

160 FERC ¶ 61,077
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 20, 2017

In Reply Refer To:
Louisiana Public Service
Commission and the Council for
the City of New Orleans v.
Entergy Services, Inc.
Docket No. EL00-66-021

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

Attention: Roger E. Smith, Esq.
Senior Counsel

Dear Mr. Smith:

1. On October 26, 2016, Entergy Services, Inc. (Entergy) submitted a compliance filing to comply with the Commission's September 26, 2016 order in this proceeding.¹ In the September Settlement Order, the Commission conditionally approved an offer of settlement filed by Entergy on May 11, 2016 (Settlement Agreement) to resolve issues concerning the proper amount of refunds associated with the removal of interruptible load from certain formulas under the Entergy System Agreement for the 15-month (May 14, 1995 through August 13, 1996) period (refund period). The Commission directed Entergy to file revisions to the offer of settlement to revise the standard of review provision applicable to third parties. As discussed below, we accept Entergy's compliance filing.

2. Entergy states that, consistent with the September Settlement Order, it has revised the standard of review provision in the Settlement Agreement to specify that the "just and reasonable" standard will apply to all parties. Entergy states that, by its own terms, the

¹ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 156 FERC ¶ 61,220 (2016) (September Settlement Order).

Settlement Agreement was subject to the final outcome of then-pending requests for rehearing and clarification regarding the propriety of refunds for the refund period, and recognized that the Commission could ultimately rule that refunds were not appropriate.² Entergy notes that, in an order issued on September 26, 2016 in this proceeding,³ the Commission denied rehearing, reaffirming that refunds should not be issued for the 15-month refund period (May 14, 1995 through August 13, 1996), thus rendering the performance of the Settlement Agreement moot. Entergy states that the September Rehearing Order resolved those pending matters and while it is making the requisite compliance filing, the refunds for the 15-month refund period will not be paid.

3. Notice of Entergy's compliance filing was published in the *Federal Register*, 81 Fed. Reg. 76,344 (2016), with interventions and protests due on or before November 16, 2016. On November 16, 2016, the Louisiana Public Service Commission (Louisiana Commission) filed comments regarding Entergy's compliance filing.

4. The Louisiana Commission explains that it filed a petition in the United States Court of Appeals for the District of Columbia Circuit for review of the September Rehearing Order and a related order on remand issued on April 29, 2016.⁴ The Louisiana Commission states that, contrary to Entergy's assertion, the September Rehearing Order is not a final, non-appealable Commission order and the Settlement Agreement is still subject to other proceedings in this docket. Further, the Louisiana Commission argues that, if it wins the appeal, the matter could be reversed, and/or modified, and/or remanded to the Commission for further proceedings, and it is possible that refunds could still ultimately be granted. The Louisiana Commission concludes therefore, that the Settlement Agreement is not yet moot, but should still govern the calculation of refunds if ultimately granted by the Commission as a result of the Louisiana Commission's appeal.

5. While the parties hold differing views on the finality of the orders in this proceeding addressing the propriety of refunds for the May 14, 1995 through August 13, 1996 period, the issue now before us for decision is whether Entergy's compliance filing complies with the requirements of the September Settlement Order. In this regard, we note that the Louisiana Commission is not contesting Entergy's compliance filing. As Entergy has revised the standard of review provision of the Settlement Agreement to specify that the "just and reasonable" standard of review will apply to all parties, we find

² Entergy Transmittal Letter at 1-2 (citing Settlement Agreement § II (3)).

³ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 156 FERC ¶ 61,221 (2016) (September Rehearing Order).

⁴ *La. Pub. Serv. Comm'n v. Entergy Corp.*, 155 FERC ¶ 61,120 (2016).

that Entergy's compliance filing fulfills the directives of the September Settlement Order. Accordingly, we accept Entergy's compliance filing.

By direction of the Commission.

Kimberly D. Bose,
Secretary.