

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. U-31971

DOCKET NO. U-31971 EX PARTE: JOINT APPLICATION OF ENTERGY LOUISIANA, LLC FOR APPROVAL TO CONSTRUCT UNIT 6 AT NINEMILE POINT STATION AND OF ENTERGY GULF STATES LOUISIANA, L.L.C. FOR APPROVAL TO PARTICIPATE IN A RELATED CONTRACT FOR THE PURCHASE OF CAPACITY AND ELECTRIC ENERGY, FOR COST RECOVERY AND REQUEST FOR TIMELY RELIEF

(Decided at the Business and Executive Session Held on March 21, 2012)

I. INTRODUCTION

This matter is before the Louisiana Public Service Commission ("Commission" or "LPSC") to consider a proposed "Uncontested Stipulated Settlement" ("Settlement") filed in this docket on February 28, 2012. Pursuant to this Settlement the remaining parties to this docket, Entergy Louisiana, LLC ("ELL") and Entergy Gulf States Louisiana L.L.C ("EGSL") (collectively, "the Companies"), the Staff of the Louisiana Public Service Commission ("Staff"), Louisiana Energy Users Group ("LEUG"), Marathon Petroleum Company, LP ("Marathon"), ArcelorMittal LaPlace, LLC (Arcelor Mittal"), Calpine Corporation ("Calpine") and Occidental Chemical Corporation, LLC ("Occidental") (collectively the "Parties"), resolved all issues, subject to the approval of the Commission.¹ Pursuant to Rule 6 of the Commission's Rules of Practice and Procedure, a hearing was held on the Settlement on March 6, 2012, and, on March 9, 2012, a "Report of Proceedings and Submission for Consideration By Commissioners" was issued by the Honorable Michelle Finnegan, the ALJ appointed in this matter. The Commission approved the Settlement at its March 21, 2012 Business & Executive Session.

In its Application in this docket, the Companies requested certification by this Commission, in accordance with the LPSC's General Order dated September 20, 1983 (the "1983 General Order"),² that the public necessity and convenience would be served by ELL's construction of a nominally-sized 550 megawatt combined-cycle gas turbine ("CCGT") generating facility ("Ninemile 6" or the "Project") at an existing electric generating station

¹ Louisiana Generating LLC, and NRG Power Marketing LLC were Intervenor in this docket, but on February 24, 2012, both withdrew their interventions. In addition, although remaining a party, Calpine withdrew the Direct Testimony that it previously filed in this proceeding.

² LPSC General Order dated September 20, 1983 (*In re: In the Matter of the Expansion of Utility Power Plant; Proposed Certification of New Plant by the LPSC*), as amended by General Order in Docket No. R-30517 (*In re: Possible modifications to the September 20, 1983 General Order to allow (1) for more expeditious certifications of limited-term resource procurements and (2) an exception for annual and seasonal liquidated damages block energy purchases*) dated October 29, 2008.

known as Ninemile Point Station located in Westwego, Louisiana. In addition EGSL seeks certification under the 1983 General Order of a Power Purchase Agreement ("PPA") priced pursuant to Service Schedule MSS-4 of the Entergy System Agreement, under which it would purchase on a life-of-unit basis 25% of the capacity and associated energy of Ninemile 6. Entergy New Orleans, Inc. ("ENOI") will purchase 20% of the capacity and associated energy of Ninemile 6 under a similar MSS-4 PPA. EGSL and ELL also both seek findings that the selection of the Ninemile 6 resource complied with the Commission's Market Based Mechanisms General Order.³

II. BACKGROUND

On June 21, 2012 the Companies filed the Joint Application. They urged that Ninemile 6 was proposed to provide generation needed in Entergy's Amite South planning region, identified as the area east of the Baton Rouge metropolitan area to the Mississippi state line and south to the Gulf of Mexico, and particularly within the Downstream of Gypsy (DSG) sub-region within Amite South. They further stated that the Project was needed to provide an efficient generating unit to meet reliability needs within Amite South and particularly DSG and to reduce reliance on existing aging gas-fired generation, in addition to adding a resource to meet long term needs for load-following capacity.

Ninemile 6 was identified as a self-build option and market-tested in Entergy's Summer 2009 Request for Proposals for Long-Term Supply-Side Resources ("Summer 2009 RFP"). The Project was selected as the preferred choice because it was the lowest reasonable cost alternative of the viable resources identified in the Summer 2009 RFP to serve load in Entergy's Amite South region. The Summer 2009 RFP Process was overseen by an Independent Monitor ("IM"). The IM reviewed the relevant documents, materials, and evaluation models and procedures used by Entergy Services, Inc. ("ESI") in conducting the Summer 2009 RFP and the selection of the Ninemile 6 self-build project. The IM concluded that the models and underlying assumptions were reasonable and accurately estimated the costs and benefits of the competing proposals. In addition, based the analysis of an Independent Engineer ("IE"), retained by the IM

³ General Order, Docket No. R-26172 Subdocket A, *In re: Development of Market-Based Mechanisms to Evaluate Proposals to Construct or Acquire Generating Capacity to Meeting Native Load, Supplements the September 20, 1983 General Order*, dated February 16, 2004 (as amended by General Order, Docket No. R-26172 Subdocket B, dated November 3, 2006, and further amended by the April 26, 2007 General Order, and the amendments approved by the Commission at its October 15, 2008 Business & Executive Meeting and now in General Order, Docket No. R-26172, Subdocket C dated October 29, 2008).

with the concurrence of the LPSC Staff, the IM also concluded that the self-build cost estimate, which was used as the basis for Entergy's Ninemile 6 proposal, was reasonable. The Commission Staff was involved in the Summer 2009 RFP process from its inception.

