140 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

System Energy Resources, Inc. Docket No. EL12-52-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued September 6, 2012)

1. On March 28, 2012, System Energy Resources, Inc. (SERI) filed a petition for declaratory order requesting the Commission find that its proposed payment of dividends[1] from common stock or paid-in capital accounts will not violate section 305(a) of the Federal Power Act (FPA) (Petition). On July 18, 2012, SERI filed a supplement to its Petition to provide additional information and clarification regarding its request for a declaratory order (Supplement). For the reasons stated below, we will grant SERI's petition for declaratory order, subject to certain commitments made by SERI.

I. Background

2. SERI is a direct, wholly-owned subsidiary of Entergy Corporation (Entergy). SERI is a single-asset company that owns and leases an aggregate 90 percent undivided interest in Unit No. 1 of the Grand Gulf Steam Electric Generating Station (Grand Gulf). SERI states that it sells the capacity and energy from its interest in the Grand Gulf facility to its public utility affiliates[2] pursuant to rate schedules on file with the Commission. SERI also states that it makes only wholesale sales of electric capacity and energy and does not have retail customers.

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[1] SERI states that the proposed distributions are in the nature of dividends, but explains that, for accounting purposes, they are characterized as "distributions." SERI Petition at 3 n.4.

[2] Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

3. SERI explains that, as a single-asset company, its capitalization has decreased over time as it earns revenues from operations and recovers its non-cash depreciation expense and amortizes long-term debt. SERI asserts that, to maintain a balanced capital structure, it has paid cash dividends to Entergy out of retained earnings that equal or exceed the amount of its current earnings each year, which has resulted in a decline in its retained earnings balance. SERI claims that, if it is not able to pay dividends out of common stock or paid-in capital, from available cash, its equity ratio will grow and result in an accumulation of cash and common equity in excess of what is appropriate for prudent financial purposes.

4. Accordingly, SERI proposes to pay dividends to Entergy out of common stock or paid-in capital to maintain a balanced capital structure. SERI commits that it will limit such dividends as necessary to maintain an equity balance of 30 percent or greater and asserts that it will make periodic distributions to maintain a balanced capital structure in the future.

5. In its Petition, SERI states that the payment of dividends it proposes is not inconsistent with the requirements of section 305(a) of the FPA. SERI states that the source of the dividends is clearly identified. SERI initially explains that dividends will be paid from available cash derived from ongoing operations and will be charged to Account 201, Common Stock Issued, or Account 209, Reduction in Par or Stated Value of Capital Stock. Second, SERI states that the dividends will not be excessive. SERI also asserts that the proposed dividends will have no effect on its shareholders or the value of its interests. SERI claims that Entergy will be the sole recipient of the dividends and will continue to be SERI's sole owner.[3]

6. In its Supplement, SERI clarifies that it will maintain an equity balance of 35 percent or greater during the term of a Capital Funds Agreement among Entergy and certain creditors. SERI states that "[u]nder that Capital Funds Agreement, Entergy has agreed to supply [SERI] with sufficient capital to maintain [SERI's] equity capital at a minimum of 35 [percent] of its total capitalization (excluding short-term debt)."[4]

7. SERI also clarifies in its Supplement that the source of the funds it will use to fund its ongoing operations and pay dividends to Entergy will be available cash derived from ongoing operations, which it earns from making wholesale sales of electric capacity and energy produced by Grand Gulf. Finally, though the Petition stated that SERI would account for such dividends as charges to Account 201, Common Stock Issued, and

[3] SERI Petition at 4-5.

[4] SERI Supplement to Petition at 2.

Account 209, Reduction in Par or Stated Value of Common Stock, SERI clarifies in its Supplement that it will account for all distributions paid to Entergy solely as charges to Account 201.[5] SERI states that it "will calculate its equity balance ratio based on the ratio of Total Proprietary Capital, as reflected in line 16 of page 112 of [SERI's] annual report to [the Commission] on Form 1, to the sum of Total Proprietary Capital and Total Long-Term Debt, as reflected in line 24 of page 112 of its Form 1.[6]

8. Finally, SERI reiterates that the proposed dividend payment is not inconsistent with section 305(a) of the FPA because the source of the dividend payment is clearly identified, and the dividend payment is not excessive.[7]

II. Notice of Filing

9. Notice of the Petition was published in the *Federal Register*, 77 Fed. Reg. 21,577 (2012), with interventions or protests due on or before April 27, 2012. Notice of the Supplement was published in the *Federal Register*, 77 Fed. Reg. 43,592 (2012), with interventions or protests due on or before July 30, 2012. None was filed.

