

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSISSIPPI**

**MISSISSIPPI PUBLIC SERVICE COMMISSION**

**DOCKET NO. 2017-AD-86**

**IN RE:                   ORDER OF THE MISSISSIPPI PUBLIC SERVICE  
COMMISSION OPENING A RULEMAKING PROCEEDING TO  
AMEND ITS RULES OF PRACTICE AND PROCEDURE TO  
INCLUDE THE HIRE MISSISSIPPI RULE**

**FINAL ORDER ADOPTING RULE**

This matter is before the Mississippi Public Service Commission (“Commission”) for consideration and adoption of its rule establishing publication and reporting requirements regarding rate-regulated, investor-owned utilities’ utilization of resident contractors. The Proposed Rule, known as the “Hire Mississippi” rule is to be added as Rule 39 of the Commission’s existing “Public Utilities Rules of Practice and Procedure.” For the following reasons, the Commission hereby adopts the Hire Mississippi rule attached hereto as Exhibit “A.”

I.

Pursuant to the authority granted in *Miss. Code Ann.* § 77-3-45, the Commission issued its Order Opening Rulemaking Proceeding regarding the proposed Hire Mississippi rule on May 4, 2017. In accordance with the Mississippi Administrative Procedures Act,<sup>1</sup> the matter was filed for publication with the Mississippi Secretary of State’s office, and an Economic Impact Statement (“EIS”) was prepared by the Public Utilities Staff (“Staff”). Due and proper notice of the pendency of the case was given in the manner and time required by law through publication in the Clarion Ledger on June 22, 2017. Numerous

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<sup>1</sup> *Miss. Code Ann.* §§ 25-43-1.101 et seq.

parties intervened and/or filed comments, including Willmut Gas & Oil Company, CenterPoint Energy, Mississippi Power Company, Mississippi Natural, Inc., Entergy Mississippi, and Mississippi Associated Builders and Contractors. On August 1, 2017, the Commission held a public hearing in which the Proposed Rule was discussed and public comments were provided.

## II.

It is the policy of the State of Mississippi “with respect to rate-regulated public utilities, to foster, encourage, enable and facilitate economic development in the State of Mississippi, and to support and augment economic development activities, and to authorize and empower the Public Service Commission, in carrying out its statutory responsibilities, to take *every opportunity* to advance the economic development of the state.”<sup>2</sup> (Emphasis added). To accomplish these policy goals, *Miss. Code Ann. § 77-3-45* empowers the Commission to “prescribe, issue, amend and rescind such reasonable rules and regulations as may be reasonably necessary or appropriate to carry out the provisions of this chapter.”

Hire Mississippi was developed to foster, encourage, enable and facilitate economic development. To accomplish this, the rule constructs an environment that encourages more existing and start-up Mississippi businesses to enter the market for utility goods and services. As more Mississippians become engaged in this multi-million dollar sector,<sup>3</sup> more dollars will flow back into the Mississippi economy, allowing for further job creation and development.

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<sup>2</sup> *Miss. Code Ann. § 77-3-2(1)(i)*

<sup>3</sup> According to the EIS prepared for this proposed rule, total capital and operating and maintenance expenses of the utilities subject to the rule were approximately \$810 million in 2016.

Prior to this rule, it has been the experience of the Commission and at least some utilities that a major impediment to more resident contractor involvement<sup>4</sup> has been a lack of awareness of specific opportunities or processes to bid. For example, “[i]t has been EMI’s experience that many Mississippi suppliers and contractors that express interest in contracting with EMI are unaware of the requirements to be qualified to work for the utility and/or do not properly complete the response to RFPs.”<sup>5</sup> The tools currently at the Commission’s disposal to raise awareness are insufficient.

*Miss. Code Ann. § 77-3-16* governs all contracts for construction, extension, and/or repair of facilities in excess of two hundred thousand dollars (\$200,000.00). The statute requires that utilities maintain a list of qualified contractors and suppliers as well as publication every six (6) months of a notice requesting names of such qualified contractors and suppliers in a newspaper having general circulation in the area in which the utility operates. However, as noted in comments filed in this docket, Entergy Mississippi (“EMI”) found “while EMI believes that Mississippi contractors qualified to bid on larger projects (in excess of the \$200,000 threshold stated in *Miss. Code Ann. § 77-3-16*) are likely aware of opportunities with utilities, it is reasonable to assume that smaller contractors may not be aware of such opportunities.” Further, EMI writes, “the publication and notice required under § 77-3-16 has not been effective in increasing such awareness.”<sup>6</sup> Hire Mississippi is designed to reach smaller contractors in the way § 77-3-16 reaches larger ones.