The current estimate of the cost to construct Ninemile 6 is \$721.145 million. This estimate includes construction related financing costs (Allowance for Funds Used During Construction or "AFUDC"), and it also includes a general contingency estimate of approximately 9% (with indirect labor and AFUDC included, approximately 10%) of the total Project cost estimate. This contingency is included in order to allow for circumstances that could affect the cost of the Project, but are currently unknown, and that are the responsibility of ELL. Construction of the Project is expected to take approximately 35 months following ELL's issuance of full notice to proceed to its construction contractor. As a result, the Project is expected to enter service no later than April 2015, although this date could be advanced, since the LPSC has approved the Project prior to the Companies' assumed May 31, 2012 approval date. This Project cost estimate (\$721.145 million) does not include projected costs of approximately \$2.26 million for the transmission upgrades needed to qualify Ninemile 6 as a network resource under Entergy's Open Access Transmission Tariff ("OATT"), and it does not include estimated costs of \$1.34 million needed to interconnect Ninemile 6 with Entergy's transmission system.

ELL will own the Project, but it will sell 25% of the capacity and associated energy of the unit to EGSL and 20% to ENOI under life-of-unit PPAs priced pursuant to Service Schedule MSS-4 of the Entergy System Agreement. The MSS-4 transaction with ENOI required approval of ENOI's retail regulator, the Council for the City of New Orleans, which was obtained in February, 2012, prior to the issuance of this Order. As a result, ELL will retain only 55% of the capacity and energy of the Project, and it will receive the MSS-4 revenues from EGSL and ENOI pursuant to the terms of the MSS-4 PPAs. Those receipts will be credited to ELL's ratepayers as revenue offsets to the Ninemile 6 revenue requirement in any future revenue requirements determination.

III. COMMISSION AUTHORITY

A Louisiana Constitution and Statutes

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Sec. 21 of the Louisiana Constitution, and La. R.S. 45:1163(A)(1) and La. R.S. 45:1176.

La. Const. Art. IV, Sec. 21 provides in pertinent part:

The Commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and perform other duties as provided by law

La. R.S. 45:1163 provides in pertinent part:

A. (1) The Commission shall exercise all necessary power and authority over any street, railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of fixing and regulating the rates charged or to be charged by the service furnished by such public utilities.

La. R.S. 45:1176 provides in pertinent part:

The Commission... shall investigate the reasonableness and justness of all contracts, agreements and charges entered into or paid by such public utilities with or to other persons, whether affiliated with such public utility or not.

B The 1983 General Order

The Commission's 1983 General Order requires a utility such as ELL to obtain the Commission's approval of, among other things, any project to construct new generating resources, and requires advance certification from the Commission that the proposed project serves the public convenience and necessity:

No electric public utility subject to the jurisdiction of the Commission shall commence any on site construction activity or enter into any contract for construction or conversion of electric generating facilities or contract for the purchase of capacity or electric power, other than emergency or economy power purchases, without first having applied to the Commission for a certification that the public convenience and necessity would be served through completion of such project or confection of such contract. Feasibility and engineering studies, site acquisition and related actives preliminary to a determination of the desirability or need for plant construction or conversion on purchase power contracts are exempted from this requirement.⁴

The Order also requires that a utility seeking certification of a generation construction project provide the Commission with specific data to be used by the Commission in deciding the utility's application:

Applications submitted pursuant to this order shall include the specific data utilized by the utility in justification of the generation project or purchased power agreement, an itemized projections of the total costs, the scheduled completion date with the appropriate time schedules for the percentage of the total project to be completed by specific target dates, and, in cases of purchased power or capacity agreements, the proposed contract in its entirety.⁵

A utility receiving approval or certification for a generation project or purchased power or capacity agreement shall notify the Commission immediately when it is

⁴ 1983 General Order, ¶ 1.

⁵ *Id.*, ¶ 2.

determined that project or contract costs will exceed that stated in the application or the completion date for the commercial operation is extended.⁶

C MARKET-BASED MECHANISMS ("MBM") ORDER

On February 16, 2004, the Commission adopted the current version of the MBM Order, establishing various procedures and requirements for the market testing of any proposed capacity acquisition or purchased power contract.⁷ The MBM Order augments the procedures of the 1983 General Order and requires a utility proposing to acquire or build new generating capacity or to enter into purchased power contracts to "employ a market-based mechanism" consisting of a "Request For Proposal ("RFP") competitive solicitation process."⁸ The utility must present the results and analysis from this RFP to the Commission as part of the "justifications" required by Paragraph (2) of the 1983 General Order.⁹ In addition, the MBM Order prescribes procedures to be followed by the utility in conducting the RFP process and presenting the results of that process to the Commission Staff.¹⁰ The procedures required by the MBM Order include, among other things, the use of an independent monitor to track the utility's conduct of the RFP process in which affiliates or self-build/self-supply proposals are competing, and the obligation to alert the Staff to any irregularities in the RFP process or any concerns.¹¹ Finally, the MBM Order provides a number of procedural safeguards designed to protect against changes to the self-build cost estimate during the RFP evaluation and selection process.¹²

IV. PROCEDURAL HISTORY

In support of the Joint Application, the Companies submitted on June 21, 2011 the testimonies of William M. Mohl, Jeffrey L. Heidingsfelder, Kimberly A. Fontan, Jonathan E. Long, Bruce M. Louiselle, Michelle H. Thiry, Charles E. DeGeorge, Raymon D. Powell, and

⁶ *Id.*, ¶ 3.

