

124 FERC ¶ 61,003
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Louisiana Public Service Commission

v.

Docket No. EL08-50-000

System Energy Resources, Inc. and
Entergy Services, Inc.

ORDER ON COMPLAINT

(Issued July 1, 2008)

1. On March 31, 2008, the Louisiana Public Service Commission (Louisiana Commission) filed a complaint against System Energy Resources, Inc. (System Energy) and Entergy Services, Inc. (Entergy). The Louisiana Commission argues that the depreciation and decommissioning rates reflected in the formula rate under the Unit Power Sales Agreement (Agreement) between System Energy and four Entergy operating companies should be changed to reflect an anticipated 20-year extension in the operating license of the Grand Gulf 1 Nuclear Generating Facility (Grand Gulf).¹ The Louisiana Commission also argues that the return on equity (ROE) component of that formula rate should be lowered because it is no longer just and reasonable.
2. The Commission denies the relief requested in the complaint with respect to both issues. First, the Commission finds that the Louisiana Commission's argument for changing the depreciation and decommissioning rates for Grand Gulf, which is based on a possible future extension of the generator's operating license, is premature. Second, the Commission finds that the Louisiana Commission has not shown that System Energy's current ROE is unjust and unreasonable.

¹ Under the Agreement, System Energy sells capacity and energy from Grand Gulf to Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together, Entergy Operating Companies).

I. Background

3. System Energy is a generating subsidiary of Entergy Corporation that owns or leases 90 percent of Grand Gulf and sells capacity and energy to the four Entergy Operating Companies under the Agreement. Grand Gulf began commercial operations in July 1985 and its current Nuclear Regulatory Commission (NRC) operating license expires on November 1, 2024. The Agreement provides for a formula rate, which adjusts to reflect actual total operating costs. The ROE component of the formula rate is fixed.

II. Complaint

4. The Louisiana Commission states that the depreciation and decommissioning rates currently in place for Grand Gulf under the Agreement are being calculated using a 40-year service life, and that this is unreasonable. The Louisiana Commission argues that the depreciation and decommissioning expenses should be calculated using the estimated useful life of the applicable unit. It contends that Entergy has announced plans to seek an extension of Grand Gulf's operating license from the NRC, and that there is a high likelihood that the extension will be granted. The Louisiana Commission asserts that the NRC reports that Entergy has indicated in a Letter of Intent that it will apply for a license extension in January 2010. The Louisiana Commission states that based on Entergy's announced plans, and "the realistic expectation that the Grand Gulf license will be renewed," the expected service life should be 60 rather than 40 years.²

5. The Louisiana Commission also argues that the Commission should set a lower ROE for System Energy. The current rate of 10.94 percent was approved in 2000, based on evidence submitted in 1995 and 1996. The Louisiana Commission contends that the current ROE is unjust and unreasonable based on the decline in interest rates since System Energy's last proceeding and System Energy's low-risk profile. In support, the Louisiana Commission states that interest rates have fallen significantly from their levels in 1995 and 1996, with the average public utility bond yield at 7.91 percent in 1995 and 7.74 percent in 1996. However, the Louisiana Commission states that the average public utility bond yield as of February 21, 2008 is 6.30 percent, which represents a decline of 160 basis points or 1.6 percent since 1995. Similarly, the Louisiana Commission contends that Treasury Bond yields for 1995 and 1996 were 6.96 percent and 6.82 percent respectively, and that the 20-year Treasury Bond yield as of the end of February 2008 is 4.49 percent. According to the Louisiana Commission, these statistics show a decline in Treasury Bond yields since 1995 of 247 basis points or 2.47 percent.

6. The Louisiana Commission attaches an affidavit from Richard A. Baudino, a consultant, who concludes that the cost of equity for System Energy should be set in the range from 9.75 percent to 10 percent. The Louisiana Commission states that a

² Complaint at 7.

Discounted Cash Flow (DCF) analysis was performed for a group of comparison electric companies to estimate the cost of equity for System Energy. The Louisiana Commission maintains that System Energy serves the four Entergy Operating Companies under a long-term purchased sale contract, and that the costs are automatically passed through to the operating subsidiaries' retail customers, so the risk of System Energy not collecting its costs is virtually zero. Additionally, the Louisiana Commission argues that the steep decline in interest rates since System Energy's last rate proceeding, coupled with its low risk profile, supports a lower ROE for System Energy. Accordingly, based on this evidence, the Louisiana Commission states that System Energy's ROE should be lowered to 9.75 percent or to some lower rate supported by the evidence concerning the current cost of equity to System Energy. The Louisiana Commission requests a refund effective date of the earliest date allowed under the law.

III. Answers and Comments

7. Notice of the Louisiana Commission's complaint was published in the *Federal Register*, 73 Fed. Reg. 19,205 (2008) with interventions and answers due on or before April 21, 2008. System Energy filed an answer and the Arkansas Public Service Commission (Arkansas Commission) filed a notice of intervention and answer. Notices of intervention were filed by the Council of the City of New Orleans and the Mississippi Public Service Commission. Union Electric Company and Occidental Chemical Corporation filed motions to intervene.

8. System Energy requests that the Commission dismiss the complaint in its entirety, or in the alternative, deny it without a hearing. Specifically, System Energy argues that the Louisiana Commission's request to re-calculate the depreciation and decommissioning expenses for Grand Gulf is unsupported and contradictory to precedent in which the Commission has said that it will not base wholesale ratemaking decisions on speculation about possible changes in the service life of a nuclear plant.

