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June 4, 2008

Chairman Barry Smitherman
Commissioner Paul Hudson
Commissioner Julie Parsley
Public Utility Commission of Texas
1701 N. Congress
Austin, Texas 78701

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FILED
CLERK

Re: 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*

Dear Commissioners:

NUS Parties file this response to the Appealing Parties' additional letter pleading. Today is the first date upon which a response could be filed since the additional letter was filed out of time on June 3, 2008. While the June 3rd letter does not raise any new issues that could not have been raised in the original appeal, NUS Parties respectfully request permission to respond to some of the additional arguments presented in the letter.

No Additional Notice is Required

The FERC has explicitly stated that the RPCE payments "are not refunds;" they are payments to roughly equalize production costs among the Entergy Operating Companies.¹ Nor does the NUS proposal, which involves the implementation of a base rate credit utilizing RPCE payments, call for implementation of a fuel refund.

The RPCE payments are but one form of cost allocation under the Entergy System Agreement. The effects of various Entergy System Agreement cost allocations on retail rates have been at play in every rate proceeding since the merger of Gulf States Utilities Company and Entergy Corporation in 1993. The notice provided in each case, including this one, encompasses the cost allocations imposed by the Entergy System Agreement.

Moreover, the new argument that a change in future fuel expense requires notice lacks merit. The statutes and rules governing notice set forth no obligation to provide notice in connection with any and every change in fuel costs, but only with a fuel *rate* (such as a fuel factor) or historical reconciliation. The Commission has the discretion to take action in a case that might affect future costs, and such action does not require new notice.²

¹ See *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Order Accepting Compliance Filing, As Modified at para. 51, 117 FERC P61,203 (2006)(argument seeking inclusion of interest in RPCE payments rejected because "[t]he [RPCE] remedy does not involve refunds."), *aff'd*, *Louisiana Public Service Comm'n v. Entergy Services, Inc.*, Order on Rehearing and Compliance at para. 32, 119 FERC P61,095 (2007)(affirming that RPCE payments "are not refunds.").

² E.g., *Application of Southwestern Public Service Company for Authority to Change Rates; Reconciliation of its Fuel Costs for 2004 and 2005; Authority to Revise the Semi-Annual Formulae Originally Approved in Docket No. 27751 Used to Adjust its Fuel Factors; and Related Relief*, Docket No. 32766, Final Order at 9 (July 27,

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Parties propounded discovery related to RPCE payments indicating an awareness that RPCE payments could potentially affect the rates in this case.³ All parties were provided notice of the proposed use of the RPCE payments with the NUS, and non-settling parties have been afforded an opportunity to respond.

The NUS does not Introduce New Complexities

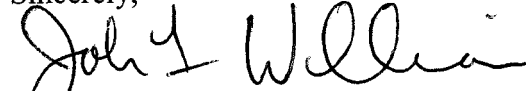
On May 30, 2008, rates were filed at FERC that will result in 2008 RPCE payments of \$65.4 million to the Texas jurisdiction. The NUS simply proposes that a sum certain of those payments be used as a credit against a base rate increase. This is not a complex concept.

There are no new complexities raised by Docket No. 35269. The sole issue in that compliance filing is jurisdictional allocation of the 2007 RPCE payments, which payments are not at issue in the NUS. Nor does the NUS implicate jurisdictional allocation of other RPCE payments. Rather, the NUS specifies that a sum certain of the RPCE payments be used to offset a rate increase irrespective of any determination of the appropriate jurisdictional allocation of those payments. The NUS does not preclude parties from addressing jurisdictional allocation of RPCE payments, but that issue is not relevant to this case.

Conclusion

The NUS Signatories respectfully request that the Commission deny the appeal of Order No. 37. The efforts and compromises by the settling parties were significant and inclusive of all parties, not exclusive. The result of those efforts should not be overlooked, or future settlement negotiations discouraged, simply because a non-settling party disagrees with a settlement proposal. The NUS should be given timely consideration on the merits, consistent with the procedural orders of the ALJs and with Commission rules that contemplate non-unanimous settlements.

Sincerely,



John F. Williams
ATTORNEY FOR
ENTERGY GULF STATES, INC.

cc: All parties of record

2007)(approval of future rate treatment of certain variable O&M charges in power contracts); *Application of Entergy Gulf States, Inc. for Authority to Change Rates*, Docket No. 20150, Order at 12-13 (June 30, 1999)(approving future rate treatment of effects of pending appeal); *Application of Central Power and Light Company for Authority to Change Rates*, Docket No. 14965, Second Order on Rehearing at 9, 14-15 (Oct. 16, 1997)(adopting performance standards for nuclear power plant that affect future fuel and rate cases).

³ See TIEC 1st set of RFIs filed Oct. 29, 2007, Cities 7th set of RFIs filed Nov. 8, 2007, OPC 42nd set of RFIs filed Feb. 25, 2008, and OPC 44th set of RFIs filed March 6, 2008.