

**RESOLUTION
R-15- 524**

CITY HALL: November 5, 2015

BY: COUNCILMEMBERS WILKINS, HEAD, GUIDRY, BROSSETT AND GRAY



NOTICE OF SETTLEMENT IN FERC DOCKET NO. ER14-75

DOCKET NOS. UD-13-03 AND UD-13-04

**RESOLUTION AND ORDER APPROVING
THE PROPOSED SETTLEMENT TERMINATING THE
ENERGY SYSTEM AGREEMENT IN FERC DOCKET NO. ER14-75**

WHEREAS, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans ("Charter"), the Council of the City of New Orleans ("Council") is the governmental body with the power of supervision, regulation and control over public utilities providing service within the City of New Orleans; and

WHEREAS, pursuant to its powers of supervision, regulation and control over public utilities, the Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern applications for the fixing and changing of rates and charges of public utilities; and

WHEREAS, Entergy New Orleans, Inc. ("ENO") is a public utility providing electric and natural gas service and, effective September 1, 2015, provides such service to all of New Orleans; and

WHEREAS, ENO is a wholly-owned subsidiary of Entergy Corporation ("Entergy"). The other five operating companies are Entergy Arkansas, Inc. ("EAI"), Entergy Gulf States, Louisiana, L.L.C. ("EGSL"), Entergy Louisiana, LLC ("ELL"), Entergy Mississippi, Inc.

("EMI"), and Entergy Texas, Inc. ("ETI"). The six operating companies are referred to collectively as the ("Operating Companies"); and

System Agreement Background

WHEREAS, for over 50 years, the six Entergy Operating Companies have been operated as a single, integrated, and coordinated system, with their relationships governed by a contract known as the System Agreement. The System Agreement traditionally has provided for the joint planning and sharing of transmission and generation infrastructure and their associated costs; and

WHEREAS, operating jointly as a single, integrated system has created significant economies of scale for the Operating Companies, and has allowed them to share certain resources that they otherwise each might have had to acquire individually. This has been especially beneficial for ENO and New Orleans ratepayers. As the smallest of the Operating Companies, ENO has faced significant challenges finding the financial resources to build large-scale generation and transmission projects; and

WHEREAS, on June 14, 2001, the Council and the Louisiana Public Service Commission ("LPSC") filed a petition with the Federal Energy Regulatory Commission ("FERC"), which was docketed as Docket No. EL01-88-000. The petition filed by the Council and the LPSC alleged, in part, that the System Agreement was no longer working to produce "rough equalization" of production costs among Entergy's operating companies and that the System Agreement should be modified to ensure that full production cost equalization among the operating companies is achieved going forward; and

WHEREAS, the final order in that proceeding held that the Operating Companies' respective production costs had not been roughly equal since at least 2000 and that the production cost disparities between the operating companies were discriminatory, unjust and

unreasonable. To remedy these disparities and achieve just, reasonable and non-discriminatory rates, FERC established a rough production cost equalization (“RPCE”) remedy which requires each Operating Company’s production costs to be within +/- 11 percent of the Entergy System average and requires low cost Operating Companies to make payments to those with higher production costs; and

EAI and EMI Withdrawals

WHEREAS, as a result of FERC's decision in Docket No. EL01-88-000, on December 19, 2005, EAI, sent written notice to the other Operating Companies of its intent to withdraw from the System Agreement. The System Agreement requires that an Operating Company seeking to leave the System Agreement must give 96 months notice to the other Operating Companies. Accordingly, EAI's withdrawal from the System Agreement became effective on December 18, 2013; and

WHEREAS, EAI decision to withdraw from the System Agreement was based, in part, on the Arkansas Public Service Commission's ("APSC") concern that the payments EAI had to make under the RPCE remedy mechanism were so onerous as to make the System Agreement as a whole unduly burdensome on Arkansas ratepayers. In 2006 and 2007, EAI’s payments to the other Operating Companies under the bandwidth remedy exceeded \$250 million annually. In each year, EAI’s payments to Operating Companies serving Louisiana ratepayers exceeded \$200 million; and

WHEREAS, it was anticipated that upon its withdrawal from the System Agreement EAI would seek to take many of the System’s then-least expensive sources of electric generation, thereby causing production costs to increase for the remaining Operating Companies, including ENO. At that time, EAI’s power plants had become the least expensive on the Entergy System

