER06-1555-000, June 22, 2007 (unpublished report).

<sup>7</sup> November 28 Order, 117 FERC ¶ 61,236.

<sup>8</sup> *Id.* P 18.

Settlement and do not oppose the Settlement. They also explain that the Settlement resolves all issues set for hearing in this proceeding.<sup>9</sup>

6. Section I of the Settlement provides that the effective date of the Settlement shall be the date that a Commission order accepting the Settlement without modification or addition and finding that all issues in the proceeding are resolved is final and no longer subject to appeal. If the Commission rejects the Settlement or finds that not all issues are resolved, the Settlement shall be void and of no effect. In the event the Commission finds that all issues are resolved, but approves the Settlement only subject to modifications or conditions, the Settlement will not take effect and will be void and of no effect, unless each party expressly accepts any modifications or conditions in writing within thirty (30) days of the date of the relevant Commission order. If the Settlement becomes void, the Parties commit to negotiate immediately and in good faith an agreement preserving the benefits and burdens previously agreed to. The Parties reserve all rights to litigate in the event that no such agreement is reached within sixty (60) days of the Commission's action on the Settlement.

7. Section II provides clarifications to transmission issues under Entergy's OATT regarding (A) the identification of network resources located outside of the Entergy control area and beyond the Entergy transmission system; (B) when a rollover request will be studied; and (C) when a network resource may be designated under the Entergy OATT even if that network resource has been designated as a network resource under another transmission provider's OATT. Section II also states that these clarifications shall not expand transmission rights under the Entergy OATT and are subject to all other applicable OATT requirements, Commission orders and other contractual requirements. Additionally, Entergy agrees to post these clarifications as business practices on its OASIS within sixty (60) days from the effective date of this Settlement.

8. Under section III of the Settlement, Entergy agrees to remove the generator known as Rodemacher Unit 3 as a Cleco designated network resource under the NITSA.<sup>10</sup>

---

<sup>9</sup> The Parties further explain that on March 28, 2007, in Docket No. ER07-670-000, Entergy filed an executed NITSA and Network Operating Agreement with LEPA. They state that LEPA and Cleco have also reached agreement on a new NITSA and modifications to their preexisting agreement. They anticipate that those documents will be filed shortly by Cleco. That filing (together with Docket No. ER07-670-000), according to the parties, resolves the issues that LEPA has raised with respect to Entergy and Cleco in this proceeding.

<sup>10</sup> A revised version of the NITSA, reflecting the removal of Rodemacher Unit 3 as a Cleco designated resource, is included as attachment A to the Settlement.

Section IV includes miscellaneous provisions of the Settlement. In particular, section IV.E of the Settlement designates a just and reasonable standard of review.

9. The Parties urge the Commission to accept the Settlement without condition or modification. Importantly, they state that there are no issues remaining regarding the Cleco loads designated under the NITSA. Moreover, according to the Parties, with the removal of Rodemacher Unit 3 from the NITSA, there are no issues remaining regarding new points of receipt. For these reasons and with the clarifications provided in the Settlement, the Parties assert that the facts here are squarely within the Commission's recent discussion of the parallel filing in *Cleco Power*.<sup>11</sup>

## **B. Comments on the Settlement**

10. On May 21, 2007, Staff filed comments in support of the Settlement, while Lafayette Utilities System (Lafayette) filed comments opposing the Settlement. On May 30, 2007, Lafayette filed reply comments to Staff's initial comments. Entergy and Cleco each filed reply comments in response to Lafayette's initial comments opposing the Settlement and Staff filed reply comments in support of the Settlement. On June 5, 2007, Lafayette filed a response to Entergy's request for treatment of the proposed Settlement as uncontested.

### **1. Supporting Comments**

11. Staff supports the Settlement as just and reasonable and recommends that the Commission accept it. Staff notes that due to the fact that the NITSA replaces the 1955 Coordination Agreement, the Settlement represents an important step in updating Entergy's and Cleco's contractual relationship to accord with today's industry and open-access transmission service.

12. Staff explains that the removal of Rodemacher Unit 3 as a network resource effectively ensures that the service Entergy will provide to Cleco under the NITSA will be the exact same service that Entergy had been providing under the 1955 Coordination Agreement and makes this case factually indistinguishable from the filing that was accepted without a hearing (because it raised no material facts) by the Commission in its February 2 Order.<sup>12</sup>

---

<sup>11</sup> *Cleco Power LLC*, 118 FERC ¶ 61,074 (2007) (February 2 Order)

<sup>12</sup> February 2 Order, 118 FERC ¶ 61,074.