⁷ *See generally* MBM Order. The MBM Order dated February 16, 2004 amended and superseded the Commission's General Order dated April 10, 2002, which was the Commission's first order establishing market testing requirements for new capacity additions. The MBM Order also was amended by General Order, Docket No. R-26172 Subdocket B, dated November 3, 2006, and further amended by the April 26, 2007 General Order, and the amendments approved by the Commission at its October 15, 2008 Business & Executive Meeting and now in General Order, Docket No. R-26172, Subdocket C dated October 29, 2008.

⁸ General Order, Docket No. R-26172, Subdocket C dated October 29, 2008., at p. 5.

⁹ *Id.*

¹⁰ *Id.* at pp. 6-7.

¹¹ *Id.* at p. 8.

¹² *Id.* at pp. 9-10.

Anthony P. Walz. A status conference establishing a procedural schedule was held on August 18, 2011 before the Honorable Michelle Finnegan. On November 22, 2011, the testimonies of Dr. Robert A. Sinclair, William C. Starnes, Teresa A. Omatick, and Karl A. Nalepa were filed on behalf of the Commission Staff. Also on that date Calpine Corporation filed testimony prepared by Phillip Q. Hanser.

On December 20, 2011 Calpine submitted the Cross-Answering testimony of Phillip Q. Hanser, and Staff submitted the Cross-Answering testimony of Dr. Robert A. Sinclair. On January 11, 2012, the Companies submitted rebuttal testimonies of William M. Mohl, Bruce M. Louiselle, Raymon D. Powell, Michelle H. Thiry, Jonathan E. Long, Kimberly A. Fontan, and Charles E. DeGeorge. On February 17, 2012, Calpine Corporation withdrew the Direct Testimony and the Cross-Answering Testimony of Philip Q. Hanser.

On February 24, 2012, LaGen and NRG withdrew their interventions. On February 28, 2012, a "Joint Motion for Scheduling of Hearing on Uncontested Stipulated Settlement" was submitted. Along with that motion, Staff and Companies filed a "Stipulated Settlement Term Sheet", Settlement Testimony of Kimberly A. Fontan, Settlement Testimony of Anthony P. Walz, Settlement Testimony of Karl J. Nalepa, as well as additional testimonial support. A settlement hearing was held on March 6, 2012 pursuant to Rule 6 of the Rules of Practice and Procedure of the Commission. Pursuant to Rule 6 (E), the Staff and Companies requested, and the ALJ granted, a request that the ten-day notice period be waived. A "Report of Proceedings and Submission of Stipulations for Consideration by Commissioners" was filed by Judge Finnegan on March 1, 2012. The matter was placed on the Agenda for the Commission's March 21, 2012 Business & Executive Session. Staff recommended approval of the Settlement.

V. UNCONTESTED STIPULATION

The Commission finds, in accordance with Rule 6(H) of the Rules of Practice and Procedure, that the Parties have met "the burden of proving that the Stipulated Settlement is reasonable in light of the record, consistent with the law, and not contradictory to the public interest." As a result, the Uncontested Stipulation is approved. The terms of the Uncontested Stipulation (which is attached to this Order) are as follows:

1. ELL's decision to construct and its ownership of a nominal 550 MW combined cycle gas turbine facility at Ninemile Point Station (the "Ninemile 6 Project" or "Ninemile 6"), ELL's retention of 55% of the capacity and energy of Ninemile 6 and

EGSL's decision to purchase, via a life-of-unit power purchase agreement ("PPA"), priced pursuant to Service Schedule MSS-4, 25% of the capacity and energy of Ninemile 6, based on the presently estimated cost of \$721.145 million, which estimate is inclusive of allowance for the funds used during construction ("AFUDC") and contingency and exclusive of transmission upgrades, are in the public interest, serve the public convenience and necessity, and therefore are prudent in accordance with the Commission's 1983 General Order, subject to the requirements of paragraph 6 below. The selection of Ninemile 6 in connection with the Summer 2009 Request for Proposals for Long-Term Supply-Side Resources is reasonable and complies with the requirements of the Market Based Mechanisms ("MBM") General Order.

2. The prudence finding in paragraph 1 above is conditioned upon expenditures to implement construction of Ninemile 6 being consistent with the Commission's certification of Ninemile 6. Nothing in this Order should be understood (1) to exempt ELL from the obligation to complete construction of Ninemile 6 at the lowest reasonable cost; or (2) to exempt ELL from prudent management of the project following certification, including cost control, continued evaluations of the appropriateness of continued construction of the project, effective administration of the engineering, procurement and construction contract and all other contracts related to the project, timely completion, reasonable financing decisions, and all other aspects of the project; or (3) to preclude a party from challenging the prudence of the particular costs that are incurred to construct the Ninemile 6 Project; or (4) be a waiver of, and the parties specifically reserve, any and all arguments as to the prudence standard applicable to the transactions under Louisiana law (including jurisprudence) and any other applicable law. Accordingly, the Ninemile 6 Project and the recovery of its costs remain subject to prudence review in the subsequent proceeding discussed below with respect to the obligation to prudently implement, construct, and/or manage the Ninemile 6 Project with the objective of providing reliable service at the lowest reasonable cost.