(in part due to the rising costs of natural gas which powers most of Entergy's generation in Louisiana and Mississippi). The Council was deeply concerned that EAI's withdrawal from the System Agreement potentially could result in increased price volatility which would be detrimental to New Orleans ratepayers and would inflict irreparable harm on the residents of the City; and

WHEREAS, the Council and its Advisors believed that to allow the EAI withdrawal without providing the appropriate protections for ENO and New Orleans ratepayers would be grossly unfair and inconsistent with (a) the FERC decision in Docket No. EL01-88-000, and (b) the shared costs and benefit arrangement between the Operating Companies that has been in place for the last 50 years; and

WHEREAS, on September 20, 2007, the Council, in the exercise of its regulatory obligation to protect the public interest and ensure just and reasonable rates, initiated a new docket, Docket No. UD-07-03, to investigate issues related to the potential withdrawal of EAI from the System Agreement, including, but not limited to: (a) the impact the withdrawal could have on New Orleans electric consumers, (b) plans to modify, amend, or replace the System Agreement in anticipation of the withdrawal, and (c) steps that ENO is taking or plans to take to mitigate any adverse impact from the withdrawal on New Orleans ratepayers; and

WHEREAS, EMI gave notice of its withdrawal on November 7, 2007 and its withdrawal will be effective on November 8, 2015; and

WHEREAS, on January 24, 2008, the Council issued Resolution R-08-38 which expanded the proceeding under Docket No. UD-07-03 to include issues related to the intended withdrawal of EMI from the System Agreement; and

WHEREAS, on October 2, 2008, the Council issued Resolution R-08-557, requiring ENO to, among other things, submit a monthly report to the Council regarding the status of negotiations regarding the System Agreement, any actions taken to assist EAI and EMI in withdrawing from the System Agreement, and any post-System Agreement arrangements; and

WHEREAS, on August 12, 2010, the Council issued Resolution R-10-322, establishing a requirement that ENO submit to the Council monthly testimony regarding the progress toward the development of a new System Agreement or any other post-withdrawal operating arrangements; and

WHEREAS, on December 16, 2010, the Council issued Resolution R-10-565 directing ENO to perform and file with the Council production cost and supplemental analyses to quantify the impact upon New Orleans ratepayers of various scenarios related to the withdrawal of EAI and EMI from the System Agreement and potential successor arrangements or to show cause why the Council should not impose sanctions upon ENO for its failure to comply; and

Shortening of Termination Notice Provision

WHEREAS, on October 11, 2013, Entergy Services, Inc. ("ESI"), as agent and on behalf of EAI, EMI, EGSL, ELL, ENO, and ETI, made a filing with the FERC in Docket No. ER14-75, et al., seeking authorization to amend Section 1.01 of the System Agreement to shorten the notice period required for an Operating Company to terminate its participation in the System Agreement from 96 months to 60 months ("Notice Filing"); and

WHEREAS, the justification that Entergy provided for its 60-month proposal is that 60 months is roughly the amount of time it would take an Operating Company to plan and construct a new baseload generating unit (specifically, a Combined Cycle Gas Turbine, or "CCGT")

capable of replacing any generation lost when another Operating Company leaves the System;
and

WHEREAS, ELL, EGSL, and ETI have also given notice of their withdrawal from the System Agreement, with a request for an effective date for such withdrawal commensurate with whatever exit notice period FERC may establish in Docket No. ER14-75, et al. Specifically, ETI filed its notice of withdrawal on October 18, 2013, seeking an effective date of October 18, 2018 (it would be October 18, 2021 under the 96-month provision). Similarly, ELL and EGSL submitted their notices of withdrawal on February 14, 2014, seeking an effective date of February 14, 2019 (which would be February 14, 2022 under the 96-month provision) (collectively, "Withdrawal Filings"). Thus ENO is the only Operating Company that has not given notice of termination of its participation in the System Agreement; and

WHEREAS, the Council, the Public Utility Commission of Texas ("PUCT"), and the LPSC all filed protests in Docket No. ER14-75, et al., the Council arguing the notice period should not be shortened, the PUCT arguing that 60 months was not short enough, and the LPSC arguing that a 60 month notice period was not sufficiently supported; and

WHEREAS, on November 21, 2013, the Council, in Resolution R-13-432, opened Docket No. UD-13-03 to investigate the prudence and reasonableness of the shortening of the System Agreement termination notice provision and the resulting impact of that decision on New Orleans ratepayers; and

WHEREAS, on December 18, 2014, the FERC issued an order accepting the Notice Filing, suspending it for a nominal period to be effective October 12, 2013, subject to refund, establishing hearing and settlement judge procedures, and consolidating the six Notice Filing proceedings for the purpose of settlement, hearing, and decision. FERC also conditionally

accepted the three Withdrawal Filings, to be effective on the dates requested in the respective filings, or on such other date as established by FERC based on its review of the Notice Filing proceedings.

