150 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Entergy Texas, Inc. Docket No. ES13-49-001

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued March 23, 2015)

1. On July 30, 2014,[1] as supplemented on December 12, 2014,[2] Entergy Services, Inc., on behalf of Entergy Texas, Inc. (Entergy Texas), filed an application pursuant to section 204 of the Federal Power Act (FPA)[3] seeking Commission authorization for an increase in Entergy Texas's existing authorization to issue long-term debt (Long-Term Debt) from the existing authorized limit of $1.128 billion to an aggregate principal amount not to exceed $1.513 billion outstanding at any one time during the Authorization Period, an increase of $385 million.[4] We will grant the authorization, as discussed below.

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[1] Application of Entergy Louisiana, LLC, and Entergy Texas, Inc., to Amend Existing Authorization Under Federal Power Act § 204, Docket Nos. ES13-46-001, ES13-49-001 (July 30, 2014) (July 2014 Application).

[2] Entergy Texas, Inc., Docket No. ES13-49-001 (Dec. 12, 2014) (December Supplement). The July 2014 Application and December Supplement are referred to together as the Application. Although Entergy Louisiana, LLC (Entergy Louisiana) and Entergy Texas both sought amendments to their existing authorizations under FPA section 204 in the July 2014 Application, Entergy Louisiana supplemented that application on October 28, 2014, and Entergy Louisiana's amended application was approved on November 13, 2014, in *Entergy Services, Inc.*, 149 FERC ¶ 62,104 (2014). This order addresses Entergy Texas's amendment to its existing authorization.

[3] 16 U.S.C. § 824c (2012).

[4] December Supplement at 1. Entergy Texas's existing authorization to issue Long-Term Debt during the authorization period, from November 1, 2013 through October 21, 2015 (Authorization Period), was established in *Entergy Arkansas, Inc.*,

(continued ...)

I. **Background**

2. Entergy Texas states that it is a public utility and a wholly-owned subsidiary of Entergy Corporation. Entergy Texas explains that it provides retail and wholesale electric service to customers in portions of Texas, and that it owns and operates transmission facilities and provides transmission service. Entergy Texas states that it is a transmission-owing member of Midcontinent Independent System Operator, Inc. (MISO) and has integrated its operations with those of MISO.

II. **Application**

3. Entergy Texas is currently authorized by the Commission to issue the following: Preferred Securities in an amount not to exceed $100 million;[5] Long-Term Debt in an amount not to exceed $1.128 billion;[6] and Short-Term Debt in an amount not to exceed $200 million.[7] Entergy Texas is also currently authorized to provide Letters of Credit to MISO in an amount not to exceed $80 million,[8] and to issue notes or other securities in connection with capital contributions and non-interest bearing open account advances received from its parent or other affiliates, without limitation.[9] Entergy Texas states that, of its current Long-Term Debt authorization of $1.128 billion, it has issuance authority for $65 million remaining.[10]

4. Pursuant to the Authorization Order, Entergy Texas is authorized to issue Long-Term Debt that bears interest as follows: (i) for Long-Term Debt that bears interest at a fixed rate, not to exceed 6 percent per annum, and (ii) for Long-Term Debt that bears

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et al., 145 FERC ¶ 61,093 (2013) (Authorization Order).

[5] Authorization Order, 145 FERC ¶ 61,093, at P 40(a) (2013).

[6] *Id.* at P 40(b).

[7] *Id.* at P 40(d).

[8] *Id.* at P 40(e).

[9] *Id.* at P 40(c).

[10] December Supplement at 2. In the July 2014 Application, Entergy Texas explains that Long-Term Debt may take the form of one or more series of first mortgage bonds and notes, debentures, intercompany credit agreements, agreements to make payments sufficient to pay government bonds issued on their behalf, and other forms of Long-Term Debt instruments. July 2014 Application at 2.

interest at a variable rate, at a rate not to exceed 400 basis points above any of the following rates for loans, (x) the 1-month, 2-month, 3-month, 6-month or 12-month London Interbank Offered Rate, or (y) the prime rate or the Federal Funds Rate, as identified in The Wall Street Journal, provided that if a lender arranges such Long-Term Debt financing at a prime rate or Federal Funds Rate other than the average prime rate or Federal Funds Rate identified in The Wall Street Journal for Entergy Texas, Entergy Texas will make available upon request to its treasurer a copy of the note or instrument that identifies such rate.[11]

