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SOAH DOCKET NO. 473-08-0334
PUC DOCKET NO. 34800

APPLICATION OF ENTERGY GULF §
STATES, INC. FOR AUTHORITY TO §
CHANGE RATES AND TO §
RECONCILE FUEL COSTS §

BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS

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**STIPULATING PARTIES' MOTION FOR ADOPTION OF PROCEDURAL SCHEDULE
AND HEARING PROCEDURES**

Community Associations of the Woodlands, Texas ("CATW"), Entergy Gulf States, Inc. ("Entergy Gulf States" or "the Company"), the Entergy Texas, Inc. Service Area Cities' Steering Committee ("Cities"), the Kroger Co. ("Kroger"), the Office of Public Utility Counsel ("OPC"), Texas Legal Service Center ("TLSC"), Texas Ratepayers Organization to Save Energy ("Texas ROSE"), and Wal-Mart Texas Stores, LP ("Wal-Mart"), ("the Stipulating Parties"), have agreed to a non-unanimous stipulation ("NUS") resolving all issues in this case. On May 15, 2008, the ALJs issued Order No. 35, requiring the parties to submit an agreed procedural schedule and hearing date for consideration of the NUS. The Stipulating Parties have agreed to the proposed procedural schedule provided as Attachment A. Despite good faith negotiations, the Stipulating Parties have been unable to agree with Staff, the State, and Texas Industrial Energy Consumers ("TIEC") on the procedural schedule. The Stipulating Parties urge adoption of the hearing procedures and attached schedule by the ALJs and have authorized EGSI to file this motion of their behalf.

I. **THE SCHEDULE PROPOSED BY THE STIPULATING PARTIES PROVIDES
FOR FAIR AND FULL CONSIDERATION OF THE NUS**

The proposed schedule to consider the NUS provides for an approximate twenty-one day period from the filing of the NUS Term Sheet (two weeks from the filing of testimony supporting the NUS) for non-settling parties to examine and evaluate the NUS, and to present responsive testimony. The schedule allows these parties to ask questions in an informal technical conference, submit RFIs, and conduct depositions if desired. These procedures are reasonable in light of the fact that the Company intends to submit testimony from no more than three witnesses of limited scope to support the

NUS (the Cities may also present a single witness to address the NUS). The only new issue interjected by the NUS is the use of Rough Production Cost Equalization (RPCE) payments to mitigate the impact of the rate increases. This is an issue of limited scope and complexity that can be reasonably addressed by the non-settling parties in the time and manner provided by the NUS Parties schedule. Moreover, the existence and nature of RPCE payments made to the Company under the Entergy System Agreement, which payments began in 2007, are not new issues for the non-settling parties. The RPCE payments have already been the subject of a significant period of discovery in other proceedings.¹

The proposed procedural schedule calls for a hearing on the NUS lasting eight working days. This timeframe is less than the 13 working days allotted for the initial hearing on the merits, to the benefit of the parties' and ALJs' limited resources. This shorter time frame takes into account the fact that none of the signatories will mount a challenge to EGSI's case-in-chief, or conduct cross-examination of that case, since EGSI is now offering that case only to provide context for the reasonableness of the NUS.

Finally, the Stipulating Parties are proposing procedures to make the NUS hearing more efficient. These include (as referenced in the attached schedule) a provision requiring advance notice of the portions of the Company, Cities, Staff, State and TIEC cases that will be subject to cross-examination.

The proposed schedule properly addresses the legal requirements for Commission consideration of an NUS. As required by PURA § 14.054(b) and P.U.C. SUBST. R. 22.206, the schedule gives each party in this proceeding—in which some of the parties have reached a settlement on some or all of the issues—the right to a full hearing before a presiding officer on issues that remain in dispute.

¹ See Docket No. 35269, *Compliance Filing of Entergy Texas, Inc., Regarding Jurisdictional Allocation of 2007 System Agreement Payments* (pending) (filed Jan. 23, 2008); Docket No. 34953, *Application of Entergy Gulf States, Inc., to Implement an Interim Fuel Refund* (filed Oct. 26, 2007) (Feb. 28, 2008).

II. THE STATUS OF THE "NON-UNANIMOUS STIPULATION TERM SHEET"
FILED BY STAFF, STATE AND TIEC

On Friday, May 16, the Staff, State and TIEC filed what they characterized as a "Non-Unanimous Stipulation Term Sheet," providing for resolution of this case in a manner agreed to by these three parties. The Company understands that other parties may agree to adopt a joint position as to the resolution of this case. Absent the Company's participation, however that agreement by no means can be considered a compromise and settlement of the issues in this case in the sense of the NUS between the Company and the other Stipulating Parties.

A compromise settlement is an agreement to resolve a dispute between persons who represent opposed interests.² The Company and the other Stipulating Parties clearly represent such adverse interests. In a utility rate case such as this one, however, where the utility is generally at odds with all of the other parties as to the need for and level of any requested rate increase, a settlement cannot reasonably capture the adverse interests at stake if it does not involve the utility. To illustrate, if there were no NUS in issue in this case involving EGSI, would it be proper to turn the case into one to review the reasonableness of an NUS where all the parties besides the utility agreed to a rate decrease? The answer is, of course, "No", because such an agreement would not truly represent a compromise and settlement of adverse interests.