3. Once Ninemile 6 is placed into commercial operation and included in base rates as set forth in paragraph 5 below, costs incurred under the long terms service agreement ("LTSA") for maintenance of the combustion turbines of Ninemile 6 are deemed eligible to be recovered through ELL's fuel adjustment clause on a basis

contemporaneous with their incurrence. To the extent it may be required, and out of an abundance of caution, a waiver of the LPSC's Fuel Adjustment Clause General Order will be granted, in the event that the LTSA costs would not otherwise qualify for recovery under the LPSC's Fuel Adjustment Clause General Order. The LTSA costs will be recorded in Account 501 on ELL's books and will be used in determining energy billing to EGSL and ENO associated with Ninemile 6 in accordance with MSS-4.

4. Any environmental compliance-related costs incurred in connection with Ninemile 6 may be recovered through the ELL and EGSL respective environmental adjustment clauses, only if the environmental compliance costs actually incurred are of a nature permitted to be recovered through the environmental adjustment clause, in accordance with the LPSC's Environmental Adjustment Clause General Order.

5. The process by which the costs associated with Ninemile 6 will be reflected in the base rates of ELL and EGSL in the first billing cycle of the month following commercial operation of Ninemile 6 shall be as follows:

a. In the event that Formula Rate Plans ("FRPs") will be in effect when Ninemile 6 is expected to be placed in service, on or about twelve months prior to the expected in-service date of Ninemile 6, the Companies shall file the then-current estimates of the incremental revenue requirements associated with Ninemile 6 and the related MSS-4 PPA in a docketed proceeding. The Commission will permit the estimated revenue requirement determined in such proceeding to form the basis for an in-service adjustment to each Company's base rates that would be subsequently coordinated with the non-Ninemile 6 revenue requirement established through the FRP at the times when those new FRP rates go into effect under the terms of the respective FRP's.

b. In the event that a FRP will not be in effect when Ninemile 6 is expected to be placed in service, on or about twelve months prior to the expected in-service date of Ninemile 6, the Companies shall file traditional full base rate cases including, among other things, a *pro forma* adjustment reflecting the then-current estimates of the incremental revenue requirements associated with Ninemile 6 and the related MSS-4 PPA.

c. In the event that the rate filings required by paragraphs 5(a) or 5(b) are not made, or if the base rate adjustments required by those paragraphs are not implemented by the first billing cycle of the month following commercial operation of Ninemile 6, the Companies shall establish separate deferrals of the incremental revenue requirements associated with the Ninemile 6 Project and related MSS-4 PPA until such time as the costs of Ninemile 6 and the related MSS-4 PPA are reflected in ELL's and EGSL's retail rates, respectively, and accruals of interest on a month basis on the net-of-tax deferred balances at ELL's and EGSL's respective retail rates. The recovery, separately, over a two-year period, of the deferred balances shall begin contemporaneously with the time that the costs of Ninemile 6 and EGSL's MSS-4 PPA begin to be recovered from customers.

d. Within 120 days of the first anniversary following the commercial operation date of Ninemile 6, the Companies shall make a filing identifying the difference between the estimated first year's revenue requirement for Ninemile 6 and the actual first year's revenue requirement based upon the actual recorded costs for the project, with any variance during the period in which rates charged were based on the estimated costs to be credited to or recovered from customers including accrued carrying charges as set forth below. Until such time that the variance is reflected in the Companies' respective base rates or credited to customers, whichever is applicable, the variance shall accrue carrying charges at each Companies' respective WACC from the time such variance was determined to have occurred.

e. After the actual construction costs of Ninemile 6 are known, ELL shall submit its prudence review application to the Commission setting forth the actual construction costs and schedule, with the comparison to the estimated costs and schedule of the Project, which application shall be docketed. The prudence of the Ninemile 6 construction costs shall be determined in such docketed proceeding. The prudence review shall be conducted in time to permit the issuance of a final Commission order within twelve months of the filing of the utility's application. To the extent that any costs relating to construction of Ninemile 6 are recovered

from ratepayers and are subsequently determined to be disallowed by the Commission as reflected in a final, non-appealable order, those amounts shall be credited or refunded to ELL and EGSL ratepayers with interest, calculated at each Company's WACC from the time those amounts were collected until those amounts are credited or refunded to ratepayers.

6. The Companies will make a joint filing as expeditiously as feasible, but no later than one year after the Commission's Order approving this term sheet, that addresses the merits of potential ELL/EGSL joint ownership of Ninemile 6 and that provides an analysis of the costs, benefits, and risks associated with joint ownership. The Companies, Staff, and any Intervening Party may take a position on whether a joint ownership transaction is appropriate and in the public interest on a going-forward basis at that time.

7. Except as may be expressly stated herein, this Term Sheet shall have no precedential effect in any other proceedings involving issues similar to those resolved herein and shall be without prejudice to the right of any party to take any position on any such similar issue in future base rate proceedings, including Formula Rate Plan proceedings, or in other regulatory proceedings or appeals therefrom.

8. Commencing with the first quarter following Commission approval of this settlement term sheet, ELL will file quarterly reports on the status of the Ninemile 6 Project, including schedule, cost status and summary, and other critical activities, on or before the last day of the month following close of each calendar quarter. The Staff shall communicate any concerns regarding these reports to ELL and to the Commission. The quarterly report elements shall include those described in Section 2 of Exhibit BML-2 to the Direct Testimony of Bruce M. Louiselle. Those reports should also reflect any material events, including change orders that increase or decrease EPC costs, any law changes affecting project costs, the status of required permits, any delays affecting project costs, and such other information mutually agreed by the Staff and ELL. While the quarterly reports will be provided to all parties in this docket, no party shall be permitted to conduct discovery concerning such reports or the subject matter thereof, provided that Staff shall be permitted to request additional information reasonably needed to evaluate the quarterly report. Moreover, any quarterly report containing confidential or proprietary information of ELL or its vendors, consultants or contractors may be

submitted on a confidential basis to LPSC Staff and to appropriate reviewing representatives of parties that have executed a confidentiality agreement in this docket, in which case a public redacted version of such report will be filed in the docket and circulated to all parties.