The lynchpin of the “opportunity awareness” strategy of the rule is the Hire Mississippi List. Four times a year, the utilities will be required to publish notice in

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<sup>4</sup> The Commission requested informal numbers on resident contractor participation over the prior five years. The numbers were universally low, in one instance indicating that only 21% of one utility’s contracts were awarded to Mississippi contractors over the period while 79% went out of state.

<sup>5</sup> See Motion to Intervene and Comments of Entergy Mississippi, Inc. Docket No. 2017-AD-86 (July 18, 2017).

<sup>6</sup> *Id.*

newspapers across their territory requesting that local contractors submit their business to be on the list.<sup>7</sup> Mississippi companies on the Hire Mississippi List will receive additional notification of any known, upcoming bids for contracts within the scope of goods or services they furnish.<sup>8</sup> Further, no contract will be awarded to any prime contractor without the utility first providing the prime contractor the utility's Hire Mississippi List for consideration in awarding subcontracts.<sup>9</sup>

Hire Mississippi goes further to foster economic development. In addition to the list, the rule requires that utilities proactively reach out and assist potential Mississippi contractors by explaining the bidding process, qualifications and other procurement practices and procedures.<sup>10</sup> When efficient or cost-effective, utilities must unbundle and separate scopes and specifications to accommodate the inclusion of resident contractors in sourcing activities.<sup>11</sup> Finally, the rule requires that in filings before the Commission, if an out-of-state firm is selected for a project, the company must explain how they reached that decision.<sup>12</sup>

The Commission's finding that Hire Mississippi will foster, encourage, enable and facilitate economic development is supported in the record in this docket. In addition to findings of the EIS supplied by Staff, filed comments have been unanimously in favor of the rule. EMI writes, "EMI believes that there will be economic benefits to the State of Mississippi through increased awareness of opportunities to contract with public utilities."

<sup>13</sup>Similarly, Associated Builders and Contractors submits, "[w]e are convinced this

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<sup>7</sup> Hire Mississippi Proposed Rule, Section 103. Docket No. 2017-AD-86 (May 4, 2017).

<sup>8</sup> Hire Mississippi, Section 105

<sup>9</sup> *Id.*

<sup>10</sup> Hire Mississippi, Section 102

<sup>11</sup> Hire Mississippi, Section 104

<sup>12</sup> Hire Mississippi, Section 106

<sup>13</sup> See EMI Comments, *Supra.*

rulemaking step taken by the PSC will further enhance the relationship between utilities and contractors and ultimately benefit hard working Mississippians.”<sup>14</sup>

### III.

The potential benefits of Hire Mississippi far outweigh any costs imposed on either the utilities or the Commission by adoption of the rule. According to the EIS, “[t]he incremental costs of the proposed rule to these entities will be minimal since most of the personnel and resources needed to comply with the rule are already in place.” Per utility, Staff determined that “cost estimates range from about \$21,000 to \$55,000.” Across all utilities subject to the rule, Staff estimates that the total cost will only be around two hundred twenty-three thousand dollars (\$223,000) per year. On the Commission end, “costs on the part of the staff of the PSC will be minimal, since present staff should be able to handle the filings and any enquiries generated.”

On the other hand, even modest success with Hire Mississippi eclipses these *de minimus* costs. As the resident contractors the rule targets are necessarily captive ratepayers of the utilities subject to the rule, “if Mississippi suppliers were able to increase their share of utility expenditures by 1% then that would represent about \$8 million in added revenue. A 2% increase would be \$16 million...Even a ½% increase would easily offset the cost of the program.”<sup>15</sup>

### IV.

The rule does not attempt in any way to interfere with interstate commerce, and the rule does not mandate any preferred right of access for resident contractors. Consistent with *Miss. Code Ann.* § 77-3-16, utilities will continue to choose the lowest and best bidder in contracting, regardless of whether that bidder is a resident or a nonresident bidder.