III. Discussion

10. We will grant SERI's petition.

11. Section 305(a) provides that:

> It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or

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[5] *Id*. at 3. (stating that the current balance in Account 201 is $789.35 million, which represents Entergy's original equity contributions).

[6] *Id*.

[7] *Id.* at 3-4 (explaining that, from a cash management perspective, it will be most efficient for SERI to pay such dividends on a regular basis, such as quarterly or semi-annually).

> paying of any dividends of such public utility from any funds properly included in capital accounts.[8]

12. 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."[9] A central concern thus "was corporate officials raiding corporate coffers for their personal financial benefit."[10] However, the record in this case justifies no such concerns.

13. As noted above, SERI has clearly identified the source from which dividends will be paid to its parent, viz. funds derived from wholesale sales of electric capacity and energy produced by Grand Gulf. For accounting purposes, Account 201, Common Stock Issued, will be charged with the dividends paid to its parent. As SERI explained, due to it being a single-asset company with declining capital needs, if SERI were unable to pay such dividends, it would experience an accumulation of cash and common equity in excess of what is appropriate for prudent financial purposes.[11] The dividends SERI proposes to pay will be used to return such excess equity to its parent in order to maintain a balanced capital structure.

14. SERI also maintains that the dividends paid to Entergy will not be excessive and commits not to pay any dividend based on the authorization granted herein if paying such dividend would cause SERI's equity ratio to drop below 30 percent.[12] SERI clarified,

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[8] 16 U.S.C. § 825d(a) (2006).

[9] *E.g.*, *Citizens Utilities Co.*, 84 FERC ¶ 61,158, at 61,865 (1998); *Delmarva Power & Light Co.*, 91 FERC ¶ 61,043, at 61,158-59 (2000); *PPL Electric Utilities Corp*., 99 FERC ¶ 61,317, at 62,356-57 (2002).

[10] *Id*.

[11] The Commission has previously granted relief under section 305(a) to a single-asset company proposing to pay dividends charged to common stock under similar circumstances. *See Allegheny Generating Co.*, 130 FERC ¶ 61,269 (2010).

[12] SERI Petition at 2, 4 (noting that the minimum equity commitment is consistent with its obligations under an existing credit facility); *see, e.g., Ameren Corporation,* 131 FERC ¶ 61,240, at P 36 (2010); *Entergy Gulf States, Inc.*, 122 FERC ¶ 61,075, at P 16 (2008); *National Grid plc*, 117 FERC ¶ 61,080, at P 29 (2006); *Cincinnati Gas and Electric Co. d/b/a Duke Energy Ohio*, 115 FERC ¶ 61,250, at P 13 (2006) (holding that the payment of dividends from common stock or paid-in capital will not violate

(continued…)

however, that it will maintain an equity balance of 35 percent or greater during the term of a Capital Funds Agreement among Entergy and certain creditors. Consistent with this commitment, we grant the petition subject to a requirement that SERI may only pay dividends out of paid-in capital so long as SERI maintains a minimum equity balance at least equal to 30 percent of total capital or 35 percent during the term of the Capital Funds Agreement.

15. Finally, the payment of dividends will not harm shareholders. Entergy is SERI's sole owner and will be the sole recipient of the dividends, and Entergy will continue to be SERI's sole owner following such payment.

16. Based on the facts and circumstances presented by SERI, we will grant the Petition as supplemented, subject to certain commitments made by SERI, and accordingly find that section 305(a) of the FPA is not a bar to SERI's payment of dividends from the particular equity account identified above.

The Commission orders:

SERI's petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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section 305(a) where, among other things, the petitioners have committed to maintain a minimum common equity ratio of at least 30 percent).