Consistent with the Company's view, Commission precedent holds that the ALJs are not required to consider "competing" settlement agreements in the same manner as a Stipulation entered into by the utility and other parties.³ In Docket No. 17751, certain parties opposed to the utility presented a non-unanimous stipulation as an alternative to that proposed by the utility and the other parties who settled with it. The ALJs rejected the argument that the alternative agreement should be considered to have equal weight to the utility's NUS. The ALJs noted that the parties opposed to the NUS had the

² A compromise agreement has been defined as an instrument that is executed as a result of mutual concessions, or the yielding of opposing contentions, in order to settle differences and avoid litigation. *In the Interest of J.T.H.*, 630 S.W.2d 473, 477 (Tex. App.—San Antonio 1982, no writ).

³ *Petition of Texas-New Mexico Power Company for Approval of Transition to Competition Plan*, Docket No. 17751, Order No. 26 at 5 (Feb. 13, 1998) (declining to change trial procedure to adopt one that somehow treats competing stipulations the same.) Order No. 26 was appealed but the Commissioners voted not to put the appeal on an open meeting agenda.

opportunity to present "unrestricted evidence" detailing their position opposing the utility's NUS. The ALJs, however, rejected adoption of a procedure that

"somehow treats both stipulations the same. The ALJs decline to do so because the burden of proof remains with [the utility]. It has not shifted to the proponents of the [competing stipulation]."⁴

In its final order in Docket No. 17751, the Commission explained that although competing NUSs were presented in the docket, the ALJs had conducted a hearing on the merits focused on consideration of the NUS presented by the utility.⁵ Similarly, the issue for this case should be whether the NUS presented by the Company, which has the burden of proof in this proceeding, meets the standards for adoption of an NUS. An agreement such as that filed by the Staff, State and TIEC is simply a joint position of the parties to it, not a compromise and settlement in the sense of the NUS. If the non-signatories wish to present a joint position on the matters at issue in this case as part of their opposition to the NUS, they may do so, but the operative question for the hearing remains whether the Company's NUS should be adopted, not potential adoption of any competing NUS. Accordingly, in these circumstances, there should not be a separate set of procedures developed for consideration of the Staff, State and TIEC non-unanimous agreement.

II. Conclusion

The Stipulating Parties request that the ALJs approve the attached procedural schedule and grant any other relief to which they have shown themselves entitled.

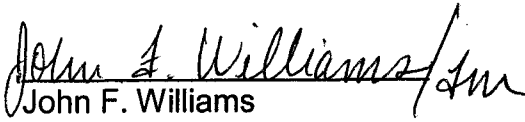
⁴ *Id.*

⁵ Docket No. 17751, Order at 8 (Sept. 4, 1998). The Commission rejected the PFD and adopted the utility's NUS, but it did not criticize the approach of the ALJs with regard to the consideration of the utility's NUS as compared with the "competing" NUS.

Respectfully submitted,

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ATTORNEYS FOR
ENTERGY GULF STATES, INC.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by first class mail, facsimile, or hand-delivery on all parties of record in this proceeding on May 19, 2008.


John F. Williams

Proposed NUS Procedural Schedule

May 20, 2008 – File NUS

May 20, 2008 – Pre-hearing conference at 9:00 a.m. to establish procedural schedule

May 23, 2008 – Testimony of NUS signatories (workpapers on May 27)

Beginning May 27, 2008 – NUS Witnesses available for depositions on mutually agreeable dates

May 28, 2008 – Informal technical conference (no ALJs or court reporter; NUS witnesses only)

May 29, 2008 – Deadline for One Round of RFI discovery on NUS and NUS testimony (five working day turnaround)

June 6, 2008 – Testimony of non-signatories (workpapers June 9)

June 13, 2008 – NUS Signatory rebuttal testimony

June 17, 2008 – NUS Hearings begin

- Company introduces as-filed direct case, and its direct witnesses made available for cross-examination as requested by non-settling parties
- Staff, State, and TIEC introduce direct case, and their direct witnesses made available for cross-examination
- Company introduces as-filed rebuttal case, and its rebuttal witnesses made available for cross-examination to the extent that testimony is responsive to Staff, State, TIEC direct testimony
- Supplemental NUS testimony introduced and witnesses subject to cross-examination: first, Company and Cities NUS testimony, then opposing parties' testimony, then NUS rebuttal testimony
- State, Staff, TIEC and NUS parties to designate seven days in advance of hearing witnesses they wish to cross-examine; NUS parties waive cross except for State, Staff, and TIEC witnesses

June 17-26 NUS Hearing

- June 17-20, 23, 2008 – Hearing on Company, Staff, State, and TIEC as-filed cases
- June 24-26, 2008 – Hearing on supplemental NUS witness testimony

Extend suspension period established in the Commission's Order on Appeal of Order No. 8 from September 26, 2008 to October 24, 2008. (But, under the NUS, stipulating parties support implementation of rate increase through temporary rates commencing with the first billing cycle in October.)