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<sup>14</sup> See comments of Associated Builders and Contractors, Docket no. 2017-AD-86 (July 25, 2017).

<sup>15</sup> See Economic Impact Statement, Docket No. 2017-AD-86 (July 7, 2017).

V.

The Commission finds that in order to give the utilities sufficient time to institute any changes in practice and procedure to meet the requirements of Hire Mississippi, there shall be a six (6) month implementation period. Therefore, the rule will only go into effect six (6) months after filing with the Secretary of State's Office. The first Annual Report required pursuant to Section 108 of the rule will be due on March 1, 2019.

**IT IS THEREFORE ORDERED** that the attached Proposed Rule is hereby adopted. The changes are within the scope of the original Notice of Proposed Rule adoption, and therefore, provide fair warning as to the contents. This Rule shall be included in the next bound publication of the Public Utility Rules of Practice and Procedure and numbered sequentially in accordance with the requirements of the Administrative Procedures Act.

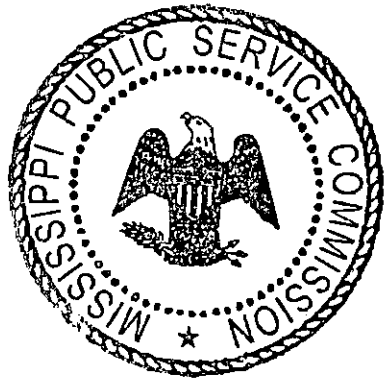
**IT IS FURTHER ORDERED** that the Executive Secretary is directed to transmit a copy of this Final Order to the Secretary of State's Office in accordance with the Mississippi Administrative Procedures Act, *Miss. Code Ann.* §§ 25-43-1.101 *et seq.*

**IT IS FURTHER ORDERED** that the Executive Secretary is also directed to transmit a copy of this Final Order to all interveners and any other parties of interest identified as well as publish the same according to applicable law.

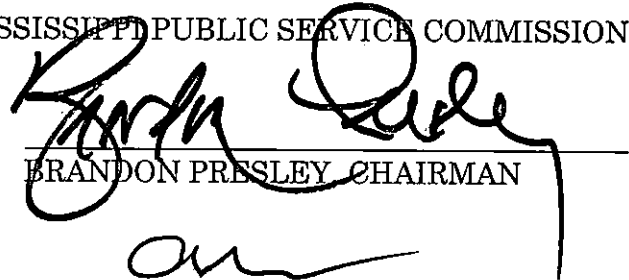
**IT IS FURTHER ORDERED** that this Order and attached Rule shall become effective six (6) months after filing with the Secretary of State's Office and shall be deemed issued on the day it is served upon the intervening parties of record by the Executive Secretary of this Commission who shall note the service date in the file of this Docket.

Chairman Brandon Presley voted *aye* Vice-Chairman Cecil Brown voted *aye*  
and Commissioner Sam Britton voted *aye*

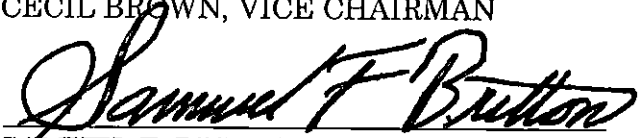
SO ORDERED, this the 1<sup>st</sup> day of August 2017.