9. Any Commission findings that ELL's Ninemile 6 Project and the related MSS-4 PPA between ELL and EGSL serve the public convenience and necessity and are in the public interest, and therefore prudent, are not dependent on whether the FERC determines the costs associated with these transactions are eligible to be included in the determination of bus bar productions costs once Ninemile 6 is placed in service pursuant to FERC Opinion Nos. 480 and 480-A, and the Commission's ruling allowing ELL and EGSL to recover the costs of Ninemile 6 and MSS-4 PPA, respectively, shall not be affected if the FERC were to determine that the costs associated therewith are not eligible to be included in the determination of bus bar production costs pursuant to FERC Opinion Nos. 480 and 480-A. The Companies agree to timely make a Federal Power Act § 205 filing if necessary to include Ninemile 6 costs or Ninemile 6 cancellation costs into the Opinion Nos. 480 and 480-A bandwidth calculations. If, following the commercial operation of Ninemile 6, or, following an order of the Commission approving the cancellation of Ninemile 6, the Companies' bandwidth calculation made pursuant to FERC Opinion Nos. 480 and 480-A does not include the costs or cancellation costs of Ninemile 6 in the test year applicable to such bandwidth calculation (i.e., the twelve months ended December 31st of the year in which Ninemile 6 began commercial operation or was cancelled) and the Commission files a complaint pursuant to Section 206 of the Federal Power Act to accomplish such inclusion, the Companies commit to submit comments in support of the inclusion of Ninemile 6 in the bandwidth calculation and, in the event such complaint is set for hearing, testimony in support of such inclusion, provided that nothing herein shall obligate the Companies to support other modifications to the bandwidth that are unrelated to Ninemile 6 and that may be sought by the LPSC.

10. The Commission's General Orders dated June 16, 1953, October 28, 1968 and March 18, 1994 are inapplicable to ELL's sale of capacity and energy from Ninemile 6 as described in the Application.

11. This term sheet does not approve or address any potential future cancellation or ratemaking treatment associated with any future cancellation, of the Ninemile 6 project. If the Company determines at some future date that Ninemile 6 should be cancelled or modified, the Company will be required to make any necessary filing at that time.

12. As provided in Reimbursement Agreements relating to Ninemile 6, EGSL and ENO, respectively, would be responsible for their allocated share of the prudently incurred costs of Ninemile 6 if the Commission should determine that the Ninemile 6 project should be cancelled prior to its completion and commercial operation. The amount of such costs allocated to each company would be a function of each company's percentage allocation as reflected in its MSS-4 PPA (EGSL - 25%; ENO - 20%) and the amount of the costs the Commission determines was prudently incurred. Nothing in this Term Sheet shall be construed to affect the respective rights and obligations of ELL, EGSL and ENO as provided in the Reimbursement Agreements.

13. As provided in Reimbursement Agreements relating to Ninemile 6, EGSL and ENO would be responsible for their allocated share of the undepreciated investment costs were the Ninemile 6 facility to be permanently shut down or damaged by a force majeure event and the unit not be repaired. The amount of such costs allocated to each company would be a function of each company's percentage allocation as reflected in its MSS-4 PPA (EGSL - 25%; ENO - 20%) and the amount of the costs the Commission determines was prudently incurred. Nothing in this Term sheet shall be construed to affect the respective rights and obligations of ELL, EGSL and ENO as provided in the Reimbursement Agreements.

14. This Term Sheet does not approve contemporaneous recovery of cash earning on construction-related costs, but does not prohibit the Companies from making such a request at a future date subject to Commission review and approval.

15. This Term Sheet does not address or seek approval of any rate design or allocation of costs to customer classes related to Ninemile 6 costs. These issues are specifically reserved and will be addressed at the time that Ninemile 6 costs are reflected in base rates consistent with Paragraph 5 of this Term Sheet.

16. ELL shall allocate a portion of Ninemile Station common facility costs to all participants in Ninemile 6 so that each will be responsible for an appropriate share of the costs of common facilities. If these costs are allocated under Service Schedule MSS-4 they will be allocated in accordance therewith.

17. Revenues received by ELL from EGSL and ENO for Ninemile 6 will be treated as revenue offsets in any ELL revenue requirements determination.

VI. CONCLUSION

This matter was considered at the Commission's March 21, 2012 Business and Executive Session. On motion of Commissioner Holloway, seconded by Commissioner Field and unanimously adopted, the Commission voted to accept the Staff's recommendation and approve the Settlement.

IT IS THEREFORE ORDERED THAT:

1. The Joint Application in this matter is approved in accordance with and as modified by the attached Stipulated Settlement Term Sheet;
2. ELL's decision to construct and its ownership of a nominal 550 MW combined cycle gas turbine facility at Ninemile 6, ELL's retention of 55% of the capacity and energy of Ninemile 6, and EGSL's decision to purchase via a life-of-unit PPA priced pursuant to Service Schedule MSS-4 of the Entergy System Agreement, 25% of the capacity of energy of Ninemile 6, based on the presently estimated cost of \$721.145 million, which estimate is inclusive of AFUDC and contingency and exclusive of transmission upgrades, are in the public interest, serve the public convenience and necessity, and therefore are prudent in accordance with the Commission 1983 General Order, in accordance with and as modified by the attached Stipulated Settlement Term Sheet;
3. ELL and EGSL shall take all other actions required herein; and
4. This order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

