

158 FERC ¶ 61,006  
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. ER17-81-000

ORDER ACCEPTING REFUND PLAN AND GRANTING WAIVER

(Issued January 4, 2017)

1. On October 13, 2016, Entergy Services, Inc., on behalf of Entergy Louisiana, LLC (Entergy Louisiana), submitted requests that the Commission: (1) accept Entergy Louisiana's plan to credit Entergy New Orleans, Inc. (Entergy New Orleans) a portion of a judgment and award received by Entergy Louisiana; and (2) grant a limited waiver of section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2016), regarding interest on refunds. Entergy Louisiana states that the Commission's acceptance of Entergy Louisiana's refund plan and granting of the limited waiver request would allow Entergy Louisiana to credit Entergy New Orleans a proportional share of a judgment and 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.<sup>1</sup> For the reasons discussed below, we grant Entergy Louisiana's requests.

**I. Background**

2. Entergy Louisiana states that it is a public utility that generates, transmits, distributes, and sells electric power to retail and wholesale customers in portions of Louisiana. Entergy Louisiana states that it owns River Bend Station (River Bend), a nuclear power station located in St. Francisville, Louisiana.<sup>2</sup> Entergy Louisiana states

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<sup>1</sup> Entergy Louisiana Transmittal Letter at 1.

<sup>2</sup> Entergy Louisiana notes that River Bend was previously owned by the former Entergy Gulf States, Inc. (Entergy Gulf States), and as result of a jurisdictional separation plan Entergy Gulf States was separated into two separate utilities, Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana) and Entergy Texas, Inc. (Entergy

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that River Bend consists of a 70 percent regulated share that is included in retail rate base and a 30 percent share that is not in retail rate base (River Bend 30).<sup>3</sup>

3. Entergy Louisiana states that a share of River Bend 30 is currently sold from Entergy Louisiana to Entergy New Orleans under an MSS-4 Replacement Tariff Power Purchase Agreement (River Bend 30 Agreement).<sup>4</sup> Entergy Louisiana adds that Entergy New Orleans bought power from Entergy Louisiana under the River Bend 30 Agreement beginning on June 1, 2003.<sup>5</sup> In addition, Entergy Louisiana states that the River Bend 30 Agreement prescribes a formula rate for calculating the payment of the capacity and associated energy of a Designated Generating Unit. Entergy Louisiana states that the formula rate is calculated monthly based on costs booked to certain accounts included in the Commission's Uniform System of Accounts. Entergy Louisiana explains that through these mechanisms, Entergy Louisiana and its predecessors in interest<sup>6</sup> collected amounts from Entergy New Orleans for costs that Entergy Louisiana had incurred for spent nuclear fuel storage and disposal.<sup>7</sup>

4. 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 also states that DOE did not perform its obligations under that contract, and, as a result, Entergy Louisiana incurred costs to store the spent nuclear fuel at the River Bend site

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Texas). Entergy Louisiana explains that following the separation, Entergy Gulf States Louisiana owned River Bend until October 1, 2015, when the assets of Entergy Gulf States Louisiana and the former Entergy Louisiana were combined into a single successor public utility now named Entergy Louisiana. Entergy Louisiana states that on October 30, 2015, Entergy Louisiana succeeded to the tariffs and rate schedules of Entergy Gulf States Louisiana and the former Entergy Louisiana. *See Entergy La., LLC*, Docket No. ER16-218-000, at 1 (Dec. 18, 2015) (delegated letter order).

<sup>3</sup> Entergy Louisiana Transmittal Letter at 1-2.

<sup>4</sup> The River Bend 30 PPA was accepted for filing in Docket No. ER16-1251-000. *See Entergy La., LLC*, 156 FERC ¶ 61,146 (2016).

<sup>5</sup> Entergy Louisiana Transmittal Letter at 2.

<sup>6</sup> Entergy Louisiana states that for purposes of this filing, references to Entergy Louisiana include its predecessors in interest. *Id.* at 3 & n.6.

<sup>7</sup> *Id.* at 2-3.

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.<sup>8</sup>

5. 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.<sup>9</sup> Entergy Louisiana states that the court awarded Entergy Louisiana \$42,341,604 (Award) 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, but that the Award did not include interest. Entergy Louisiana states that on August 16, 2016, it received the Award amount from DOE.<sup>10</sup>

## **II. Requests for Acceptance of Refund Plan and Waiver**

### **A. Refund Plan**

6. 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.<sup>11</sup> However, Entergy Louisiana states that the River Bend 30 Agreement does not contain a fuel adjustment clause pursuant to section 35.14 of the Commission regulations, but does contain a cost-based formula that passes through fuel, capacity, and operations & maintenance (O&M) costs on a monthly basis. Therefore, Entergy Louisiana states that out of an abundance of caution, it is providing the Commission with its refund plan for the River Bend 30 Agreement because Entergy Louisiana intends to credit to Entergy New Orleans its proportional share of the total Award for any investment or capital damages incurred on or after May 1, 2003 and on or after June 1, 2003 for fuel and O&M expenses.<sup>12</sup>

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> *See Entergy Gulf States, Inc. and Entergy Gulf States Louisiana, L.L.C. v. USA*, 125 Fed. Cl. 678 (2016).