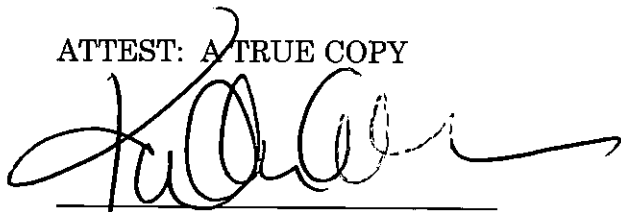
MISSISSIPPI PUBLIC SERVICE COMMISSION

  
BRANDON PRESLEY, CHAIRMAN

  
CECIL BROWN, VICE CHAIRMAN

  
SAMUEL F. BRITTON, COMMISSIONER

ATTEST: A TRUE COPY

  
KATHERINE COLLIER  
Executive Secretary

Effective this, the 1<sup>st</sup> day of August 2017

## “HIRE MISSISSIPPI”

### RESIDENT CONTRACTOR UTILITIZATION

#### 100 Purpose

Public utilities in Mississippi are capital intensive businesses that require millions of dollars of investment in capital and operations and maintenance costs each year to meet their obligation to serve Mississippi residents with essential services. These costs are then passed on to the utilities' customers through their rates. For the purpose of promoting economic development, creating jobs, and improving the communities served by the utilities, the Commission urges utilities to maximize, consistent with law, the use of goods, products, and materials produced in the State of Mississippi. This rule shall serve as a tool to encourage and measure public utility utilization of Mississippi resident contractors, subcontractors, vendors and businesses. This rule is created to foster utility engagement with potential Mississippi suppliers and contractors, providing ways to inform Mississippi companies of business opportunities. However, this rule shall not be interpreted to supersede any state statute, and nothing in this rule shall be construed to prevent a utility from choosing the lowest and best bidder for any project or interfering with the mandate to serve the ratepayers or adequately respond to emergencies or support outages.

This rule is promulgated pursuant to the authority of the Mississippi Public Service Commission (the “Commission”) under Miss. Code Ann. §§ 77-3-45 and 77-3-16. The purpose of this rule is to apply to new contracts and projects of the utilities, and the provisions of this rule shall not apply to existing contracts and/or projects for which the competitive solicitation process has been initiated before the effective date of this rule.

#### 101 Definitions

1. **Local Business Enterprise** – A resident contractor determined by the utility to be qualified to furnish goods and services to the utility and placed on the utility’s “Hire Mississippi” list pursuant to Section 103 below.
2. **Nonresident Contractor** - A prime contractor or subcontractor, be they corporate, individual or partnership, domiciled or having its principal place of business in a location other than the State of Mississippi that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.
2. **Prime Contractor** - Any party or person (who is not an employee of the utility or its affiliated or associated companies) who directly enters into any agreement with a utility for the furnishing of goods or services.
3. **Resident Contractor** – A prime contractor or subcontractor, be they corporate, individual, or partnership, domiciled or having its principal place of business in the State of Mississippi that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.
4. **Subcontractor** - Any party or person, who is not an employee of the prime contractor or the utility, who directly enters into any agreement with a prime contractor:
  - a. for the furnishing of goods or services; or
  - b. under which any portion of the prime contractor’s obligation under any contracts with the utility is performed or undertaken.

# Exhibit A



A subcontractor shall be treated as a prime contractor hereunder to the extent the subcontractor assumes any portion of the prime contractor's obligation under any contracts with the utility.

5. **Utility** – Any public utility as defined in Miss. Code Ann. § 77-3-3(d)(i)-(ii) subject to rate regulations by the Mississippi Public Service Commission.

**102 Resident Contractor Outreach and Assistance**

The utility shall actively seek out opportunities to identify and assist potential resident contractors in order to expand the utility's contracting source pool within the state of Mississippi.

The utility shall help enable contracting relationships with resident contractors by exercising reasonable efforts to explain utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures.

The utility shall make available to resident contractors lists of contract categories which may best align with the resident contractor's stated qualifications.

The utility shall develop marketing program literature to provide to resident contractors and the business community summarizing its efforts pursuant to this rule. Such summaries shall state that the resident contractor will be furnished a complete copy of this rule upon request. Such summaries shall encourage the participation of resident contractors as prime contractors and subcontractors.

The Commission also encourages the utilities to explore opportunities for outreach involving Mississippi's institutions of higher education, community colleges, and other trade and technical schools to raise awareness of career opportunities in fields utilized by the public utility sector, with special emphasis on explanation of the contract bidding process.

**103 "Hire Mississippi" List**

The utility shall maintain a "Hire Mississippi" list consisting of resident contractors determined by the utility to be qualified to furnish goods and services of the types described in Miss. Code Ann. § 77-3-16. At least every three (3) months, the utility shall publish in a newspaper in each county in the utility's certificated area, a notice requesting names of qualified resident contractors. Special attention shall be paid to counties which have no daily local paper to make reasonable efforts to reach potential contractors through cost effective available avenues which may include without limitation electronic communications.

