

157 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Louisiana, LLC

Docket No. ER16-2635-000

ORDER GRANTING WAIVERS

(Issued November 22, 2016)

1. On September 20, 2016, Entergy Services, Inc., on behalf of Entergy Louisiana, LLC (Entergy Louisiana), submitted a request that the Commission grant limited waivers of sections 35.14 and 35.19a of the Commission's regulations, 18 C.F.R. §§ 35.14 and 35.19a (2016). Entergy Louisiana states that the waivers would allow Entergy Louisiana to credit a wholesale, cost-based requirements customer a proportional share of a judgment and partial award received by Entergy Louisiana from the United States Department of Energy (DOE), as a result of DOE's breach of a contract for disposal of spent nuclear fuel.¹ For the reasons discussed below, we grant Entergy Louisiana's requested limited waivers of sections 35.14 and 35.19a.

I. Background

2. Entergy Louisiana states that it has a partial requirements agreement for wholesale electric service (Agreement) with the Sam Rayburn Municipal Power Authority (Sam Rayburn).² Entergy Louisiana notes that since 2001, Entergy Louisiana and its predecessors have provided power to Sam Rayburn member, the City of Jasper.³ Entergy Louisiana states that the Agreement contains a fuel adjustment clause that conforms to the principles identified in section 35.14 of the Commission's regulations. In addition,

¹ Entergy Louisiana Transmittal Letter at 1.

² See *Entergy Louisiana, LLC*, Docket No. ER11-4415-000, at 1 (Oct. 25, 2011) (delegated letter order accepting Agreement).

³ Entergy Louisiana Transmittal Letter at n.4.

Entergy Louisiana states that, consistent with section 35.14(a)(2)(i) and the Commission's Uniform System of Accounts, the Agreement includes the cost of nuclear fuel consumed at River Bend Station in Saint Francisville, Louisiana (River Bend) in Account 518 (Nuclear Fuel Expense). Entergy Louisiana adds that Account 518 is included in the fuel adjustment clause under the Agreement, and that through this mechanism, Entergy Louisiana and its predecessors in interest⁴ collected amounts from Sam Rayburn that were used for spent nuclear fuel storage and disposal.⁵

3. Entergy Louisiana states that in accordance with the Nuclear Waste Policy Act of 1982, one of Entergy Louisiana's predecessors in interest entered into a contract with DOE for the disposal of spent nuclear fuel consumed at River Bend. Entergy Louisiana states that while Entergy Louisiana performed its obligations under the contract by paying DOE, DOE did not perform its obligations under that contract, and, as a result, Entergy Louisiana incurred incremental costs to store the spent nuclear fuel at the River Bend site prior to disposal of the fuel. Specifically, Entergy Louisiana states that from June 1, 1999, to June 30, 2010, Entergy Louisiana incurred costs to implement dry cask spent nuclear fuel storage at River Bend, including design, construction, and equipment costs.⁶

4. Entergy Louisiana states that on April 14, 2016, the United States Court of Federal Claims issued an Opinion and Order Entering Partial Judgment on Entergy Louisiana's claims against DOE for partial breach of contract.⁷ Entergy Louisiana states that the court awarded Entergy Louisiana \$42,341,604 in reimbursement for part of the costs incurred by Entergy Louisiana from June 1, 1999 to June 30, 2010, as a result of DOE's breach of contract (Award), but that the Award did not include interest. Entergy Louisiana states that on August 16, 2016, it received the Award amount from DOE.⁸

⁴ Entergy Louisiana's predecessors in interest include Entergy Gulf States, Inc. and Entergy Gulf States Louisiana, L.L.C. Entergy Louisiana states that it succeeded to the Agreement from Entergy Gulf States Louisiana, L.L.C., and that references to Entergy Louisiana in its filing include its predecessors in interest. Entergy Louisiana Transmittal Letter at n.3.

⁵ Since 2001, Entergy Louisiana and its predecessors in interest have provided power to Sam Rayburn member the City of Jasper. *Id.* at 2 & n.2.

⁶ *Id.* at 2.

⁷ *See Entergy Gulf States, Inc. and Entergy Gulf States Louisiana, L.L.C. v. USA*, 125 Fed. Cl. 678 (2016).

⁸ Entergy Louisiana Transmittal Letter at 2.