## 2. Opposing Comments

13. Lafayette claims that there is no basis for the Commission to accept the proposed Settlement. Lafayette contends that there are significant unresolved issues of material fact involving the propriety of Entergy's study-free rollover of transmission service to Cleco and that there is no more evidence in the record today that might allow the Commission to decide these unresolved issues than there was when the Commission set this matter for hearing.

14. Lafayette claims that the settling Parties misread the November 28 Order, which did not limit the scope of the hearing procedures exclusively to the new delivery and receipt points.<sup>13</sup> It contends that the settling Parties equate the word "including" with "that is" or "specifically," however, Lafayette maintains that when the Commission uses the word "including," it means that the listed item or items are among the full set of items to which reference is made but are not the only such items. Lafayette argues that the NITSA's establishment of new receipt and delivery points was meant to be among the matters set for hearing regarding the propriety of the rollover, but it was not the only issue set for hearing. According to Lafayette, the issues that remain unresolved regarding the propriety of the rollover are the following: (1) whether Entergy acted properly and in accordance with its OATT in failing to perform a System Impact Study and (2) whether Lafayette should have been identified as an Affected System. Lafayette speculates on whether the study-free service approval was part of a *quid pro quo* in which Cleco agreed to provide Entergy the same treatment for the corresponding NITSA eventually filed in Docket No. ER07-289-000 and, if so, states that this could well be improper as a matter of tariff administration.

15. Lafayette references Entergy's System Impact Study and Facilities Study Process Manual in its claim that Entergy's statement of its current practice is that it requires System Impact Studies whenever pre-Order No. 888 contracts are rolled over.<sup>14</sup> Thus, Lafayette argues that the Settlement's proposed clarification of how the study requirement will be applied in the future leaves unresolved the question of whether Entergy followed its own tariff procedures for the Cleco service rollover, or whether those procedures were impermissibly modified or waived.

16. Further, it claims that the Settlement, section II.B, itself provides a further indication that Entergy did not follow its own tariff procedures in approving Cleco's

---

<sup>13</sup> Lafayette's Initial Comments at 7.

<sup>14</sup> Lafayette's Initial Comments at 9 citing Entergy Services, Inc., FERC Electric Tariff, Rate Schedule FERC No. 2, section 1.4 "When a System Impact Study is Required."

service request because although Entergy claims that these provisions reflect its current practices, they were not applied to Cleco's service request. Specifically, Lafayette states that despite Cleco's inclusion of a new Receipt Point and a new Delivery Point in its rollover request, Entergy did not perform a transmission System Impact Study to determine whether a substantial change in power flows would result, even though, according to Lafayette, the current practice required such a study. Lafayette references the Affected System Study which indicated a substantial change in power flows on six different Entergy circuits, in pointing out that Entergy only conducted a Facilities Study on one of those circuits, Rodemacher Unit 3, and claims that this underscores the need to investigate whether Entergy followed its own procedures in processing Cleco's NITSA service request.

17. Lafayette states that Cleco identified Entergy as an Affected System in the course of processing the interconnection service request for Rodemacher Unit 3 in accordance with the Large Generator Interconnection Agreement procedures, but did not identify Lafayette as such, and did not invite Lafayette to participate in further interconnection-related discussions given the tightly intertwined nature of the transmission facilities at the Entergy-Lafayette-Cleco seam. Lafayette argues that the Affected System procedures are not intended to only protect selected parties, whose operations may be impacted by new services on nearby systems, further stating that the Commission should ensure that other entities affected by the new Entergy-Cleco arrangements were not intentionally excluded. Lafayette states that such an intentional exclusion would be a serious tariff violation and would require hearing procedures to establish the relevant facts in that regard.

18. According to Lafayette, undesignating Rodemacher Unit 3 is a transparent attempt to prevent further inquiry into the propriety of the service rollover and Lafayette further states that the Commission should not accept the Settlement because no legitimate purpose is served by delisting Rodemacher [Unit] 3.<sup>15</sup> Lafayette states that Entergy does not give a reason for Rodemacher Unit 3's delisting and urges the Commission to question why Cleco, having already secured study-free approval from its transmission provider, disadvantaged itself by agreeing to delist Rodemacher Unit 3 and risk taking a lower spot on the transmission queue when it is redesignated later.

