UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Gulf States, Inc. Docket No. EL07-34-000

ORDER CONDITIONALLY GRANTING PETITION FOR DECLARATORY ORDER

(Issued March 30, 2007)

1. Entergy Gulf States, Inc. (Entergy Gulf States) filed a petition for a declaratory order requesting the Commission find that the payment of one or more dividends out of paid-in capital by Entergy Gulf States to its parent, Entergy Corporation (Entergy), under the facts and circumstances described herein, will not violate section 305(a) of the Federal Power Act (FPA).[1] We will conditionally grant Entergy Gulf States' petition for a declaratory order and conditionally authorize the payment of dividends out of paid-in capital.

Background

2. Entergy Gulf States is a direct, wholly-owned subsidiary of Entergy. Entergy Gulf States is a fully integrated electric utility providing generation, transmission and distribution service in southeastern Texas and southern Louisiana. It is regulated in Louisiana by the Louisiana Public Service Commission (Louisiana Commission) and in Texas by the Public Utility Commission of Texas (Texas Commission).

3. To finance a portion of Entergy Gulf States' reconstruction costs resulting from Hurricanes Katrina and Rita, which hit Entergy Gulf States' service territory in August and September 2005, Entergy Gulf States explains that Entergy made a $300 million cash capital contribution to Entergy Gulf States. Entergy Gulf States financed the remaining hurricane reconstruction costs with internally generated funds and through the issuance of first mortgage bonds. Entergy Gulf States also explains that it is exploring the use of securitization financings under Louisiana and Texas enabling statutes to recover qualified hurricane reconstruction costs from retail customers. Through a securitization financing, Entergy Gulf States notes that it could lower the cost of capital used to finance hurricane

[1] 16 U.S.C. § 825d(a) (2000).

reconstruction costs and/or mitigate the effect of those costs on retail rates compared to conventional utility financing methods or alternative methods of cost recovery. Entergy states that the financing would benefit retail ratepayers.[2]

4. Under the state enabling statutes, the state commissions would issue financing orders authorizing the issuance of the securitization bonds and, in turn, the billing and collection of storm recovery charges from Entergy Gulf States' retail customers. The bonds would be secured by the rights of Entergy Gulf States in the storm recovery charges collected from retail customers; the storm recovery charges would be used to pay principal, interest and other costs associated with the bonds. The proceeds from the securitization financings would be used only in accordance with the state statute or financing order.

5. As it relates to the requirements of section 305(a) of the FPA, Entergy Gulf States proposes to use up to $300 million of the aggregate net proceeds from the securitization financings to pay dividends to Entergy. Entergy Gulf States commits, however, that it will not pay any dividend based on the authorization requested herein if Entergy Gulf States' equity balance as a percentage of total capital, or equity ratio, would drop to below 30 percent.[3] Entergy Gulf States explains that it will use some or all of the balance of the net proceeds to retire existing debt and/or fund reserves. Entergy Gulf States further explains that the dividends paid to Entergy would be reflected as a reduction in paid-in capital on Entergy Gulf States' balance sheet. According to Entergy Gulf States, the dividends would have the effect of returning to Entergy all or a portion of the $300 million capital contribution made by Entergy in December 2005.

Notice of Filing

6. Notice of Entergy Gulf States' filing was published in the *Federal Register*, 72 Fed. Reg. 8367 (2007), with interventions or protests due on or before March 2, 2007. None was filed.

Discussion

7. We will conditionally grant Entergy Gulf States' petition because the concerns underlying section 305(a) of the FPA are not present in the circumstances of this transaction.

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[2] According to Entergy Gulf States, the securitization financing is expected to achieve "AAA" ratings from the major rating agencies and can be implemented with an insignificant equity contribution.

[3] Petition at 3-4.

8. Section 305(a) provides that:

> It shall be unlawful for any officer or director of any public utility . . . . to participate in the making or paying of any dividends of such public utility from any funds properly included in capital accounts.[4]

9. The concerns underlying the enactment of section 305(a) included "that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies."[5]

10. We find that Entergy Gulf States has clearly identified the source from which payment will be made. The dividends, which will not exceed $300 million, the amount of Entergy's cash capital contributions to Entergy Gulf States, will be made by Entergy Gulf States using a portion of the net proceeds from the securitization financings. The dividends will be reflected as a reduction in Account No. 211,[6] where Entergy's $300 million cash capital contribution was recorded.

11. We also find that the proposed dividends do not affect the ownership of Entergy Gulf States, as Entergy Gulf States will continue to be a wholly-owned subsidiary of Entergy. The dividends, thus, will have no adverse effect on the value of shareholders interests in Entergy Gulf States, since Entergy, the sole stockholder of Entergy Gulf States, will be the sole recipient of the dividends.

12. With regard to whether the dividends would be excessive, Entergy Gulf States acknowledges that following the securitization financings and application of the proceeds to reduce equity and retire certain debt, including the payment of dividends to Entergy, Entergy Gulf States' equity ratio will decline to 42.92 percent from 46.95 percent. Entergy Gulf States maintains, however, that the dividends paid to Entergy from paid-in capital will not be excessive. To this end, Entergy Gulf States commits not to pay any dividend based on the authorization granted herein if Entergy Gulf States' equity ratio would drop below 30 percent. Consistent with this commitment, we grant the petition

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[4] 16 U.S.C. § 825d(a) (2000).

[5] *See Exelon Generation Co., LLC*, 114 FERC ¶ 61,317 at P 13 (2006); *Entergy Louisiana Inc.*, 114 FERC ¶ 61,060 at P 12 (2006); *Exelon Corp.*, 109 FERC ¶ 61,172 at P 8 (2004); *ALLETE, Inc.*, 107 FERC ¶ 61,041 at P 10 (2004).

[6] *See* 18 C.F.R. Part 101, Account No. 211 (Miscellaneous Paid-In-Capital) (2006).

subject to a requirement that Entergy Gulf States may only pay dividends out of paid-in capital so long as Entergy Gulf States maintains a minimum equity balance equal to 30 percent of total capital.[7]

13. For these reasons, and under the circumstances of this case, we will conditionally grant the petition and conditionally authorize the requested payment of dividends.

The Commission orders:

(A) Entergy Gulf States' petition for declaratory order is hereby conditionally granted.

(B) Entergy Gulf States must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting the petition.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

[7] *See, e.g., Cincinnati Gas and Electric Co. d/b/a Duke Energy Ohio*, 115 FERC ¶ 61,250 at P 13 (2006); *Entergy Louisiana, Inc.*, 114 FERC ¶ 61,060 at P 13 (2006).