April 5, 2012

/S/ FOSTER L. CAMPBELL
DISTRICT V
CHAIRMAN FOSTER L. CAMPBELL

/S/ JAMES M. FIELD
DISTRICT II
VICE CHAIRMAN JAMES M. FIELD

/S/ ERIC F. SKRMETTA
DISTRICT I
COMMISSIONER ERIC F. SKRMETTA

/S/ LAMBERT C. BOISSIERE
DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III


EVE KAHAO GONZALEZ
SECRETARY

/S/ CLYDE C. HOLLOWAY
DISTRICT IV
COMMISSIONER CLYDE C. HOLLOWAY

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

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LA PUBLIC SERVICE
COMMISSION

**EX PARTE: JOINT APPLICATION)
OF ENTERGY LOUISIANA, LLC FOR)
APPROVAL TO CONSTRUCT UNIT 6)
AT NINEMILE POINT STATION AND)
OF ENTERGY GULF STATES)
LOUISIANA, L.L.C. FOR APPROVAL)
TO PARTICIPATE IN A RELATED)
CONTRACT FOR THE PURCHASE OF)
CAPACITY AND ELECTRIC ENERGY,)
FOR COST RECOVERY AND)
REQUEST FOR TIMELY RELIEF)**

DOCKET NO. U-31971

STIPULATED SETTLEMENT TERM SHEET

Applicants, Entergy Louisiana, LLC ("ELL") and Entergy Gulf States Louisiana, L.L.C. ("EGSL") (ELL and EGSL, collectively, the "Companies"), and the Louisiana Public Service Commission ("LPSC" or "Commission") Staff ("LPSC Staff" or "Staff"), hereby agree to settle and resolve the captioned matter upon the following terms, which shall be presented to the Commission for approval:

1. ELL's decision to construct and its ownership of a nominal 550 MW combined cycle gas turbine facility at Ninemile Point Station (the "Ninemile 6 Project" or "Ninemile 6"), ELL's retention of 55% of the capacity and energy of Ninemile 6 and EGSL's decision to purchase via a life-of-unit power purchase agreement ("PPA"), priced pursuant to Service Schedule MSS-4, 25% of the capacity and energy of Ninemile 6, based on the presently estimated cost of \$721.145 million, which estimate is inclusive of allowance for funds used during construction ("AFUDC") and contingency and exclusive of transmission upgrades, are in the public interest, serve the public convenience and necessity, and therefore are prudent in accordance with the Commission's 1983 General Order, subject to the requirements of paragraph

6 below. The selection of Ninemile 6 in connection with the Summer 2009 Request for Proposals for Long-Term Supply-Side Resources is reasonable and complies with the requirements of the Market Based Mechanisms ("MBM") General Order.

2. The prudence finding in paragraph 1 above is conditioned upon expenditures to implement construction of Ninemile 6 being consistent with the Commission's certification of Ninemile-6. Nothing in this Order should be understood (1) to exempt ELL from the obligation to complete construction of Ninemile 6 at the lowest reasonable cost; or (2) to exempt ELL from prudent management of the project following certification, including cost control, continued evaluations of the appropriateness of continued construction of the project, effective administration of the engineering, procurement and construction contract and all other contracts related to the project, timely completion, reasonable financing decisions, and all other aspects of the project; or (3) to preclude a party from challenging the prudence of the particular costs that are incurred to construct the Ninemile 6 Project; or (4) be a waiver of, and the parties specifically reserve, any and all arguments as to the prudence standard applicable to the transactions under Louisiana law (including jurisprudence) and any other applicable law. Accordingly, the Ninemile 6 Project and the recovery of its costs remain subject to prudence review in the subsequent proceeding discussed below with respect to the obligation to prudently implement, construct, and/or manage the Ninemile 6 Project with the objective of providing reliable service at the lowest reasonable cost.

3. Once Ninemile 6 is placed into commercial operation and included in base rates as set forth in paragraph 5 below, costs incurred under the long term service agreement ("LTSA") for maintenance of the combustion turbines of Ninemile 6 are deemed eligible to be recovered through the Companies' fuel adjustment clause on a basis contemporaneous with their

incurrence. To the extent it may be required, and out of an abundance of caution, a waiver of the LPSC's Fuel Adjustment Clause General Order will be granted, in the event that the LTSA costs would not otherwise qualify for recovery under the LPSC's Fuel Adjustment Clause General Order. The LTSA costs will be recorded in Account 501 on ELL's books and will be used in determining energy billing to EGSL and ENO associated with Ninemile 6 in accordance with MSS-4.

4. Any environmental compliance-related costs incurred in connection with Ninemile 6 may be recovered through the ELL and EGSL respective environmental adjustment clauses, only if the environmental compliance costs actually incurred are of a nature permitted to be recovered through the environmental adjustment clause, in accordance with the LPSC's Environmental Adjustment Clause General Order.