II. Request for Waivers

5. Entergy Louisiana states that the Commission requires utilities with fuel adjustment clauses who receive refunds from DOE related to the disposal of spent nuclear fuel to prepare a plan to pass these refunds on to the customers who are served under the fuel adjustment clause and contributed to the cost of fuel.⁹ Since Entergy Louisiana collected amounts from Sam Rayburn for spent nuclear fuel disposal through the fuel adjustment clause under the Agreement, Entergy Louisiana states that it plans to credit a proportional share of the portion of the Award attributable to fuel back to Sam Rayburn through the Agreement's fuel adjustment clause. Entergy Louisiana requests that the Commission waive the requirements of section 35.14 of the Commission's regulations to permit it to use the fuel adjustment clause for this purpose.¹⁰

6. Entergy Louisiana explains that out of the total Award of \$42,341,604, which represents damages incurred by Entergy Louisiana in connection with DOE's breach of contract, \$23,197,884 represents amounts attributable to spent nuclear fuel storage and disposal. Entergy Louisiana states that the remaining \$19,143,720 of non-fuel damages consists of \$17,274,175 of capital costs and \$1,869,545 of operating and maintenance (O&M) costs. Entergy Louisiana states that the Agreement contains a stated capacity rate that is based on the 2010 test year. Thus, Entergy Louisiana asserts that no capital costs were incurred as damages in 2010. Entergy Louisiana states that due to the stated nature of the capacity charge calculated based on the 2010 test year, Entergy Louisiana did not charge Sam Rayburn any portion of the capital damages and, therefore, Sam Rayburn will not receive any of the portion of the Award attributable to non-fuel damages.¹¹

7. For purposes of billing under the Agreement, Entergy Louisiana requests that the Commission waive section 35.14 of the Commission's regulations to allow Entergy Louisiana to include in Account 518 the amount of damages attributable to fuel, in the amount of \$23,197,884. Entergy Louisiana states that this waiver will allow Entergy Louisiana to include a proportional share of that amount in the fuel adjustment clause under the Agreement.¹²

⁹ *Id.* at 3 & n.7 (citing *South Carolina Elec. & Gas Co.*, 63 FERC ¶ 61,335 (1993) (*South Carolina*) and *Southern California Edison Co.*, 31 FERC ¶ 61,113 (1985) (*Southern California Edison*)).

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

¹² Specifically, Entergy Louisiana states that with the \$23,197,884 included in Account 518, Sam Rayburn's fuel adjustment clause will be calculated pursuant to the Agreement and Sam Rayburn will receive its proportional share of the credit based on the

Entergy Louisiana states that its requested waiver is consistent with the public interest because it will allow Energy Louisiana to credit Sam Rayburn with a proportional share of the portion of the Award attributable to fuel in recognition of Sam Rayburn's prior payments through the fuel adjustment clause toward spent nuclear fuel disposal.¹³

8. Entergy Louisiana also requests that the Commission waive the requirements of section 35.19a of the Commission's regulations to allow it to omit interest on the amount that it credits to Sam Rayburn under the Agreement. Entergy Louisiana states that the Commission has previously waived section 35.19a under similar circumstances.¹⁴ In support of its requested waiver Entergy Louisiana states that it has not been reimbursed for the money it paid to store spent nuclear fuel prior to its recent receipt of the Award amount. Entergy Louisiana also asserts that a waiver of section 35.19a will allow it to avoid incurring the cost of interest on the amounts credited to Sam Rayburn, which is consistent with the public interest because Entergy Louisiana was not awarded interest on the Award amount. Entergy Louisiana adds that it intends to include the \$23,197,884 in Account 518 in either the November or December 2016 billing cycle depending on the timing of the Commission's order in this docket.¹⁵

III. Notice of Filing and Comments

9. Notice of the request for limited waivers was published in the *Federal Register*, 81 Fed. Reg. 66,648 (2016), with interventions and protests due on or before October 11, 2016. None was filed.

IV. Commission Determination

10. Entergy Louisiana requests that we waive sections 35.14 and 35.19a of the Commission's regulations to: (1) allow Entergy Louisiana to credit a proportional share of the portion of the Award attributable to fuel back to Sam Rayburn through the Agreement's fuel adjustment clause; and (2) allow Entergy Louisiana to exclude interest on the amount that it credits to Sam Rayburn under the Agreement.

amount of service Sam Rayburn utilized in the billing month. Entergy Louisiana Transmittal Letter at 4.

¹³ *Id.*

¹⁴ *Id.* at 4 (citing *South Carolina*, 63 FERC ¶ 61,335).