9. The Arkansas Commission also argues that the complaint ignores Commission precedent on depreciation being based on the actual service life of a nuclear plant.³ The Arkansas Commission opposes the Louisiana Commission's request to change the current depreciation rate based on a speculative extension. Also, the Arkansas Commission cites Commission Trial Staff testimony in a related case, arguing that intergenerational inequity could occur when speculative extensions are used in calculation of depreciation rates.⁴ The Arkansas Commission further states that the life span of a generator is only one parameter among several used in the calculation of depreciation expenses and it

³ See, e.g., *Boston Edison Company*, 52 FERC ¶ 61,010 (1990).

⁴ Arkansas Commission at 4 (citing Testimony of Kevin J. Pewterbaugh at 11, Docket No. ER07-956-001 (Mar. 26, 2008)).

agrees with Commission Trial Staff that a proposed change in decommissioning rates should be accompanied and supported by a systematic study to determine depreciation expenses.

10. System Energy further argues that the Louisiana Commission falls short of meeting its burden of demonstrating that the currently-effective ROE is unjust and unreasonable. Rather, System Energy contends that the complaint is simply a procedural maneuver that collaterally attacks the Commission's determination in Opinion Nos. 446 and 446-A that the ROE should be 10.94 percent.⁵ System Energy argues that the Commission's policy against relitigation of issues, absent a showing of changed circumstances, prohibits the Louisiana Commission's attempt to lower System Energy's ROE. System Energy states that the ROE issue was settled in Opinion Nos. 446 and 446-A, and that the Louisiana Commission has not presented any new evidence of a significant change in circumstances since the issuance of those opinions. System Energy further contends that the Louisiana Commission did not provide any data to support its DCF analysis, such as a list of the utilities included in the comparison group. Additionally, it points out that Mr. Baudino's affidavit states that high growth rates that would overstate the constant-growth DCF results were excluded, but only low growth rates were near 0.00 percent were excluded. System Energy states that these screens are inconsistent with those used under the Commission's prescribed DCF method, and the effect of this manipulation is that the DCF range for the group was arbitrarily narrowed and lowered, resulting in the lowest possible DCF recommendation.

11. The Arkansas Commission agrees with the Louisiana Commission that System Energy's ROE is unjust and unreasonable, as it was based on out-dated financial information. In support of this position, the Arkansas Commission cites the financial data from 1995-1996 that the Commission relied upon in determining the currently-effective ROE and argues that capital market conditions have improved in the last 12 years. The Arkansas Commission clarifies that the Louisiana Commission's request to reduce System Energy's ROE does not legitimize the Louisiana Commission's request regarding Grand Gulf's depreciation and decommissioning rates. Rather, the Arkansas Commission contends that the ROE relief sought is intended to ensure a just and reasonable result using the appropriate Commission policy and procedures, and the Arkansas Commission supports setting the ROE issue for hearing procedures.

⁵ *System Energy Resources, Inc.*, Opinion No. 446, 92 FERC ¶ 61,119 (2000), *order on reh'g*, Opinion No. 446-A, 96 FERC ¶ 61,165 (2001).

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Analysis

13. Section 206 of the Federal Power Act (FPA) requires a complainant to satisfy a dual burden in order to obtain the relief it seeks in a complaint.⁶ First, the complainant must establish that the current rate is unjust and unreasonable; second, the complainant must establish that its alternative rate proposal is just and reasonable.⁷ Based on the information provided, the Commission finds that the Louisiana Commission has not met the first burden of demonstrating that the depreciation and decommissioning rates under the Agreement are not just and reasonable, or that System Energy's ROE should be reduced from its current level. The Commission also finds that the Louisiana Commission has not met the second burden of providing sufficient evidence to demonstrate that its proposed rates for the Agreement are just and reasonable.

14. As System Energy and the Arkansas Commission observe, the Commission has consistently based depreciation costs on the actual life of a nuclear facility license at the time of calculation. For example, in *Boston Edison*, the Commission determined that although Boston Edison Company (Boston Edison) had applied for a license extension to 2012 with the NRC, Boston Edison was required to amortize decommissioning costs based on the life of its current license, which was ending in 2008.⁸ The Commission declined to base its decision upon speculation regarding possible changes in the license life of the facility in question. The Louisiana Commission's complaint requests relief based on the same speculative change that the Commission rejected in *Boston Edison*. We therefore deny the Louisiana Commission's request to change the Grand Gulf decommissioning and depreciation rates pursuant to FPA section 206.

15. Similarly, we find that the Louisiana Commission has not provided sufficient information to establish that System Energy's currently-effective ROE under the Agreement is unjust and unreasonable, or that the Louisiana Commission's proposed

⁶ 16 U.S.C. § 824e (2006).

⁷ See *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Michigan Electric Transmission Co.*, 116 FERC ¶ 61,164, at P 12 (2006).

⁸ *Boston Edison Company*, 52 FERC ¶ 61,010, at 61,078 (1990) (*Boston Edison*). See also *System Energy Resources, Inc.*, 76 FERC ¶ 63,001, at 63,013 (1996).

ROE of 9.75 percent would be just and reasonable. As System Energy points out, the affidavit attached to the Louisiana Commission's complaint does not include supporting data, such as a list of the utilities in the comparison group or the DCF methodology used for the DCF analysis. Moreover, the Louisiana Commission has only provided statistical evidence of a change in bond yields, without making clear what effect this information alone has on System Energy's cost of equity. This evidence is insufficient to establish that the existing ROE may be unjust and unreasonable.⁹ Therefore, we will deny the Louisiana Commission's request to change System Energy's existing ROE.

The Commission orders:

The relief requested in the Louisiana Commission's complaint is hereby denied, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ Section 385.206 of the Commission's regulations, 18 C.F.R. § 385.206 (2008) requires parties filing a complaint to provide all documents in support of the facts in the complaint. The Louisiana Commission has failed to satisfy this requirement.