

127 FERC ¶ 61,291  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;  
Suedeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Entergy Gulf States, Inc.

Docket No. AC09-22-000

ORDER REJECTING COMPLIANCE FILING

(Issued June 23, 2009)

1. On December 19, 2008, Entergy Services, Inc., on behalf of Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf - Louisiana) and Entergy Texas, Inc. (Entergy Texas) (collectively, Entergy), submitted a filing purportedly complying with the Commission's directions in an earlier order conditionally approving Entergy's plan to divide Entergy Gulf States, Inc. (EGSI) into two separate utilities, i.e., Entergy Texas and Entergy Gulf – Louisiana (EGSI separation).<sup>1</sup> In addition, on February 20, 2009, Entergy submitted additional information to comply with a request for additional information by the Chief Accountant.<sup>2</sup> In this order, the Commission rejects Entergy's compliance filing because it fails to comply with the Commission's directions in the Entergy Separation Plan Order and in the Chief Accountant's information request.

**I. Background**

2. On March 16, 2007, as supplemented on May 4, 2007, Entergy submitted a request for Commission approval of its separation plan. As part of that filing, Entergy provided *pro forma* accounting entries for each step of the proposed EGSI separation. The proposed accounting entries reflected Entergy's evaluation of expected external financial statement requirements for the EGSI separation, as of the anticipated December 31, 2007 closing date.

3. In the Entergy Separation Plan Order, the Commission authorized the proposed separation plan as consistent with the public interest and as otherwise meeting the

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<sup>1</sup> *Entergy Gulf States, Inc., Entergy Gulf States Louisiana, L.L.C., and Entergy Texas, Inc.*, 120 FERC ¶ 61,079 (2007) (Entergy Separation Plan Order).

<sup>2</sup> We will refer collectively to Entergy's December 19, 2008 submittal and its February 20, 2009 submittal as its compliance filing.

requirements of section 203 and 305 of the Federal Power Act (FPA).<sup>3</sup> However, the Commission noted that Entergy's proposed accounting entries for the separation plan did not provide sufficient detail to determine whether these accounting entries complied with the Commission's Uniform System of Accounts (USofA). Accordingly, the Commission directed Entergy to submit complete details of all accounting entries related to the EGSI separation, along with complete narrative explanations describing the basis for the entries, within six months of the date on which the EGSI separation is consummated. Additionally, the Commission clarified that the narrative explanations must explain the purpose of each journal entry and must provide the generally accepted accounting principle Entergy relied upon for each entry.

4. On January 10, 2008, Entergy informed the Commission that the EGSI separation was consummated on December 31, 2007, as required by the Entergy Separation Plan Order. On December 19, 2008, Entergy submitted to the Commission financial and explanatory statements on behalf of Entergy Gulf - Louisiana and Entergy Texas to satisfy the requirement in the Entergy Separation Plan Order to provide details of all accounting entries related to the EGSI separation. This information consisted of financial disclosures Entergy submitted to the Securities and Exchange Commission in its Form 10-K about its EGSI separation. Entergy, in the December 19<sup>th</sup> filing, stated that due to an inadvertent oversight, it did not submit its final accounting within six months of the transaction's closing as required by the Entergy Separation Plan Order and requested leave to file its final accounting out-of-time.

5. On January 27, 2009, the Chief Accountant issued a request for additional information and directed Entergy to submit its final accounting entries related to the EGSI separation. Additionally, the Chief Accountant required Entergy to explain the method by which assets, liabilities, and equity was transferred to the books of Entergy Texas. The Chief Accountant's information request was designed to elicit the information that Entergy failed to provide in response to the Entergy Separation Plan Order.

6. On February 20, 2009, Entergy submitted additional information regarding Entergy Gulf - Louisiana's and Entergy Texas's final accounting with respect to the transaction in the captioned docket.<sup>4</sup> Entergy states that the final accounting entries for

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<sup>3</sup> 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (EPAAct 2005) and 16 U.S.C. § 825d(a) (2000).

<sup>4</sup> The Commission directed Entergy to provide final accounting entries related to the multi-step ESGI separation plan, along with complete narrative explanations describing the basis for the entries, for each phase of the EGSI separation plan. In the February 20<sup>th</sup> submittal, Entergy provides a "split balance sheet" for Entergy Gulf -

(continued...)

Entergy Texas and Entergy Gulf - Louisiana included in its February 20<sup>th</sup> submittal are provided in the same format as was used in its proposed journal entries submitted earlier in the proceeding.