5. Entergy Texas states that, during the remainder of the Authorization Period, which will expire on October 31, 2015, it has a need to issue Long-Term Debt in excess of its remaining authority. Accordingly, Entergy Texas requests an increase from its existing authorized level of up to $1.128 billion of Long-Term Debt outstanding at any one time to $1.513 billion, or an increase of $385 million.[12] Entergy Texas states that it is seeking this increased authority for the remainder of the Authorization Period.[13]

6. Entergy Texas states that the increase in the Long-Term Debt issuance limit will permit it to "undertake an array of lawful purposes for which it issues Long-Term Debt in furtherance of its operations as a public utility."[14] According to Entergy Texas, among other uses of its Long-Term Debt issuance authority, it periodically issues Long-Term Debt with a lower interest rate to repay, prior to maturity, existing Long-Term Debt with a higher interest rate. Entergy Texas notes that other purposes for which it will issue Long-Term Debt include: paying for storm damage expenses; paying off maturing debt;

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[11] Authorization Order, 145 FERC ¶ 61,093 at P 15 (citing July 2013 Application at 20), Ordering Paragraph (A). In the July 2014 Application, Entergy Texas states that it does not request any other changes to the Authorization Order and will continue to rely on the Authorization Order in all respects except with respect to the issuance of Long-Term Debt in excess of that currently authorized by the Authorization Oder. July 2014 Application at 1.

[12] In the July 2014 Application, Entergy Texas requested authorization to increase its issuance limit to $1.768 billion. July 2014 Application at 2. In the December Supplement, Entergy Texas decreased the issuance limit to $1.513 billion. December Supplement at 1.

[13] December Supplement at 2. Entergy Texas notes that it will file an application to renew its issuance authority during the first half of 2015, for renewal effective as of November 1, 2015.

[14] *Id.*

making infrastructure investments to serve customers, maintaining reliability, and satisfying planning requirements.[15]

7. Entergy Texas states that it currently has a Long-Term Debt issuance planned for April 2015 in an amount that will exceed its remaining Long-Term Debt authorization, and that the purpose of the planned issuance is to repay maturing Long-Term Debt and to finance other general corporate purposes. Entergy Texas notes that, if other needs or opportunities arise that require the issuance of Long-Term Debt during the remainder of the Authorization Period, Entergy Texas may undertake other issuances, subject to the issuance limit established by the Commission.

8. Entergy Texas states that it does not "request any other changes to the Authorization Order and will continue to rely on the Authorization Order in all respects except with respect to the issuance of Long-Term Debt in excess of that currently authorized by the Authorization Order."[16] In addition, in the July 2014 Application, Entergy Texas notes that, in the Authorization Order, the Commission granted it a waiver of, or exemption from, the Commission's competitive bidding requirement set forth at 18 C.F.R. § 34.2 (2014).[17] Entergy Texas does not propose any change to the waiver or any change in circumstances that would render it ineligible for such waiver.[18]

III. Notices of Filing, Interventions, and Protests

9. Notice of the July 2014 Application was published in the *Federal Register*, 79 Fed. Reg. 46,254 (2014), with interventions and protests due on or before August 20, 2014. None was filed.

10. Notice of the December Supplement was published in the *Federal Register*, 79 Fed. Reg. 77,469 (2014), with interventions and protests due on or before December 22, 2014. None was filed.

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[15] *Id.*

[16] July 2014 Application at 1.

[17] Section 34.2 sets forth the Commission's method of issuance requirements. It states, in part, that utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a) (2014). These requirements do not apply to short-term debt securities.

[18] July 2014 Application at 20.