Transmission Pricing Zone

WHEREAS, the Entergy System has undergone major transformation. The Council actively participated in the creation of the Entergy Regional State Committee (“ERSC”) and its on-going activities to improve the widely-acknowledged problems with Entergy’s regional transmission system, policies and practices that limit New Orleans access to lower-cost sources of generation; and

WHEREAS, between 2011 and 2013, the Council, the ERSC, and the Operating Companies, through their agent Entergy Services, Inc. (“ESI”), collectively, and in some cases individually, evaluated the benefits and detriments of continuing the operation of Independent Coordinator of Transmission (“ICT”) arrangement and, as an alternative, joining a Regional Transmission Organization (“RTO”), either (i) the Southwest Power Pool (“SPP”), or (ii) the Midcontinent Independent System Operator, Inc. (“MISO”); and

WHEREAS, on April 13, 2011, SPP and MISO appeared at a public meeting of the Council Utility Committee and made presentations on the general benefits and advantages each believed would inure to the Operating Companies by joining their respective RTO; and

WHEREAS, on April 25, 2011, the Operating Companies formally announced their desire that the entire Entergy System join MISO. MISO is an independent, non-profit RTO responsible for maintaining reliable transmission of power in 15 U.S. states and the Canadian province of Manitoba ; and

WHEREAS, on November 14, 2011, ELL and ENO filed a Joint Application requesting a Council public interest finding with respect to the transfer of functional control of their transmission assets to MISO; and

WHEREAS, ELL and ENO and the Council's Utility Advisors ("Advisors") engaged in extensive negotiations and on November 8, 2012, ENO, ELL, MISO and the Advisors entered into a Stipulation and Settlement Agreement, which was filed at the Council in Docket UD-11-01; and

WHEREAS, throughout the proceedings in Docket No. UD-11-01, the Council Advisors sought an ENO-only Transmission Pricing Zone ("TPZ"), so as to ensure that ENO ratepayers only incur transmission costs commensurate with the benefits they receive; and

WHEREAS, on November 15, 2012 the Council adopted Resolution R-12-439, which found that the transfer of functional control of the ENO's and ELL's electric transmission assets to MISO to facilitate the Operating Companies' membership therein is in the public interest, and that the Council's public interest determination is conditional, and subject to further reconsideration by the Council based upon the conditions and contingencies contained in the Stipulation and Settlement Agreement; and

WHEREAS the Stipulation and Settlement Agreement, in relevant part, provides:

"The Council Advisors have asserted that, it will be in the best interest of Council-jurisdictional ratepayers for ENO to have its own TPZ.

- a) In order to attempt to comply with the position of the Council and its Advisors with regard to the TPZ issue, ENO agrees to use its reasonable best efforts to:
 - i. Secure the support and agreement from ELL that ENO have its own TPZ.

ii. Engage ELL to join with ENO in seeking support from ITC and the Louisiana Public Service Commission (“LPSC”) that ENO have its own TPZ . . .”; and

WHEREAS, ENO expressed a clear commitment to use its reasonable best efforts to secure the support and agreement from ELL that ENO have its own TPZ; and

WHEREAS, in December 2013, Entergy turned over operational control of its transmission facilities to MISO, which offers a capacity market and has transmission planning and cost allocation methodologies -- functions traditionally governed as among the Operating Companies by the System Agreement; and

WHEREAS, in connection with their joining MISO, and pursuant to the FERC-approved MISO Tariff, the Operating Companies, except to the extent they qualify for and apply the bundled load exemption provided for under the MISO Tariff, pay a transmission rate based, in part, on the costs of the transmission facilities located within the Transmission Pricing Zone (“TPZ”) in which it is located. Entergy proposed state-wide TPZs - - that is, , one for Arkansas, one for Texas, one for Mississippi, and one for Louisiana. Accordingly, under a Louisiana-wide TPZ, ENO customers, except to the extent they qualify for and apply the bundled load exemption, pay a rate based on the combined transmission facilities' costs of EGSL, ELL and ENO; and