7. In addition, Entergy's submittal includes a request that much of the information provided in the submittal be afforded privileged and confidential treatment, pursuant to the Commission's regulations at 18 C.F.R. § 388.112. Entergy argues that privileged treatment is warranted because the journal entries contain financial information that is not otherwise required to be publicly disclosed.

## II. Discussion

### A. Entergy's Submittals (Dated December 19, 2008 and February 20, 2009) Do Not Satisfy the Filing Requirements Imposed by the Entergy Separation Plan Order

8. The Commission rejects Entergy's compliance filing because it fails to provide complete details of all entries as required by the Entergy Separation Plan Order.

9. In particular, the Entergy Separation Plan Order specifically required Entergy to submit complete details of all accounting entries related to the EGSI separation, along with complete narrative explanations describing the basis for the entries and to explain the purpose of each journal entry and provide the generally accepted accounting principle relied upon. Entergy's December 19 filing fails to satisfy this requirement because it does not include any of its accounting entries related to the EGSI separation.

10. Further, in response to the Chief Accountant's request designed to elicit the information that Entergy failed to provide in response to the Entergy Separation Plan Order, Entergy submitted another deficient submittal. Just as with Entergy's original submittal,<sup>5</sup> the response to the request for additional information still failed to provide complete details of all accounting entries related to the EGSI separation, along with complete narrative explanations describing the basis for the entries and to explain the purpose of each journal entry and provide the generally accepted accounting principle relied upon.

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Louisiana and Entergy Texas that shows the accounting entries for each step of the EGSI separation plan. The submittal also includes a narrative explanation of each of the accounting entries in the financial statements for Entergy Gulf - Louisiana and Entergy Texas.

<sup>5</sup> Entergy's filing submitted in this proceeding on March 16, 2007 and supplemented on May 4, 2007.

11. Entergy's response is in the same format and contains the same level of detail as contained in its section 203 application, which the Commission determined to be insufficient in detail to determine whether it is consistent with the USofA. Entergy's response also failed to explain the manner or methods by which its assets, liabilities, and equity accounts were transferred to Entergy Texas, as required by the Entergy Separation Plan Order.

12. Entergy must therefore submit its final accounting entries related to the EGSI separation within 30 days from the date of issuance of this order. In particular, we direct Entergy to include the following information:

- All accounting entries related to the EGSI separation, along with complete narrative explanations describing the basis for the entries, for each phase of the separation plan. Entergy must also explain the generally accepted accounting principle relied upon in making its accounting entries.
- A detailed explanation of the method(s) by which amounts in each primary balance sheet account was transferred from EGSI to Entergy Texas in the journal entries related to the first phase of the separation plan.
- A worksheet listing each primary FERC account, along with individual columns showing account balances for EGSI before the separation and Entergy Texas and Entergy Gulf - Louisiana after the separation.
- Additional information or documents beyond what is specifically indicated where relevant and necessary to fully understand the accounting and financial reporting in the respective FERC Form 1's of Entergy Gulf – Louisiana and Entergy Texas for the transaction.

**B. Entergy's Request for Confidential Treatment under Section 388.112**

13. Entergy argues that the information in its February 20, 2009 submittal for which it is requesting confidential treatment is entitled to confidential treatment under 18 C.F.R. § 388.112 because the journal entries contain financial information that is not otherwise required to be publicly disclosed.<sup>6</sup> The Commission's regulations at 18 C.F.R. § 388.112(d) (2008) require that whenever the Commission is considering release of a document for which privileged treatment has been requested, the Commission must notify the person who submitted the document and give that person an opportunity to

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<sup>6</sup> The accounting entries at issue are those used by Entergy to determine the beginning account balances for Entergy Gulf - Louisiana and Entergy Texas filed in their FERC Form No. 1.

comment in writing on release of the information. As the basis for the confidentiality request is unclear and reduces transparency,<sup>7</sup> we require further support and justification for the request, and will afford Entergy seven calendar days from the issuance of this order to file comments elaborating on its claim that this information warrants confidential treatment. Absent adequate support for confidential treatment, or in the event of non-response within the time allotted for Entergy to comment, the Commission may release the information.

The Commission orders:

(A) Entergy's compliance filing is hereby rejected, for the reasons discussed in the body of this order.

(B) Entergy is hereby directed to file, within 30 days of the date of issuance of this order, a compliance filing as discussed in the body of this order.

(C) Entergy may, within seven calendar days of the date of issuance of this order, file comments with the Commission elaborating why the information it filed in this proceeding pursuant to a request for confidential treatment under 18 C.F.R. § 388.112 (2008) warrants confidential treatment.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>7</sup> We note that the accounting information to be provided here establishes the basis for Entergy's Form 1 filings, which the Commission has held to be public and not privileged.