

114 FERC 61,120
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entergy Services, Inc.
Entergy Corporation
Entergy Arkansas, Inc.
Entergy Gulf States, Inc.
Entergy Louisiana, Inc.
Entergy Louisiana Holdings, Inc.
Entergy Louisiana, LLC
Entergy Mississippi, Inc.
System Energy Resources, Inc.

Docket No. EC06-42-000

ORDER CONDITIONALLY AUTHORIZING IN PART
AND DENYING IN PART ACQUISITIONS OF SECURITIES

(Issued February 7, 2006)

1. On December 16, 2005, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Corporation (Entergy), Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana, Inc., Entergy Louisiana Holdings, Inc. (Entergy Louisiana Holdings), Entergy Louisiana, LLC¹ (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), and System Energy Resources, Inc. (System Energy) (collectively, Applicants) filed an application under section 203 of the Federal Power Act (FPA)² requesting blanket Commission approval for the acquisition of

¹ Entergy Louisiana will be the successor to Entergy Louisiana, Inc. under the restructuring authorized by the Commission in *Entergy Louisiana, Inc.*, 112 FERC ¶ 62,209 (2005). Entergy Louisiana will be a subsidiary of Entergy Louisiana Holdings, which, in turn, will be a wholly-owned subsidiary of Entergy.

² 16 U.S.C. § 824b (2000), *as amended by* Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109-58, 119 Stat. 594 § 1281 (2005).

[continued...]

certain securities as described in detail below.³ We conditionally approve in part Entergy's request, and dismiss in part without prejudice to an adequately supported refiling. Specifically, the Commission temporarily authorizes Applicants to engage in securities acquisitions involving internal financing transactions that have been approved by the Securities and Exchange Commission (SEC) under the Public Utility Holding Company Act of 1935 (PUHCA 1935), while denying the request for blanket authorization for securities transactions between certain public utility subsidiaries of Entergy.

I. Background

A. Description of Applicants

2. Entergy, a registered public utility holding company under PUHCA 1935, directly owns all of the issued and outstanding common stock of each Applicant, except for Entergy Louisiana, whose common membership interests, after the restructuring, will be owned indirectly by Entergy through Entergy Louisiana Holdings. Entergy Arkansas, Entergy Gulf States, Entergy Louisiana, and Entergy Mississippi (collectively, Entergy Operating Companies), together with Entergy New Orleans, Inc. (Entergy New Orleans), provide service to approximately 2.8 million electric customers in portions of Arkansas, Louisiana, Mississippi, and Texas, and over 188,000 retail gas customers in Louisiana. System Energy owns and leases an aggregate 90 percent undivided interest in the Grand Gulf Stream Electric Generating Station (nuclear) in Port Gibson, Mississippi, and sells all of the capacity and energy from that interest at wholesale to Entergy Arkansas, Entergy Louisiana, Entergy Mississippi, and Entergy New Orleans.

B. Description of the Transactions

3. Applicants request blanket authorization under section 203(a) of the FPA to acquire securities issued by associate companies in the Entergy holding company system.

³ This filing also requested authorization for Entergy Services, on behalf of Entergy Arkansas, Entergy Gulf States, Entergy Louisiana, Entergy Mississippi, and System Energy, under section 204(a) of the FPA for the issuance of certain securities and for the receipt of funds from its parent company in the form of cash capital contribution and/or non-interest bearing open account advances (Docket No. ES06-20-000). A separate order will be issued in Docket No. ES06-20-000.

Specifically, they seek blanket authorization under section 203(a)(2) or section 203(a)(1), as applicable, for four different types of acquisitions of securities: (1) acquisition by each Applicant of short-term debt securities having a value in excess of \$10 million evidencing borrowings from the Entergy System Money Pool (Money Pool);⁴ (2) acquisition by Entergy of any securities issued by any Entergy Operating Company, System Energy or Entergy Louisiana Holdings, and by Entergy Louisiana Holdings of any securities issued by Entergy Louisiana, if the issuance of the securities to be acquired has been approved by the Commission under section 204 of the FPA; (3) acquisition by any direct or indirect subsidiary company of Entergy that is a public utility under section 201(e) of the FPA other than the Entergy Operating Companies, System Energy and Entergy New Orleans (Other Subsidiary)⁵ of securities of any Other Subsidiary having a value in excess of \$10 million, if the issuance of the securities to be acquired has been approved under section 204 of the FPA; and (4) acquisition by Entergy and any direct or indirect subsidiary of Entergy that is a holding company under section 203(a)(2) (Intermediate Holding Company), with respect to any Other Subsidiary and /or any electric utility company as that term is used in section 203(a)(2), whose operations are entirely outside the United States (FUCO), of any securities of any Other Subsidiary or FUCO, or of any other Intermediate Holding Company, having a value in excess of \$10 million.