5. The process by which the costs associated with Ninemile 6 will be reflected in the base rates of ELL and EGSL in the first billing cycle of the month following commercial operation of Ninemile 6 shall be as follows:

a. In the event that Formula Rate Plans ("FRPs") will be in effect when Ninemile 6 is expected to be placed in service, on or about twelve months prior to the expected in-service date of Ninemile 6, the Companies shall file the then-current estimates of the incremental revenue requirements associated with Ninemile 6 and the related MSS-4 PPA in a docketed proceeding. The Commission will permit the estimated revenue requirement determined in such proceeding to form the basis for an in-service adjustment to each company's base rates that would be subsequently coordinated with the non-Ninemile 6 revenue requirement established through the FRP at the times when those new FRP rates go into effect under the terms of the respective FRPs.

b. In the event that a FRP will not be in effect when Ninemile 6 is expected to be placed in service, on or about twelve months prior to the expected in-service date of Ninemile 6, the Companies shall file traditional full base rate cases including, among other things, a *pro forma* adjustment reflecting the then-current estimates of the incremental revenue requirements associated with Ninemile 6 and the related MSS-4 PPA.

c. In the event that the rate filings required by paragraphs 5(a) or 5(b) are not made, or if the base rate adjustments required by those paragraphs are not implemented by the first billing cycle of the month following commercial operation of Ninemile 6, the Companies shall establish separate deferrals of the incremental revenue requirements associated with the Ninemile 6 Project and related MSS-4 PPA until such time as the costs of Ninemile 6 and the related MSS-4 PPA are reflected in ELL's and EGSL's retail rates, respectively, and accruals of interest on a monthly basis on the net-of-tax deferred balances at ELL's and EGSL's respective weighted average costs of capital ("WACC"), commencing on the date of commercial operation of Ninemile 6 and continuing until such time as the costs of Ninemile 6 and the related MSS-4 PPA are reflected in ELL's and EGSL's respective retail rates. The recovery, separately, over a two-year period, of the deferred balances shall begin contemporaneously with the time that the costs of Ninemile 6 and EGSL's MSS-4 PPA begin to be recovered from customers.

d. Within 120 days of the first anniversary following the commercial operation date of Ninemile 6, the Companies shall make a filing identifying the difference between the estimated first year's revenue requirement for Ninemile 6 and the actual first year's revenue requirement based upon the actual recorded costs for the project, with any

variance during the period in which rates charged were based on estimated costs to be credited to or recovered from customers including accrued carrying charges as set forth below. Until such time that the variance is reflected in the Companies' respective base rates or credited to customers, whichever is applicable, the variance shall accrue carrying charges at each Companies' respective WACC from the time such variance was determined to have occurred.

e. After the actual construction costs of Ninemile 6 are known, ELL shall submit its prudence review application to the Commission setting forth the actual construction costs and schedule, with comparisons to the estimated costs and schedule of the Project, which application shall be docketed. The prudence of the Ninemile 6 construction costs shall be determined in such docketed proceeding. The prudence review shall be conducted in time to permit the issuance of a final Commission order within twelve months of the filing of the utility's application. To the extent that any costs relating to construction of Ninemile 6 are recovered from ratepayers and are subsequently determined to be disallowed by the Commission as reflected in a final, non-appealable order, those amounts shall be credited or refunded to ELL and EGSL ratepayers with interest, calculated at each Company's WACC from the time those amounts were collected until those amounts are credited or refunded to ratepayers.

6. The Companies will make a joint filing as expeditiously as feasible, but no later than one year after the Commission's Order approving this term sheet, that addresses the merits of potential ELL/EGSL joint ownership of Ninemile 6 and that provides an analysis of the costs, benefits, and risks associated with joint ownership. The Companies, Staff, and any Intervening

Party may take a position on whether a joint ownership transaction is appropriate and in the public interest on a going-forward basis at that time.

7. Except as may be expressly stated herein, this Term Sheet shall have no precedential effect in any other proceedings involving issues similar to those resolved herein and shall be without prejudice to the right of any party to take any position on any such similar issue in future base rate proceedings, including Formula Rate Plan proceedings, or in other regulatory proceedings or appeals therefrom.

8. Commencing with the first quarter following Commission approval of this settlement term sheet, ELL will file quarterly reports on the status of the Ninemile 6 Project, including schedule, cost status and summary, and other critical activities, on or before the last day of the month following close of each calendar quarter. The Staff shall communicate any concerns regarding these reports to ELL and to the Commission. The quarterly report elements shall include those described in Section 2 of Exhibit BML-2 to the Direct Testimony of Bruce M. Louiselle. Those reports should also reflect any material events, including change orders that increase or decrease EPC costs, any law changes affecting project costs, the status of required permits, any delays affecting project costs, and such other information mutually agreed by the Staff and ELL. While the quarterly reports will be provided to all parties in this docket, no party shall be permitted to conduct discovery concerning such reports or the subject matter thereof, provided that Staff shall be permitted to request additional information reasonably needed to evaluate the quarterly report. Moreover, any quarterly report containing confidential or proprietary information of ELL or its vendors, consultants or contractors may be submitted on a confidential basis to LPSC Staff and to appropriate reviewing representatives of parties that have

executed a confidentiality agreement in this docket, in which case a public redacted version of such report will be filed in the docket and circulated to all parties.

9. Any Commission findings that ELL's Ninemile 6 Project and the related MSS-4 PPA between ELL and EGSL serve the public convenience and necessity and are in the public interest, and therefore prudent, are not dependent on whether the FERC determines the costs associated with these transactions are eligible to be included in the determination of bus bar production costs once Ninemile 6 is placed in service pursuant to FERC Opinion Nos. 480 and 480-A, and the Commission's ruling allowing ELL and EGSL to recover the costs of Ninemile 6 and MSS-4 PPA, respectively, shall not be affected if the FERC were to determine that the costs associated therewith are not eligible to be included in the determination of bus bar production costs pursuant to FERC Opinion Nos. 480 and 480-A. The Companies agree to timely make a Federal Power Act § 205 filing if necessary to include Ninemile 6 costs or Ninemile 6 cancellation costs into the Opinion Nos. 480 and 480-A bandwidth calculations. If, following the commercial operation of Ninemile 6, or, if following an order of the Commission approving the cancellation of Ninemile 6, the Companies' bandwidth calculation made pursuant to FERC Opinion Nos. 480 and 480-A does not include the costs or cancellation costs of Ninemile 6 in the test year applicable to such bandwidth calculation (i.e., the twelve months ended December 31st of the year in which Ninemile 6 began commercial operation or was cancelled) and the Commission files a complaint pursuant to Section 206 of the Federal Power Act to accomplish such inclusion, the Companies commit to submit comments in support of the inclusion of Ninemile 6 in the bandwidth calculation and, in the event such complaint is set for hearing, testimony in support of such inclusion, provided that nothing herein shall obligate the Companies

to support other modifications to the bandwidth that are unrelated to Ninemile 6 and that may be sought by the LPSC.