19. Lafayette claims that Cleco will operate Rodemacher Unit 3, regardless of its status under the NITSA because of the expected low cost of energy from Rodemacher Unit 3, as opposed to Teche Power Station, which has the second highest variable cost of all Cleco's resources.<sup>16</sup> As a result, Lafayette believes that the north-to-south power flows, which have been the recurrent cause of security limit violations, Transmission

---

<sup>15</sup> Lafayette's Initial Comments at 13.

<sup>16</sup> See Lafayette's Initial Comments at 15-16 & n.16.

Loading Relief (TLR) events and energy emergencies at the Entergy-Cleco seam, will increase (including loop flows on Entergy's system) and would greatly disserve the public interest in a sound and reliable bulk power system.

20. Cleco has stated the importance of Rodemacher Unit 3 for reliability reasons and to reduce Cleco's reliance on natural gas,<sup>17</sup> therefore Lafayette alleges that the acceptance of the Settlement and termination of this procedure would validate an obvious end-run on the Commission's procedures because if Cleco were to designate Rodemacher Unit 3 as a network resource after this procedure is terminated, Cleco and Entergy would be able to do so without making a filing with the Commission.

21. Lafayette states that the Commission must reject the Settlement and direct the parties to return to settlement negotiations or proceed to hearing. Lafayette suggests three alternative remedies in this proceeding: (1) the Commission should accept the Settlement as to its signatories and sever for further settlement negotiations or hearing the contested issues it has raised; (2) the Commission should accept the Settlement but prohibit Cleco from later seeking network resource status for Rodemacher Unit 3 or using that resource to serve Cleco's North Lake load; or (3) the Commission should reject the Settlement, hold further proceedings in abeyance, and direct Cleco to resubmit its NITSA application for *de novo* consideration by the Entergy ICT.

### **3. Reply Comments**

#### **a. Staff**

22. Staff states that the November 28 Order did in fact limit the scope of the hearing exclusively to whether a system impact study would be required because Cleco was adding Rodemacher Unit 3 as a network resource under the NITSA, and whether by doing so Entergy was required to perform a system impact study.

23. Staff states that the delisting of Rodemacher Unit 3 as a network resource renders moots any argument that the rollover is the result of preferential treatment either by Entergy or Cleco to the other. Further, Staff states that there is no dispute that a System Impact Study is unnecessary when the service being rolled over is identical to the

---

<sup>17</sup> Referencing Cleco's 2006 Annual Report to Stockholders and Cleco's application for a certificate of public convenience from the Louisiana Public Service Commission. Lafayette's Initial Comments at 16-17.

previous provided service.<sup>18</sup> Thus, Staff states that by delisting Rodemacher Unit 3, Entergy and Cleco have removed any need to examine whether a study is required.

24. Staff counters Lafayette's argument that the Settlement is an attempt to derail an investigation of the effects of Rodemacher Unit 3's operation on the regional grid by pointing out that Entergy and Cleco are doing nothing impermissible by rolling over identical transmission service – whatever their goals are with regard to any such investigation. Staff states that there is no valid reason why the two utilities cannot agree to remove the only possible impediment to the rollover. Further, Staff maintains that if Rodemacher Unit 3 had not been listed as a Cleco network resource in the rollover to begin with, the Commission would never have set this proceeding for hearing. Staff advises Lafayette to file a section 206 complaint if it has issues beyond the scope of a rollover of identical transmission service.<sup>19</sup>

**b. Entergy**

25. Entergy states that Lafayette has failed to comply with the Affidavit Requirement of Rule 602(f)(4) of the Commission's Rules of Practice and Procedure. Entergy states that a settlement is contested if any party submits comments alleging a dispute as to a genuine issue of material facts *and* supports those allegations by including an affidavit detailing any genuine issue of material fact.<sup>20</sup>

26. Beyond dismissing Lafayette's comments on procedural grounds, Entergy argues that Lafayette has failed to raise any disputed issues of material fact that would bar certification of the settlement. Entergy states that it is well established that a party's opposition to a settlement, by itself, does not create disputed issues of material facts.