4. Applicants state that (1) the Money Pool and other intra-system financing transactions and (2) Entergy Louisiana Holdings' acquisition of common membership interests and long-term debt securities of Entergy Louisiana are likely to exceed the \$10 million threshold under section 203(a) on a regular basis. Entergy also contemplates that it will occasionally acquire additional equity or debt securities having a value in

⁴ Entergy currently maintains the Money Pool for funding the working capital needs of Applicants Entergy Arkansas, Entergy Gulf States, Entergy Louisiana, Entergy Mississippi, Entergy Services, and also, non-Applicants Entergy New Orleans, Entergy Operations, Inc. (a nuclear power plant operations subsidiary of Entergy) and Systems Fuels, Inc. (an indirect subsidiary of Entergy Corporation) (together, with Entergy as a borrower only, Money Pool Participants). Following restructuring, Entergy Louisiana (as successor to Entergy Louisiana, Inc.), and Entergy Louisiana Holdings (initially as a lender only) will also become Money Pool Participants. Entergy New Orleans has petitioned for relief under Chapter 11 of the United States Bankruptcy Code and does not intend to make additional borrowings under the Money Pool until it is discharged under Chapter 11.

⁵ That is, "Other Subsidiary" means direct or indirect public utility subsidiaries of Entergy or Entergy Louisiana Holdings other than Entergy Louisiana Holdings, the Entergy Operating Companies, System Energy and Entergy New Orleans.

excess of the \$10 million of existing or future exempt wholesale generator (EWG)⁶ and FUCO subsidiaries or of Intermediate Holding Companies in the Entergy System that own such entities. Applicants further state that by granting the blanket approvals requested the Commission will enable the Entergy companies to engage in the kinds of internal financing transactions that have been approved by the SEC under PUHCA 1935.

II. Notice of Filing and Responsive Pleadings

5. Notice of Applicants' filing was published in the *Federal Register*, 70 Fed. Reg. 76,805, with comments, protests or interventions due on or before January 6, 2006. On January 5, 2006, the Arkansas Public Service Commission filed a notice of intervention. On January 6, 2006, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale) filed a motion to intervene and request for conditions. On January 9, 2006, the Mississippi Public Service Commission (Mississippi Commission) filed a notice of intervention. Finally, on January 19, 2006, Entergy Services filed an answer to Clarksdale's intervention and request for conditions.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them, parties to this proceeding. Given the early stage of this proceeding, the absence of undue prejudice or delay, and its interest in this proceeding, we will grant the Mississippi Commission's untimely, unopposed motion to intervene.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

B. Standard of Review under Section 203

8. Section 203(a)(4) of the FPA provides that the Commission is to approve a transaction that is jurisdictional under section 203 if: it finds that the proposed

⁶ EWG and FUCO are defined terms in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (PUHCA 1935) and are incorporated by reference into the Public Utility Holding Company Act of 2005 (PUHCA 2005).

transaction will be consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest. The Commission's Merger Policy Statement provides that the Commission will generally take into account three factors in analyzing proposed section 203 transactions: (1) effect on competition; (2) effect on rates; and (3) effect on regulation.⁷ Order No. 669 provides additional guidance for implementing the Commission's responsibilities, particularly with respect to amendments of section 203(a) in EAct 2005.⁸

1. Requests for Blanket Authorizations That Are Moot

9. Applicants request authorization for acquisitions of securities by Entergy and Entergy Louisiana Holdings that have been issued, respectively, by any Entergy Operating Company, System Energy, or Entergy Louisiana Holdings, and by Entergy Louisiana. Order No. 669 granted a blanket authorization for a holding company to acquire any security of a subsidiary company within the holding company system.⁹

⁷ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (Dec. 19, 1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (Nov. 28, 2000), FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (Merger Filing Requirements).

⁸ *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats & Regs. ¶ 31,200 (2005), *reh. pdg.*

⁹ 18 CFR Section 33.1(c)(2)(iii) provides as follows:

(2) Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to purchase, acquire, or take.... (iii) any security of a subsidiary company within the holding company system.

This regulation is subject to the conditions of §33.1(c)(3)-(4):

(3) The blanket authorizations granted under section (c)(2) are subject to the conditions that the holding company shall not:

[continued...]

Therefore, this Entergy request is moot. Order No. 669 also provides a blanket authorization for a holding company to acquire a foreign utility company, subject to the requirements therein.¹⁰ Thus, Applicants' request for Entergy or a holding company

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- (i) borrow from any electric utility company subsidiary in connection with such acquisition;
 - or
 - (ii) pledge or encumber the assets of any electric utility company subsidiary in connection with such acquisition;

(4) A holding company granted blanket authorizations in section (c)(2) shall provide the Commission with the same information, on the same basis, that the holding company provides to the Securities and Exchange Commission in connection with any securities purchased, acquired or taken pursuant to this section.