A contractor wishing to be on the "Hire Mississippi" list may certify to the utility that is a "Resident Contractor" as defined in Section 101 above by any means the utility deems reasonable. Upon such certification, the utility shall add said contractor to the "Hire Mississippi" list.

To ease public access to information provided through this rule, the Commission may administer a "Hire Mississippi" web portal, accessible through its website that compiles, among other things, the "Hire Mississippi" lists of utilities subject to this rule, information regarding contracting requirements and procedures, notice of upcoming opportunities, and marketing literature.

**104 Unbundling of Contract Goods and Services**

When efficient or cost-effective, the utility shall unbundle and separate scopes and specifications to accommodate the inclusion of resident contractors in sourcing activities.

**105 Publication of Competitive Bidding**

In addition to the publication requirements of Section 103 above and Miss. Code Ann. § 77-3-16, the utility is encouraged to pursue any additional means of publication in trade journals, local newspapers, social media, or any other avenue available.

Resident contractors who operate within the area in which the scope of goods or services will be performed under the applicable contracts and who furnish the goods and services sought, at a minimum of once per calendar year, shall be notified of any known upcoming bids for contracts containing scopes of goods or services furnished by the resident contractor via U.S. mail or electronic means, if available.

No contract shall be awarded to any prime contractor without the utility first providing the prime contractor the utility's "Hire Mississippi" list for consideration of awarding subcontracts arising out of the prime contract.

#### **106 Applicability to Other Filings**

In any filing before the Commission requesting approval of a contract specified in Miss. Code Ann. § 77-3-16, the utility shall include all relevant information addressing compliance with this rule in the procurement process. In cases where nonresident contractors are used, the utility shall provide a brief explanation of why the nonresident contractor was chosen over a resident contractor. However, utility shall not be required to provide confidential competitive advantage or proprietary information in these disclosures. Such explanation shall not disclose the identity of the resident contractor not chosen or the nonresident contractor in order to not harm the reputation of the resident contractor. The Commission and/or the utility reserves the right to request such information be filed confidentially when deemed necessary to fulfill the goals of this Rule or to comply with contractual confidentiality obligations.

#### **107 Resident Contractor Bid Feedback**

In any case in which a resident contractor is unsuccessful in a bid on a contract which is awarded to a nonresident contractor, the utility shall, at the request of any unsuccessful resident contractor bidder, and only after the contract has been executed, provide general, non-confidential information concerning the overall evaluation process between the resident contractor's bid as contrasted with the successful bid. Information on additional selection criteria, such as warranty periods, maintenance costs, and delivery capability, shall be provided under confidentiality protections when requested if disclosure would not violate the proprietary nature of the specific contract element or otherwise violate contractual obligations of confidentiality.

#### **108 Annual Report Requirements**

On March 1 of each year, the utility shall file a report with the Commission addressing compliance with this rule. The report shall include relevant and material information from the prior year, including proofs of publication, a copy of the utility's most recent "Hire Mississippi" list, a listing of all student outreach event opportunities afforded by the utility, and the number of bid feedback requests received pursuant to Section 107.

Additionally, the utility shall report the total number of contracts awarded by the utility in the previous year pursuant to Miss. Code Ann. § 77-3-16, a breakdown of how many of those contracts were awarded to resident contractors and how many to nonresident contractors, and a brief description of each contract's scope of work or supply.

The report shall specify the percentage of that contractor's employees that are Mississippi residents to the extent reported to the utility by the contractor. If within the reporting period seventy five

percent (75%) of those employed pursuant to resident contractor contracts are Mississippi residents, the Commission shall award a certificate to the utility naming it a “Mississippi Champion.”

The utilities shall also summarize any outreach efforts undertaken pursuant to Section 102 above, including the response to and perceived impact of such efforts.

**109 Hearing on Annual Report Requirements**

Upon request of the utility or by order of the Commission, a public hearing for discussion of the annual report may be held after it has been issued by the utility. The public hearing should protect confidential information including but not limited to the identity of the contractors and costs. Notice shall be provided in a manner consistent with current Commission procedural rules.

**110 Cost Recovery**

The utilities shall be allowed to recover all prudently incurred incremental costs associated with compliance with this rule.