27. Entergy also argues that Commission precedent is equally clear that where the interests of a party opposing a settlement are not immediately and irreparably affected by approval of the settlement, that party's opposition does not create a genuine material issue of fact. Entergy states that Lafayette is not a transmission service customer under the Entergy Operating Companies' OATT. In further support, Entergy refers to the

---

<sup>18</sup> *Citing* February 2 Order, 118 FERC ¶ 61,074 at P 20 (finding that a “transmission provider is under no obligation to perform a system impact study to provide a rollover of the same service that it was previously providing”).

<sup>19</sup> *Citing* February 2 Order, 118 FERC ¶ 61,074 at P 13. Staff further points out that Lafayette did not file a section 206 complaint against Cleco in the February 2, 2006 proceeding, nor has it done so against Entergy.

<sup>20</sup> *See* 18 C.F.R. § 385.602(f)(4) (2007).



February 2 Order, in which the Commission stated that not only does Lafayette's complaint preexist the matter at issue in this proceeding, the rollover of an existing agreement to service under Cleco's OATT, but that it failed to demonstrate how the rollover of a longstanding existing agreement to the exact same transmission service under Cleco's OATT could affect the situation raised by Lafayette.<sup>21</sup>

28. Entergy further argues that most of Lafayette's comments deal with possible effects outside of the Entergy system that may occur with the addition of Rodemacher Unit 3. Entergy remarks that the interconnection of Rodemacher Unit 3 on the Cleco system is outside the scope of this proceeding, which addresses transmission service on the Entergy system. Entergy states that the Commission has previously explained that a transmission provider may not condition a transmission customer's rights to roll over transmission service on the transmission provider's system at the end of an existing service agreement based on whether there is enough transmission capacity available on a third party's transmission system.<sup>22</sup>

29. Entergy also addresses Lafayette's assertion of a *quid pro quo*. Entergy maintains that the service in this proceeding and that of Docket No. ER07-289-000 are wholly independent of one another. Entergy argues that it granted the rollover transmission service requested by Cleco. Entergy continues, stating that this transmission service is not a new service request, but is a rollover request, which is subject to section 2.2 of Entergy's OATT. Entergy notes that section 2.2 does not contain any requirement that Entergy perform any studies before granting a rollover request. Entergy also notes that it is Commission precedent to accept a rollover request as long as the receipt and delivery points have not changed.

30. Entergy argues that Lafayette's alternative requests for relief are unnecessary since the Settlement resolved all of the issues set for hearing. Entergy states that Lafayette is not a party to the NITSA and should not be permitted to unnecessarily hinder Cleco's transmission service.

**c. Cleco**

31. Cleco dismisses Lafayette's concerns over Rodemacher Unit 3, arguing that the rollover of the preexisting 1955 Coordination Agreement was set for hearing, not the regional effects of the unit. Cleco contends that since Rodemacher Unit 3 was removed from the NITSA, and thus no study was required, the rollover is consistent with Order Nos. 888 and 888-A, as well as the ruling in Docket No. ER07-289-000.

---

<sup>21</sup> See February 2 Order, 118 FERC ¶ 61,074 at P 17.

<sup>22</sup> Citing *Commonwealth Edison Co.*, 95 FERC ¶ 61,252, at 61,875 (2001).

32. Cleco, like Entergy, disputes Lafayette's claims of a *quid pro quo*, arguing that they are unsupported. Cleco notes that the Commission has previously found that there is no reason to conduct new transmission studies where existing service is simply being rolled over without change. Cleco states that, simply put, there is no evidence of any tariff violations or improper agreements between Cleco and Entergy.

33. Cleco states that Rodemacher Unit 3 is not in service and argues that since the Settlement does not include the unit as a designated network resource, any designation of this resource in the future as a network resource on Entergy's system will need to comply with the then applicable provisions of Commission regulations and Entergy's OATT relating to the designation of new network resources. Cleco suggests that Lafayette raise any concerns that it may have at that time, and concludes that speculation about future events is no reason to reject the Settlement.

**d. Lafayette**

34. Lafayette filed a reply to Staff's comments, which essentially restates its comments opposing the Settlement. It adds that Staff is mistaken in its statement that Docket No. ER07-289-000, which did not involve a delisting "flip-flop," is factually indistinguishable from this proceeding. Lafayette also states that Staff failed to address the reliability problems at the Entergy-Cleco seam.