<sup>10</sup> Entergy Louisiana Transmittal Letter at 3.

<sup>11</sup> *Id.* at 3 & n.9 (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*)).

<sup>12</sup> Entergy Louisiana notes that it also has an MSS-4 Replacement Tariff Agreement with Entergy Texas relating to the 70 percent regulated share of River Bend

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Entergy Louisiana adds that it does not intend to credit any portion of the Award associated with investment or capital damages incurred prior to May 1, 2003, and fuel and O&M expense damages incurred prior to June 1, 2003. Entergy Louisiana also states that it will provide the credit to Entergy New Orleans in the first billing cycle following receipt of the Commission's order in this docket.<sup>13</sup>

7. In explaining its refund plan, Entergy Louisiana states that the total Award of \$42,341,604 represents damages incurred by Entergy Louisiana in connection with DOE's breach of contract for the period January 1, 1999 to December 31, 2010. Entergy Louisiana notes that the River Bend 30 Agreement began on June 1, 2003, and that for billings in the first service month of June 2003, the capital/investment costs were based on actual balances on Entergy Louisiana's books as of the end of the month immediately preceding the service month, which was May 2003. Entergy Louisiana states that for fuel and O&M billings in the first service month of June 2003, expenses were based on transactions recorded on Entergy Louisiana's books for that service month, i.e., June 2003.<sup>14</sup>

8. Entergy Louisiana further explains that in preparing its refund plan, it prepared a breakdown of the damages incurred by type (capital fuel, or O&M), month, year, and cost category. Entergy Louisiana states that it separated the \$42,341,604 into four categories: (1) capital costs incurred prior to May 1, 2003; (2) capital costs incurred on or after May 1, 2003 until December 31, 2010; (3) fuel and O&M expenses incurred prior to June 1, 2003; and (4) fuel and O&M expenses incurred on or after June 1, 2003 until December 31, 2010.<sup>15</sup>

9. Entergy Louisiana states that it recorded the Award in the appropriate accounts in the Commission's Uniform System of Accounts, reflecting whether the portion of the Award was for the recovery of fuel cost, capital expenditures, or O&M expenses, based

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(River Bend 70 Agreement) which it did not include in its filing here because Entergy Louisiana states that it intends to calculate Entergy Texas' proportionate share of the total award and credit Entergy Texas through the normal course of the River Bend 70 Agreement billings. Entergy Louisiana Transmittal Letter at 4 & n.10.

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.*

on how the original charges were recorded.<sup>16</sup> Entergy Louisiana explains that during the next billing cycle after the Commission issues the Commission order in this proceeding, Entergy Louisiana intends to provide a share of this credit to Entergy New Orleans pursuant to the River Bend 30 Agreement. Entergy Louisiana further reiterates that in determining the amount of the credit to be given Entergy New Orleans, it will include only the capital-related amounts incurred on or after May 1, 2003 and the fuel and O&M expense amounts incurred after June 1, 2003.<sup>17</sup>

## **B. Waiver Request**

10. 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 Entergy New Orleans under the River Bend 30 Agreement. Entergy Louisiana states that the Commission has previously waived section 35.19a under similar circumstances.<sup>18</sup> In support of its requested waiver Entergy Louisiana states that a waiver of section 35.19a will allow it to avoid incurring the cost of interest on the amounts credited to Entergy Louisiana, which is consistent with the public interest because Entergy Louisiana was not awarded interest on the Award amount. In addition, Entergy Louisiana states that it prepared and filed this plan to pass a portion of the Award to Entergy New Orleans shortly after it received the proceeds from the Award. Therefore, Entergy Louisiana requests that the Commission accept its refund plan and grant a limited waiver of section 35.19a of the Commission's regulations as necessary to permit Entergy Louisiana to credit Entergy New Orleans a portion of the Award received by Entergy Louisiana from DOE, without interest.<sup>19</sup>

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<sup>16</sup> Entergy Louisiana states that, e.g., it recorded a credit to Account 518 for the entire amount of damages attributable to fuel which is \$23,197,884. *Id.* at 5.

<sup>17</sup> Entergy Louisiana states, e.g., that the amount of damages attributable to fuel since June 1, 2003, i.e., \$19,819,422, will be used in the MSS-4 Replacement Tariff billing with a credit calculated pursuant to the River Bend 30 Agreement. Entergy Louisiana adds that it intends to apply the same methodology to the capital and O&M components of the bill with damages attributable since May 1, 2003 and June 1, 2003, respectively. *Id.*

<sup>18</sup> *Id.* (citing *South Carolina*, 63 FERC ¶ 61,335).