WHEREAS, in contrast, under an ENO-only TPZ, ENO customers would pay a rate based solely on ENO’s transmission facilities' costs. The primary concerns that termination of the System Agreement creates for the Council are: (1) that as part of a Louisiana-wide TPZ with ELL and EGSL, ENO would potentially be required to pay for substantial transmission investments in other parts of the state (particularly related to the anticipated industrial renaissance, which would result in significant new load in the Lake Charles area and elsewhere in Louisiana) that do not benefit New Orleans; and (2) that without being able to rely upon the

economies of scale that come from combining with the larger Operating Companies to build and/or acquire new generation, ENO could end up in a position where it is at a significant disadvantage in procuring generation resources to serve New Orleans, which could result in substantial increased costs and/or decreased reliability to New Orleans ratepayers. This is particularly worrisome in light of the expected deactivation of the Michoud generating plant in 2016. Accordingly, on November 21, 2013, the Council adopted Resolution R-13-433, establishing an investigation in Docket No. UD-13-04 to consider issues related to the prudence of ENO's support of a Louisiana-wide TPZ and the resulting impact that a Louisiana-wide TPZ will have on New Orleans ratepayers; and

Proposed Settlement Agreement

WHEREAS, on August 14, 2015, on behalf of ETI, ELL, EGSL, ENO, the LPSC, the PUCT and the Council (collectively "Settling Parties"), ESI filed a settlement agreement with FERC to resolve issues in the FERC Docket Nos., ER14-75-000, ER14-75-001, ER14-76-000, ER14-76-001, ER14-77-000, ER14-77-001, ER14-78-000, ER14-78-001, ER14-79-000, ER14-79-001, ER14-80-000 and ER14-80-001(Consolidated), and ER14-128-000, ER14-1328-000 and ER14-1329-000 ("Proposed Settlement Agreement"); and

WHEREAS, the Proposed Settlement Agreement is attached to this resolution and is incorporated herein and made a part hereof; and

WHEREAS, if approved, the Proposed Settlement Agreement resolves all outstanding issues among the Settling Parties in the referenced FERC dockets; and

WHEREAS, the Staffs and outside counsel for the LPSC, PUCT and Council have negotiated this Proposed Settlement Agreement, but are not authorized to bind such entities. Therefore, the Proposed Settlement Agreement is conditioned on the LPSC, PUCT and Council,

each voting to approve the Proposed Settlement Agreement upon completion of such procedures that may be required by each retail regulatory body. Such procedures are expected to be completed by October 31, 2015. By that date, counsel for LPSC, PUCT and the Council have agreed to provide the FERC with a report regarding the final status of whether the LPSC, the PUCT and the Council have approved the Settlement, and if not, the status and anticipated timing to complete such approval process; and

WHEREAS, at its Open Meeting on September 24, 2015, the PUCT approved the Proposed Settlement Agreement; and

WHEREAS, on August 27, 2015, ENO filed a "Notice of Settlement in FERC Docket ER14-75" in each Council Docket Nos. UD-13-03 and UD-13-04 so that the Council will be able to consider whether the Proposed Settlement Agreement is in the public interest; and

WHEREAS, while the Proposed Settlement Agreement itself should be consulted for a full and complete understanding of its terms and conditions, the Proposed Settlement Agreement includes the following key provisions affecting ENO and New Orleans ratepayers; and

WHEREAS, the System Agreement shall terminate, effective August 31, 2016 at 11:59:59 PM Central Daylight Time (the System Agreement Termination Date), for all Operating Companies remaining a party to the System Agreement as of that date; and

WHEREAS, the establishment of a separate TPZ for ENO, and provision for a payment by ENO to EGSL/ELL of \$2.2 million per year for 15 years for a total of \$32.9 million; and

WHEREAS, ENO will have the option to participate in up to a 30% share of the next LPSC-certified Amite South CCGT generation unit constructed or acquired by ELL and/or EGSL and up to 10% of subsequent CCGT units constructed or acquired by ELL and/or EGSL in Amite South, with the options limited to 15 years after the date of the Settlement Agreement and

a total of 500 megawatts inclusive of ENO's participation in the 2020 Amite South Resource. Alternatively, the Proposed Settlement Agreement provides that ENO's options to acquire energy and capacity will extinguish if the following three conditions occur: (1) ENO acquires Power Block 1 of the Union Power Station ("UPS") which is under Council consideration in Docket No. UD-15-01; (2) ENO actually receives credit in MISO. for the energy and capacity from UPS Power Block 1; and (3) UPS Power Block 1 has been granted full Network Resource Interconnection Service; and