¹⁵ *Id.*

11. Section 35.14 of the Commission's regulations limits the fuel adjustment clause to the recovery of current fuel costs. The Commission normally requires that utilities with fuel adjustment clauses that receive refunds from fuel suppliers prepare a plan to pass these refunds to their customers served under the fuel adjustment clause.¹⁶ The Commission considers refund plans on a case-by-case basis. In *South Carolina*, the Commission granted waiver of its fuel adjustment clause regulations to permit the pass-through of spent nuclear fuel-related refunds from DOE. The Commission acted in this manner because there was no significant change in the composition of the utility's wholesale customers, and because there had been little variation over time in the size of the utility's wholesale business.¹⁷

12. Likewise, here, there is no significant discrepancy between the customers who paid the charges in the past and the customers who will receive the refunds from Entergy Louisiana, given that as Entergy Louisiana states, Sam Rayburn is its only current wholesale requirements customer and has been the only wholesale customer that it collected amounts from that were then used for spent nuclear fuel storage and disposal.¹⁸ Furthermore, we note that Entergy Louisiana had not been reimbursed for the monies it paid to store spent nuclear fuel prior to its recent receipt of the Award, and Entergy Louisiana promptly made its filing after receipt of the Award on August 16, 2016. For these reasons, we grant Entergy Louisiana's request for waiver of section 35.14 of the Commission's regulations.¹⁹

13. Entergy Louisiana also requests waiver of section 35.19a of the Commission's regulations so that it can exclude interest on the amount that it credits to Sam Rayburn. The Commission's practice is to require the payment of interest on refunds, with the interest computed using the interest methodology in section 35.19a.²⁰ In *South Carolina*, the Commission found that the public utility, South Carolina Electric & Gas Company (South Carolina), should not be responsible for interest covering periods during which it did not have the refund amount. Therefore, the Commission found that between the date

¹⁶ See *Southern California Edison*, 31 FERC ¶ 61,113 at 61,232 & Ordering Para. (A).

¹⁷ *South Carolina*, 63 FERC ¶ 61,335 at 63,198.

¹⁸ As stated above, Entergy Louisiana provides power to Sam Rayburn member the City of Jasper.

¹⁹ Cf. *Wisconsin Public Service Comm'n*, 67 FERC ¶ 61,287, at 61,997 (1994) (waiver denied, citing *South Carolina*, finding that the record showed that purchases by the utility's wholesale customers declined over time, and thus current customers' share of refunds would be substantially greater).

²⁰ *South Carolina*, 63 FERC ¶ 61,335 at 63,199.

South Carolina paid DOE and the date South Carolina received refunds from DOE, South Carolina was not responsible for any additional interest beyond that received from DOE. The Commission added, however, that to the extent there was or is any delay of more than one billing cycle between the date South Carolina passes the refund on to its customers, South Carolina should pay additional interest computed pursuant to section 35.19a.²¹

14. Likewise, we find that Entergy Louisiana should not be held responsible for interest covering periods before it received the Award amount. Therefore, we grant Entergy Louisiana's requested limited waiver of section 35.19a of the Commission's regulations. Accordingly, between the date Entergy Louisiana paid DOE and the date Entergy Louisiana received refunds from DOE in the form of the Award, Entergy Louisiana is not responsible for any additional interest. However, to the extent that there is a delay of more than one billing cycle between the date Entergy Louisiana received the Award amount from DOE and the date it passes the appropriate amount on to its customer, Entergy Louisiana must pay additional interest computed pursuant to section 35.19a.

15. Commission Enforcement Staff, acting under its own authority, publicly announced on February 27, 2015 that it was commencing an audit of Entergy Gulf States Louisiana, L.L.C. in Docket No. FA15-10-000.²² Of particular relevance to this proceeding, Staff stated the Entergy Audit will evaluate compliance with the Uniform System of Accounts and the Fuel Adjustment Clause regulations. Accordingly we clarify that the grant of the requested waivers does not prejudice the ongoing audit of Entergy in Docket No. FA15-10-000 or appropriate accounting and rate treatment of any non-fuel damages.

The Commission orders:

(A) Sections 35.14 and 35.19a of the Commission's regulations, 18 C.F.R. §§ 35.14 and 35.19a (2016), are hereby waived for the purpose and to the extent discussed in the body of this order.

²¹ *Id.*

²² Entergy Gulf States Louisiana, L.L.C. and Entergy Louisiana LLC, as part of a business combination, combined substantially all of their respective assets and liabilities into a single successor public utility operating company, Entergy Louisiana Power, LLC, pursuant to Commission approval. *Entergy Gulf States Louisiana, L.L.C. and Entergy Louisiana, LLC*, 151 FERC ¶ 62,018 (2015). Entergy Louisiana Power, LLC was subsequently renamed Entergy Louisiana, LLC, the applicant.

(B) Entergy Louisiana is hereby directed to pay additional interest computed pursuant to section 35.19a of the Commission's regulations if it delays for more than one billing cycle flowing through to its wholesale customer the refunds received from DOE, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.