¹⁰ 18 CFR Section 33.1(c)(5) provides:

Any holding company in a holding company system that includes a transmitting utility or an electric utility is granted a blanket authorization under section 203(a)(2) of the Federal Power Act to acquire a foreign utility company. However, if such holding company or any of its affiliates, its subsidiaries, or associate companies within the holding company system have captive customers in the United States, the authorization is conditioned on the holding company verifying by a duly authorized corporate official of the holding company that the proposed transaction:

- (i) will not have any adverse effect on competition, rates, or regulation; and
- (ii) will not result in, at the time of the transaction or in the future:

- (A) any transfer of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company;

- (B) any new issuance of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;

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owned by Entergy to obtain securities of a utility whose operations are located entirely outside the United States is also moot.

2. Other Requests For Blanket Authorization

10. Applicants requested blanket authorization to allow them to acquire any short-term debt securities having a value in excess of \$10 million evidencing borrowings from the Money Pool. The Commission grants Applicants' request for its public utility subsidiaries to acquire the securities of other public utility subsidiaries as part of Money Pool Transactions, subject to the same limits on Money Pool Transactions imposed by the SEC under PUHCA 1935.¹¹ This grant of blanket authority is also subject to Applicants providing the same information to the Commission as provided to the SEC in connection with their Money Pool Transactions. The Commission understands the need for public utilities to quickly obtain or provide financing as part of a money pool transaction, and we conclude that these transactions will not have an adverse effect on competition, rates or regulations, and will not result in cross-subsidization or pledges or encumbrances of public utility assets. However, we are in the early stages of implementing EPAct 2005 and therefore conclude that it is appropriate to grant the authorization for one year, subject to the same limits on Entergy's money pool activities that are now imposed by the SEC. Applicants will be permitted to continue their Money Pool Transactions as they presently do. Our action is without prejudice to requests to extend the authorization and

(C) any new pledge or encumbrance of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; or

(D) any new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act.

(iii) A transaction by a holding company subject to the conditions in sections (c)(5)(i) and (ii) will be deemed approved only upon filing the information required in sections (c)(5)(i) and (ii).

¹¹ See Securities and Exchange Commission, *Entergy Corporation, Holding Co.* Act Release No. 35-27918 (November 30, 2004).

is subject to the rehearing of Order. No. 669. The authorization expires one year from the effective date of this order without prejudice to requests to extend the authorization and subject to any relevant Commission action on rehearing of Order No. 669, including the imposition of any additional conditions, to be prospectively applied, that may be necessary for the protection of ratepayers.

11. We deny without prejudice Applicants' request for blanket authorization for Other Subsidiaries (i.e., Entergy indirect subsidiaries that are public utilities other than the Entergy Operating Companies, System Energy and Entergy New Orleans) to acquire securities of Other Subsidiaries. Order No. 669 indicated that the Commission would allow blanket authorizations that include securities transactions between public utilities that are part of a cash management program.¹² However, this request goes beyond that permitted by Order No. 669. As noted above, the absence of limits on such transactions may present concerns regarding cross-subsidization. Entergy has also not explained why this blanket authorization is needed, or why public utility subsidiaries would be acquiring such securities. We are not persuaded that this type of proposed acquisition is consistent with the public interest, or that it will not result in inappropriate cross-subsidization. We will deny this authorization without prejudice to Entergy refiling the request with additional support.

3. Clarksdale's Intervention

12. Clarksdale proposes that authorization of the proposed securities acquisitions be subject to the condition that Entergy pursue good faith negotiations with its wholesale transmission customers for a joint transmission ownership arrangement. It argues that reasonable joint ownership arrangements would allow Entergy's wholesale transmission customers to provide an infusion of capital that would assist Entergy in meeting the financial challenges of rebuilding its transmission system. In this way, Clarksdale hopes to reduce the capital-related costs that are ultimately borne by the customers.

13. While we appreciate Clarksdale's proposal to assist Entergy in rebuilding the Entergy transmission system, Clarksdale has not presented evidence from which we could reasonably conclude that the standards for approval of the application under section 203 have not been met. Consequently, we deny Clarksdale's request for conditions.

¹² Order No. 669 at P 142.

The Commission orders:

(A) Applicants' request for authorization to acquire any short-term debt securities having a value in excess of \$10 million evidencing borrowings from the Money Pool is approved, subject to the limits and reporting requirements imposed by the SEC as referred to in the body of this order.

(B) The approvals granted herein are subject to the outcome of Commission action on rehearing of Order No. 669, Docket No. RM05-34-000, including any additional conditions for ratepayer protections that the Commission may impose on any similar blanket authorizations granted in association with that docket.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Entergy's request for authorization for Other Subsidiaries, as described in this order, to acquire securities of Other Subsidiaries is dismissed without prejudice.

(G) If the proposed transactions result in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made.

(H) This order is effective February 8, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.