<sup>19</sup> *Id.*

### **III. Notice of Filing and Comments**

11. Notice of Entergy Louisiana's filing was published in the *Federal Register*, 81 Fed. Reg. 72,046 (2016), with interventions and protests due on or before November 3, 2016.

12. On October 20, 2016, the Council of the City of New Orleans filed a notice of intervention. On November 3, 2016, the Public Utility Commission of Texas (Texas Commission) filed a notice of intervention and comments. The Texas Commission states that it has no objection to Entergy New Orleans receiving a proportionate share of the \$42.3 million award received by Entergy Louisiana. However, it has questions concerning the application of the Award to the MSS-4 Replacement Tariff accounts, and the resulting application to the River Bend Agreement invoice for Entergy Texas. The Texas Commission states that it is attempting to work through those questions with Entergy Louisiana, Entergy New Orleans, and Entergy Texas. The Texas Commission adds that by not protesting or by not requesting at this time a more detailed accounting, it is not waiving any claims, positions, or rights with respect to the propriety of the distribution of the DOE payment.

### **IV. Commission Determination**

#### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the notices of intervention serve to make the entities that filed them parties to this proceeding.

#### **B. Substantive Matters**

14. Entergy Louisiana requests that we: (1) accept its refund plan for filing; and (2) grant a limited waiver of section 35.19a of the Commission's regulations to allow Entergy Louisiana to exclude interest on the amount that it credits to Entergy New Orleans under the River Bend 30 Agreement.

15. We note that 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.<sup>20</sup> Although Entergy Louisiana states that the River Bend 30 Agreement does not contain a fuel adjustment clause pursuant to section 35.14 of the Commission regulations, it does contain a cost-based

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<sup>20</sup> See *Southern California Edison*, 31 FERC ¶ 61,113 at 61,232 & Ordering Para. (A).

formula rate that passes through fuel, capacity, and O&M costs on a monthly basis. We note that Entergy Louisiana used these mechanisms to collect amounts from Entergy New Orleans for costs that Entergy Louisiana incurred for spent nuclear fuel storage and disposal, which is generally how a fuel adjustment clause would be used in this situation. Accordingly, in this instance, we find that Entergy Louisiana's use of the cost-based formula rate is similar to the use of a fuel adjustment clause. Therefore, we will review Entergy Louisiana's refund plan. 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.<sup>21</sup>

16. 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. In this regard, we point out that Entergy Louisiana states that: (1) Entergy New Orleans bought power from Entergy Louisiana under the River Bend 30 Agreement beginning on June 1, 2003; (2) Entergy Louisiana collected amounts from Entergy New Orleans for costs that Entergy Louisiana had incurred for spent nuclear fuel storage and disposal; and (3) Entergy Louisiana intends to credit to Entergy New Orleans its proportional share of the total Award for any investment or capital damages incurred on or after May 1, 2003 and for fuel and O&M expenses incurred on or after June 1, 2003. Furthermore, we note that Entergy Louisiana had not been reimbursed for the amounts 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.

17. 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 Entergy New Orleans. 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.<sup>22</sup> 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

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<sup>21</sup> *South Carolina*, 63 FERC ¶ 61,335 at 63,198. *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).

<sup>22</sup> *South Carolina*, 63 FERC ¶ 61,335 at 63,199.

the date 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 received the award amount from DOE and the date South Carolina passes the refund on to its customers, South Carolina should pay additional interest computed pursuant to section 35.19a.<sup>23</sup>

18. 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 Entergy New Orleans, Entergy Louisiana must pay additional interest computed pursuant to section 35.19a.

19. For the reasons stated above, we accept Entergy Louisiana's refund plan and grant its request for a limited waiver of section 35.19a of the Commission regulations.<sup>24</sup>

20. Finally, we note that the Commission's Enforcement Staff, acting under its own authority, publicly announced on February 27, 2015 that it was commencing an audit of Entergy Gulf States Louisiana in Docket No. FA15-10-000.<sup>25</sup> Of particular relevance to this proceeding, Staff stated that the audit will evaluate Entergy Gulf States Louisiana's compliance with the Commission's Uniform System of Accounts, including the accounting for any judgment award and refund. Accordingly, we clarify that our acceptance of Entergy Louisiana's refund plan and grant of the requested waiver does not prejudice the ongoing audit of Entergy Gulf States Louisiana in Docket No. FA15-10-000, or appropriate rate treatment of any non-fuel damages.

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<sup>23</sup> *Id.*

<sup>24</sup> *See Entergy La., LLC*, 157 FERC ¶ 61,144 (2016).

<sup>25</sup> As noted above, Entergy Gulf States is the former owner of River Bend. *See supra* note 2.

The Commission orders:

(A) Entergy Louisiana's refund plan is hereby accepted for filing as discussed in the body of the order.

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

(C) 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 Entergy New Orleans the refunds received from DOE, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.