IV. Discussion

11. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[19]

12. Typically, under FPA section 204, the Commission utilizes an interest coverage calculation in order to determine that the undertaking "will not impair [a public utility's] ability to perform" service as a public utility. And, typically, the Commission bases its finding that a proposed issuance of securities will not impair an applicant's ability to perform service as a public utility upon the applicant's demonstration that it will have a *pro forma* interest coverage ratio that is 2.0 or higher.[20]

13. In the December Supplement, Entergy Texas filed revised versions of Exhibits C, D and E *pro forma* financial statements as of September 30, 2014. The revised version of Exhibit E shows that Entergy Texas has a *pro forma* interest coverage ratio of 1.8, which does not meet the Commission's 2.0 interest coverage ratio threshold.

14. Entergy Texas sets out several factors that it claims support granting the requested authorization. First, Entergy Texas points to its rates for retail electric service, explaining that it filed a rate case with the Public Utility Commission of Texas (Texas Commission) in May 2014 and that the Texas Commission has approved a stipulation related to that case. The stipulation provides for an $18.5 million base rate increase; recovery over three years of calendar 2012 rough production cost equalization charges and rate case expenses; and a 9.8 percent return on common equity. Entergy Texas states that the rate increase was effective with bills rendered on and after the billing cycle of April 2014, and that the income it earns from its retail electric service rates permits it to pay its long-term debt expenses and other expenses of providing utility services to its customers. Second, Entergy Texas states that, under its currently-effective transmission formula rate, which is modeled on the formula rate template under Attachment O of the MISO Tariff, long-

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[19] 16 U.S.C. § 824c(a) (2012).

[20] *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (stating that "this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

term debt expenses are included in the company's annual transmission revenue requirement and recovered under the MISO Tariff.[21] Finally, Entergy Texas notes that it issues secured and unsecured Long-Term Debt that is rated as investment grade by institutional credit ratings agencies, and that these investment grade credit ratings are an indication that the company is financially sound.[22]

15. As noted above, the Commission utilizes an interest coverage ratio calculation in its evaluation of requests for authorization pursuant to FPA section 204, and generally requires an FPA section 204 applicant to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice total interest expense.[23] In this case, Entergy Texas's *pro forma* interest coverage ratio of 1.8 is below 2.0, but the Commission has looked to other factors and determined that servicing the costs of the proposed increase in Long-Term Debt will not impair Entergy Texas's ability to perform services as a public utility.

16. At the outset, we note that the requested change to the existing authorization to issue Long-Term Debt simply increases that existing authorization by $385 million and for a period of less than eight months. Moreover, data provided by Entergy Texas demonstrates that Entergy Texas's actual interest coverage ratio has improved steadily since 2013.[24] Furthermore, at the time the existing authorization was granted, almost all

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[21] Entergy Texas notes that its transmission formula rate is subject to refund pending settlement proceedings in Docket No. ER13-948-000. Entergy Texas states that the proceeding was initiated by the Commission in light of protests of the transmission formula rates that Entergy Texas and its operating company affiliates proposed when they joined MISO. According to Entergy Texas, protestors did not object to the proposed recovery of long-debt expense. December Supplement at 5.

[22] *Id.* at 4. Entergy Texas also notes that it is part of the multi-company Entergy utility system and that it has access to resources through its corporate relationships, and that it thus can receive capital contributions from its parent and enter into other intercompany arrangements that provide financial flexibility and support as a means of satisfying its financial and public utility service obligations. *Id.* Absent a contractual or other commitment by other companies in the Entergy utility system, we are reluctant to rely upon the possibility that such companies may choose to provide access to their resources. *See, e.g., Mississippi Power Co.*, 145 FERC ¶ 61,218 (2013).

[23] *E.g.*, *Startrans*, 122 FERC ¶ 61,253 at P 18.

[24] In the July 31, 2013 application, which was approved in the Authorization Order, Entergy Texas's pre-issuance interest coverage ratio was 2.2. Joint Application for Authorization under Federal Power Act § 204 (July 2013 Application), Exhibit E: Entergy Texas, Inc. *Pro Forma* Consolidated Statement of Cash Flows (for the twelve months ended March 31, 2013), Docket No. ES13-49-000 (Jul. 31, 2013). In the July

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of Entergy Texas's mortgage bonds and unsecured debt were rated as investment grade,[25] and here Entergy has represented that all of its secured and unsecured long-term debt is currently rated investment grade by credit rating agencies.[26] Additionally, Entergy Texas's currently-effective transmission formula rate includes long-term debt expense in its transmission revenue requirement under the MISO Tariff.[27]