WHEREAS, ENO will use reasonable diligent efforts to pursue the development of at least 120 MW of new-build peaking generation capacity within the City of New Orleans. As part of this commitment, ENO will fully evaluate Michoud or Paterson, along with any other appropriate sites in the City of New Orleans, as the potential site for a combustion turbine ("CT") or other peaking unit to be owned by ENO, or by a third party with an agreed-to PPA to ENO. This evaluation will take into consideration, among other material considerations, the results of the Michoud site analysis that was completed in connection with the Summer 2014 Request For Proposal; and

WHEREAS, ENO commits to use diligent efforts to have at least one future generation facility located in the City of New Orleans; and

WHEREAS, the Proposed Settlement Agreement also provides that by March 31, 2016 ENO will inform the Council of the operational and planning infrastructure established for ENO that would become effective September 1, 2016, including the person(s) whom it expects to be primarily active in and responsible for operational/planning decision-making for ENO after termination of the System Agreement, and a description of the organization, if any, that ENO may put in place to support supply resource planning; and

WHEREAS, the Council has previously expressed to the Company through settlement discussions its desire that the Company put the operational and planning infrastructure in place necessary to ensure independent decision making upon termination of the System Agreement; and

WHEREAS, the Proposed Settlement Agreement also provides that 30 days after final non-appealable ruling (from FERC or any other retail regulator) needed to fulfill all of the terms of the Proposed Settlement Agreement, the Council agrees to dismiss Docket Nos. UD-13-03 and UD-13-04; and

WHEREAS, the Proposed Settlement Agreement also provides there will be no post-withdrawal obligation to roughly equalize production costs under the RPCE Remedy for any cost incurred by any Operating Company after December 31, 2015 and establishes that the settlement shall have no effect on cost allocation disputes affecting costs incurred prior to January 1, 2016. Further, the Operating Companies that are subject to RPCE shall complete any FERC approved “rough equalization” payments and receipts based on the 2015 test year, by September 1, 2016 or upon issuance of a final FERC order establishing the amount and timing of such payments; and

WHEREAS, the Council desired that all parties affected by the Proposed Settlement Agreement be provided an opportunity to understand the proposal, submit comments and have their views considered prior to the Council’s final consideration of the Proposed Settlement Agreement. Accordingly, on September 3, 2015, in Resolution R-15-437, the Council established a procedural schedule that allowed the Parties to Docket Nos. UD-13-03 and UD-13-04 and members of the public to submit Comments and Reply Comments regarding the Proposed

Settlement Agreement upon which the Council may use to render a decision regarding the Proposed Settlement Agreement; and

WHEREAS, no Comments or Reply Comments were filed pursuant to Resolution R-15-437; and

WHEREAS, the Council finds that Proposed Settlement Agreement is a reasonable compromise of a number of long-term and hotly contested issues that result in specific benefits to New Orleans ratepayers. Moreover, if approved, the Proposed Settlement Agreement will eliminate the need for additional expenditure of major financial and personnel resources by the parties in the instant FERC proceedings and in connection with the long on-going negotiations among the retail regulators; and

WHEREAS, the Council finds that the Proposed Settlement Agreement specifically provides for: (1) the termination of the System Agreement which has been, and continues to be, the subject of significant and costly litigation; (2) a comprehensive set of generation alternatives and ENO commitments relating to future generation resources the City of New Orleans that will address ENO's need for generation capacity with the retirements of the Michoud generation facilities; (3) a reasonable framework for ENO to become its own TPZ within MISO that will insulate New Orleans ratepayers from paying for future new transmission construction costs in parts of Louisiana that are not likely to benefit New Orleans ratepayers; and

WHEREAS, the Council is informed by our Advisors that ENO's payments of \$2.2 million for 15 years to EGSL and ELL is a negotiated amount based on a variety of facts, analyses, and considerations as part of the settlement negotiations; and

WHEREAS, in addition, the Proposed Settlement Agreement provides the termination of the RPCE Remedy mechanism, which has been the subject of and basis for numerous FERC

complaints and litigation, subsequent federal court appeals and proceedings on remand. Accordingly, the approval of the Proposed Settlement Agreement will result in additional savings of resources by all the Parties; and

WHEREAS, on the basis of the record before the Council, the agreement between the Parties and the absence of any comments in opposition, the Council finds that the Proposed Settlement Agreement is just, reasonable and in the public interest; now therefore:

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS THAT:

1. The Proposed Settlement Agreement is APPROVED without modification.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS:

NAYS:

ABSENT:

AND THE RESOLUTION WAS ADOPTED.