35. In response to Entergy's request for the treatment of the proposed Settlement as uncontested, Lafayette states that where a party raises objections to the material terms of a settlement offer that has been submitted to a settlement judge, it is for the Commission to assess the sufficiency of that party's objections and to determine, based on the parties' submittals and the record as a whole, whether a genuine issue of material fact exists. Lafayette contends that the cases cited by Entergy are inapposite and did not involve referrals to the Commission by a Settlement Judge; rather they involved referrals by Presiding Judges, and as such the authority of those judges was not defined by Rule 603(g) of the Commission's Rules of Practice and Procedure. Further, Lafayette submits that the affidavit required by 18 C.F.R. § 385.602(f)(4) should not be deemed necessary in this instance and it relies on the Commission's finding that the proposed NITSA "raises issues of material fact that cannot be resolved based on the record before us..."<sup>23</sup> If the Commission rejects Lafayette's reliance on the November 28 Order, Lafayette points out that the Commission may make an independent finding as to the existence of material facts in dispute, even where parties contesting a settlement have failed to satisfy Rule 602(f)(4).

---

<sup>23</sup> Lafayette's Comments at 6 n.8.

## II. Discussion

### A. Disposition of the Settlement

36. For the reasons discussed below, we find that this contested Settlement, as modified, is just and reasonable, and accordingly, we conditionally approve the Settlement.<sup>24</sup> In order to accept a contested settlement, such as the instant 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.”<sup>25</sup> 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.<sup>26</sup>

37. Lafayette has failed to demonstrate that the Settlement should not be approved. While we agree with Lafayette that the Commission did not limit the hearing to whether Entergy included new receipt and delivery points, the Commission did limit the hearing to “whether Entergy properly allowed the rollover of the 1955 Coordination Agreement into the NITSA without performing any transmission studies....”<sup>27</sup> It is in this context that we address Lafayette’s arguments opposing the Settlement.

38. As just discussed, in the November 28 Order the issue set for hearing by the Commission was “whether Entergy properly allowed the rollover of the 1955 Coordination Agreement into the NITSA without performing any transmission studies, including whether Entergy included new receipt and delivery points.”<sup>28</sup> In this regard, the Commission has repeatedly explained that a system impact study is not required if the agreement carries forward the same delivery points and receipt points for the same loads

---

<sup>24</sup> 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).

<sup>25</sup> *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1974), *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998).

<sup>26</sup> 18 C.F.R § 385.602(h)(1)(i) (2007).

<sup>27</sup> November 28 Order, 117 FERC ¶ 61,236 at P 18. The “including” clause raised by Lafayette modifies the above-quoted language from the November 28 Order and, thus, the matters set for hearing are not as broad as Lafayette maintains.

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

and resources already served under the agreement.<sup>29</sup> However, because an issue of material fact arose in this proceeding concerning Entergy's rollover of the Coordination Agreement and the possibility that it might not be the same service that was being rolled over, the Commission established hearing and settlement judge procedures to address this matter.

39. The Parties entered into a Settlement in which Entergy removed the Rodemacher Unit 3 as a network resource. By removing this unit, the service that Entergy will provide to Cleco under the NITSA will be the *exact same service* that Entergy has been providing under the 1955 Coordination Agreement.<sup>30</sup> Thus, pursuant to Order No. 888 and other Commission precedent, Entergy is obligated to provide the rollover without first performing a system impact study.<sup>31</sup> With the resolution of this matter, no issues of material fact remain in this proceeding.<sup>32</sup>

---

<sup>29</sup> See, e.g., *Associated Elec. Coop, Inc. v. Southwest Power Pool, Inc.*, 115 FERC ¶ 61,213 at P 16 (2006), *reh'g denied*, 117 FERC ¶ 61,114, at P 12 (2007). (“Only if a transmission customer with a rollover right requests a change to its receipt or delivery points would the transmission provider perform a study to determine whether it could provide the rollover request.”); *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at n.176 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002). (“If the customer chooses a new power supplier and this substantially changes the location or direction of its power flows, the customer's right to continue taking transmission service from its existing transmission provider may be affected by the transmission constraints associated with the change.”); Order No. 888-A, at n.52; and *Cleco Power LLC*, 118 FERC ¶ 61,074, at P 20 (2007).