10. The Commission's General Orders dated June 16, 1953, October 28, 1968 and March 18, 1994 are inapplicable to ELL's sale of capacity and energy from Ninemile 6 as described in the Application.

11. This term sheet does not approve or address any potential future cancellation, or the ratemaking treatment associated with any future cancellation, of the Ninemile 6 project. If the Company determines at some future date that Ninemile 6 should be cancelled or modified, the Company will be required to make any necessary filing at that time.

12. As provided in Reimbursement Agreements relating to Ninemile 6, EGSL and ENO, respectively, would be responsible for their allocated share of the prudently incurred costs of Ninemile 6 if the Commission should determine that the Ninemile 6 project should be cancelled prior to its completion and commercial operation. The amount of such costs allocated to each company would be a function of each company's percentage allocation as reflected in its MSS-4 PPA (EGSL - 25%; ENO - 20%) and the amount of the costs the Commission determines was prudently incurred. Nothing in this Term Sheet shall be construed to affect the respective rights and obligations of ELL, EGSL and ENO as provided in the Reimbursement Agreements.

13. As provided in Reimbursement Agreements relating to Ninemile 6, EGSL and ENO would be responsible for their allocated share of the undepreciated investment costs were the Ninemile 6 facility to be permanently shut down or damaged by a force majeure event and the unit not be repaired. The amount of such costs allocated to each company would be a function of each company's percentage allocation as reflected in its MSS-4 PPA (EGSL - 25%; ENO - 20%) and the amount of the costs the Commission determines was prudently incurred.

Nothing in this Term Sheet shall be construed to affect the respective rights and obligations of ELL, EGSL and ENO as provided in the Reimbursement Agreements.

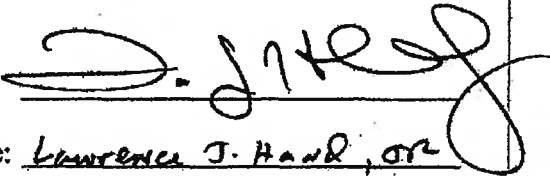
14. This Term Sheet does not approve contemporaneous recovery of cash earnings on construction-related costs, but does not prohibit the Companies from making such a request at a future date subject to Commission review and approval.

15. This Term Sheet does not address or seek approval of any rate design or allocation of costs to customer classes related to Ninemile 6 costs. These issues are specifically reserved and will be addressed at the time that Ninemile 6 costs are reflected in base rates consistent with Paragraph 5 of this Term Sheet.

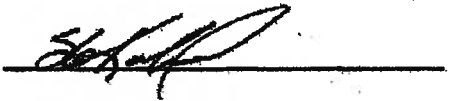
16. ELL shall allocate a portion of Ninemile Station common facility costs to all participants in Ninemile 6 so that each will be responsible for an appropriate share of the costs of common facilities. If these costs are allocated under Service Schedule MSS-4 they will be allocated in accordance therewith.

17. Revenue received by ELL from EGSL and ENO for Ninemile 6 will be treated as revenue offsets in any ELL revenue requirements determination.

Agreed to by the following Parties:

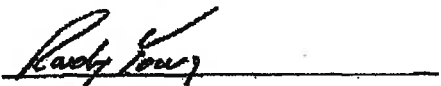
By: 
Name: Lawrence J. Hand, or

REPRESENTING
ENTERGY LOUISIANA, LLC and
ENTERGY GULF STATES LOUISIANA, L.L.C.

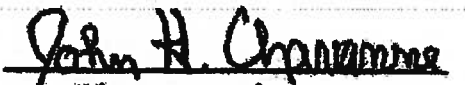
By: 
Name: STEPHEN KABEL

REPRESENTING
LOUISIANA PUBLIC SERVICE COMMISSION STAFF

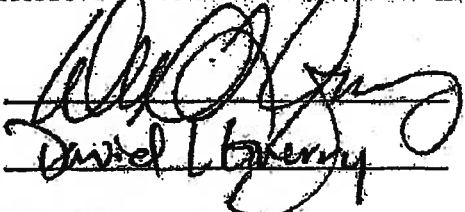
The following parties to the captioned proceeding have signed below, stating their non-opposition to the Stipulated Settlement Term Sheet:

By: 
Name: Randy Young, counsel for and

REPRESENTING
LOUISIANA ENERGY USERS GROUP

By: 
Name: JOHN H. CHAVANNE

REPRESENTING
MARATHON PETROLEUM COMPANY LP

By: 
Name: David L. Cherry

REPRESENTING
ARCELORMITTAL LAPLACE, LLC

By: Randy Young

Name: Randy Young, Counsel for and

REPRESENTING
CALPINE CORPORATION

By: Luke Piontek

Name: Luke Piontek

REPRESENTING
OCCIDENTAL CHEMICAL CORPORATION, LLC