17. We find, based on the discussion set forth above, that Entergy Texas has demonstrated that the proposed issuances of securities and assumptions of obligations or liabilities sought in the Application: (1) are for a lawful object, within Entergy Texas's corporate purposes, compatible with the public interest, and necessary, appropriate and consistent with Entergy Texas's proper performance as a public utility and will not impair its ability to perform such service; and (2) are reasonably necessary and appropriate for such purposes

18. Accordingly, we authorize the following:

> Entergy Texas is authorized to issue either secured or unsecured Long-Term Debt, in an aggregate amount not to exceed $1.513 billion outstanding at any one time during the Authorization Period, subject to the the interest rate limitation established in the Authorization Order. The Long-Term Debt may

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2014 Application, Entergy Texas's pre-issuance interest coverage ratio was 2.8. July 2014 Application, Exhibit E: Entergy Texas, Inc. *Pro Forma* Consolidated Statement of Cash Flows (for the twelve months ended March 31, 2014), Docket No. ES13-49-001. In the December Supplement, Entergy Texas's pre-issuance interest coverage ratio is 3.1. December Supplement, Exhibit E: Entergy Texas, Inc. *Pro Forma* Consolidated Statement of Cash Flows (for the twelve months ended September 30, 2014), Docket No. ES13-49-001.

[25] July 2013 Application at 23 (at the time, Standard & Poor's rated Entergy Texas's mortgage bonds and unsecured debt as A- and BBB, respectively; Moody's rated Entergy Texas's mortgage bonds and unsecured debt as Baa2 and Ba1, respectively).

[26] Specifically, Entergy Texas states, that Standard & Poor's rates its mortgage bonds and unsecured debt as A- and BBB, respectively, and that Moody's rates its mortgage bonds and unsecured debt as Baa1 and Baa3, respectively. December Supplement at 4.

[27] Entergy Texas notes that the currently-effective transmission formula rate is subject to refund pending settlement proceedings in Docket No. ER13-948-000, but represents that protestors in that proceeding did not object to the recovery of long-term debt expenses under the formula rate. *Id.* at 5.

> consist of one or more series of mortgage bonds, notes, revolving credit arrangements with terms in excess of one-year, debentures, intercompany credit agreements, arrangements to make payments sufficient to pay governmental bonds issued on behalf of Entergy Texas, and other forms of long-term debt instruments.

19. We grant the requested authorization effective as of the date of this order, through October 31, 2015. We will also continue the waiver of the Commission's competitive bidding and negotiated placement requirements applicable to Long-Term Debt.

20. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[28] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or "spun off." Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or "spun off", then a proportionate share of the debt must follow the divested or "spun off" non-utility asset. Finally, if utility assets financed by unsecured debt are divested or "spun off" to another entity, then a proportionate share of the debt must also be divested or "spun off." Entergy Texas states that it will comply with the *Westar* conditions.[29]

<u>The Commission orders</u>:

(A) Entergy Texas is hereby authorized to issue Long-Term Debt securities in the form of secured or unsecured loans, credit or financing agreements, and long-term bonds, notes, or other debt securities in an aggregate amount not to exceed $1.513 billion outstanding at any one time during the remainder of the Authorization Period, subject to the interest rate limitations and other terms and conditions set forth in the body of this order and the Authorization Order.

(B) The authorization granted in this order to increase the amount of Long-Term Debt for Entergy Texas will be effective as of the date of this order and terminate on October 31, 2015. All other authorizations previously approved for Entergy Texas in the Authorization Order remain unchanged.

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[28] *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at PP 20-21, *order on reh'g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

[29] July 2014 Application at 10.

(C) The authorization granted is subject to the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) The continuation of waiver of the Commission's competitive bidding and negotiated placement requirements for long-term debt at 18 C.F.R. § 34.2(a) (2014) is hereby granted.

(E) Entergy Texas must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2014), no later than 30 days after the sale or placement of Long-Term Debt securities or the entry into guarantees or assumption of liabilities.

(F) The authorization granted in Ordering Paragraph (A) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(G) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.