<sup>30</sup> Staff's Initial Comments at 5; Entergy's Reply Comments at 7; and Cleco's Reply Comments at 5.

<sup>31</sup> The fact that Entergy initially may not have processed the request correctly is now irrelevant in light of the Settlement in this proceeding. To argue otherwise would be to elevate form over substance. Because Cleco is now rolling over the same service that it was previously receiving, Entergy is not obligated to perform a system impact study.

<sup>32</sup> With respect to Lafayette's failure to file an affidavit pursuant to Rule 602(f)(4) of the Commission's Regulations, we find that it was not necessary in light of the Commission's finding in the November 28 Order that the NITSA raised issues of

(continued...)

40. We reject, as pure speculation, Lafayette's argument that the settlement was a *quid pro quo* in which Cleco agreed to provide Entergy the same treatment for the corresponding NITSA filed in Docket No. ER07-289-000. As Entergy and Cleco state, there is no evidence of any tariff violations or improper agreements between Entergy and Cleco, the two proceedings are wholly independent and, in any event, under Commission precedent, Entergy is obligated to accept a rollover request if the receipt and delivery points have not changed. Lafayette's speculative assertions to the contrary do not warrant a different result in this proceeding.<sup>33</sup>

41. We further reject, as beyond the scope of this proceeding, Lafayette's argument that Cleco should have identified Lafayette as an Affected System when Cleco processed the interconnection service request for Rodemacher Unit 3. This proceeding involves a rollover request by Cleco of a grandfathered agreement to service under Entergy's OATT and, as the Settlement makes clear, the Rodemacher Unit 3 is not a designated network resource under the NITSA. Thus, no aspect of the Rodemacher Unit 3 is relevant to this proceeding. It simply has no bearing on whether or not the rollover request should be granted. If Lafayette wants to pursue this issue, it must do so by filing a complaint with the Commission; it may not do so by attempting to piggyback this unrelated issue on to the rollover issue in this proceeding.

42. Lafayette's speculation as to the parties' motives in removing Rodemacher Unit 3 as a network resource and future operation of Rodemacher Unit 3 is also unavailing. Not only does Lafayette provide no support for any of its assertions, but how Rodemacher Unit 3 might or might not impact Lafayette is unrelated to the rollover matter at issue in this proceeding. Moreover, as Cleco explains, Rodemacher Unit 3 is not in service and any future designation of this resource as a network resource will have to comply with Entergy's then applicable OATT. At that time, Lafayette can raise any concerns it may have with the Commission.

43. Regarding the language in section II (B)(2) of the Settlement (Studies of Rollover Requests), Entergy states that it will perform the System Impact Study. This is inconsistent with section 7.1.2 of the Transmission Service Protocol of its OATT, which states that the Independent Coordinator of Transmission (ICT) will perform System Impact Studies. We direct Entergy to submit, within 30 days of the date of this order, a

---

material fact. We also note that because we determine that no issues of material fact remain in this proceeding, the dispute concerning Lafayette's failure to file the affidavit required by Rule 602(f)(4) of the Commission's regulations is essentially moot. Also in light of our approval of the Settlement, we dismiss as moot Entergy's request to treat the Settlement as uncontested.

<sup>33</sup> Lafayette's Initial Comments at 9.

compliance filing that modifies section II (B)(2) of the Settlement to be consistent with the Transmission Service Protocol of its OATT.

44. Finally, in light of our conditional approval of the contested Settlement, we do not address the alternative approaches to resolving the matter set forth by Lafayette.

**B. Revised NITSA**

45. We find that the revised NITSA is just and reasonable and not unduly discriminatory. The revised NITSA reflects the removal of Rodemacher Unit 3 as a designated network resource per the Settlement. By removing Rodemacher Unit 3, the service sought to be rolled over is identical to the service previously provided under the 1955 Coordination Agreement.<sup>34</sup> Therefore, we accept the revised NITSA to become effective December 1, 2006, as requested.

The Commission orders:

(A) The Settlement is hereby conditionally approved, subject to Entergy making a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(B) The revised NITSA is hereby accepted for filing to become effective December 1, 2006, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>34</sup> See, e.g., February 2 Order, 118 FERC ¶ 61,074.