169 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Entergy New Orleans, LLC | Docket No. ES19-28-000

ORDER GRANTING REQUEST FOR AUTHORIZATION TO ISSUE SECURITIES

(Issued October 31, 2019)

1. On April 30, 2019, pursuant to section 204 of the Federal Power Act (FPA),[1] Entergy Services, LLC (Entergy Services) filed, on behalf of its affiliate Entergy New Orleans, LLC (Entergy New Orleans), an application seeking Commission authorization to issue and sell securities and assume short-term and long-term obligations and liabilities (Application). On October 25, 2019, Entergy Services filed, on behalf of Entergy New Orleans, supplemental information to assist the Commission in its decision-making process (Supplemental Information). As discussed below, we grant the requested authorization, as supplemented, for a two-year period beginning November 1, 2019 and ending October 31, 2021.

I. Application

A. Background

2. Entergy New Orleans states that it is a public utility that provides retail electric and natural gas service to customers in the city of New Orleans, Louisiana, and is an indirect subsidiary of Entergy Corporation. Entergy New Orleans states that it makes wholesale sales of capacity, energy, and ancillary services to Midcontinent Independent System Operator, Inc. (MISO), and that it also owns and operates transmission facilities as a transmission-owning member of MISO.[2]

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[1] 16 U.S.C. § 824c (2018).

[2] Application at 2.

3. Entergy New Orleans explains that it was previously granted authorization under section 204 to issue not more than $40 million in preferred securities, $600 million in long-term debt, $150 million in short-term debt, and $25 million in MISO letters of credit during the two-year period ending October 31, 2019.[3]

B. Request for Issuance of Securities

1. Preferred Securities

4. Entergy New Orleans requests authorization to issue not more than $40 million in preferred securities, in the form of preferred membership interests or units of preference membership interests.[4]

5. Entergy New Orleans proposes that preferred securities will have distribution rates as follows: (1) for preferred securities entitled to distributions at a fixed rate, the rate will not exceed 10 percent per annum; and (2) for preferred securities entitled to distributions at a variable rate, the rate will not exceed 400 basis points above the 1-month, 2-month, 3-month, 6-month or 12-month London Interbank Offered Rate (LIBOR), or the prime rate or the federal funds rate, as identified in The Wall Street Journal.[5]

2. Long-Term Debt

6. Entergy New Orleans requests authorization to issue not more than $700 million in long-term debt that may take the form of one or more series of mortgage bonds, notes, debentures, credit agreements, arrangements to make payments sufficient to pay governmental bonds issued on behalf of Entergy New Orleans, and other forms of long-term debt instruments.[6]

7. Entergy New Orleans proposes that long-term debt will bear interest rates as follows: (1) for long-term debt that bears interest at a fixed rate, the rate will not exceed 6 percent per annum; and (2) for long-term debt that bears interest at a variable rate, the rate will not exceed 400 basis points above the 1-month, 2-month, 3-month, 6-month or

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[3] *Id.* at 1 (citing *Entergy Arkansas, Inc.*, 161 FERC ¶ 62,057 (2017)).

[4] *Id*. at 9.

[5] *Id*. at 11.

[6] *Id*. at 5, 9.

12-month LIBOR or commercial paper rate, or the prime rate or the federal funds rate, as identified in The Wall Street Journal.[7]

3. Short-Term Debt

8. Entergy New Orleans requests authorization to issue not more than $150 million in short-term debt that may consist of any type of debt securities having maturities of not more than one year, but will primarily be in the form of money pool borrowings,[8] external borrowings, or other intra-system short-term borrowing arrangements.[9]

9. Entergy New Orleans proposes that short-term debt will bear interest rates as follows: (1) for short-term debt that bears interest at a fixed rate, the rate will not exceed 3.83 percent; and (2) for short-term debt that bears interest at a variable rate, the rate will not exceed 400 basis points above the 1-week, 1-month, 2-month, 3-month, 6-month or 12-month LIBOR, or the prime rate or the federal funds rate, as identified in The Wall Street Journal.[10]

4. MISO Letters of Credit

10. Entergy New Orleans explains that, under MISO's credit rules, entities that participate in MISO's markets and settlement processes, including Entergy New Orleans, are obligated to post collateral security to secure their payment obligations to MISO through the MISO settlement process for market transactions and for other purposes related to their participation in MISO. Entergy New Orleans states that if MISO draws on Entergy New Orleans' letter of credit to pay an amount owed by Entergy New Orleans, Entergy New Orleans will be obligated to reimburse the issuer of the letter

[7] *Id*. at 10-11.

[8] Commission-regulated entities are required to file their cash management agreements with the Commission. *See* 18 C.F.R. § 141.500 (2019). The information provided is used to aid the Commission in monitoring cash management programs. Since the rule does not govern participation in cash management programs, this order does not address any request for authorization to participate in a cash management program. *See Regulation of Cash Management Practices*, Order No. 634-A, FERC Stats. & Regs. ¶ 31,152 (2003) (cross-referenced at 105 FERC ¶ 61,098 (2003)).

[9] Application at 7-8, 10.

[10] *Id*. at 12.

of credit for the amount of the drawing and will be able to recover such amount from its customers through its retail rates on a pass-through basis.[11]

5. Capital Contributions and Non-Interest Bearing Open Account Advances

11. Entergy New Orleans requests authorization to issue notes or other securities, including units of common membership interests, in connection with capital contributions and non-interest bearing open account advances received from its parent companies that directly or indirectly own Entergy New Orleans or other affiliates, without limitation.[12]

C. Purpose of Issuances

12. Entergy New Orleans states that it will use the proceeds received from the issuances of preferred securities, long-term debt, and short-term debt for a variety of lawful purposes in furtherance of its operations as a public utility, including financing for the acquisition, construction, modification, and/or improvement of utility facilities, financing for operations and maintenance activities, satisfying working capital needs, meeting long-term debt maturities, and refinancing or refunding existing debt. Entergy New Orleans states that it will use its MISO letters of credit as collateral security to secure its obligations relating to the MISO settlement process for market transactions and ancillary matters.[13]

D. Request for Waiver

13. Entergy New Orleans requests waiver of the Commission's competitive bidding and negotiated placement regulations.[14] According to Entergy New Orleans, the successful placement of securities may require the selection of specific underwriters, agents, or purchasers who are knowledgeable about Entergy New Orleans and highly qualified to be involved in such transactions, and such firms have a significant interest in devoting the requisite efforts to the due diligence and marketing necessary for the placement of such securities. In addition, Entergy New Orleans states that there may be circumstances where compliance with the competitive bidding or negotiated placement

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[11] *Id*. at 8.

[12] *Id*. at 9-10.

[13] *Id*. at 13.

[14] *See* 18 C.F.R. § 34.2 (2019).

requirements would unduly restrict Entergy New Orleans' ability to rely on such highly qualified firms.[15]

E. Supplemental Information

14. In its Supplemental Information filing, Entergy New Orleans provides additional support to demonstrate that its ability to provide service as a public utility will not be impaired by undertaking the issuances and assumptions of obligations and liabilities it proposes.

15. First, Entergy New Orleans states that, pursuant to an agreement with its retail regulator, the Council of the City of New Orleans (Council), Entergy New Orleans returned to customers in the third and fourth quarters of 2018 approximately $13 million of unprotected excess accumulated deferred income tax liability (ADIT) related to the Tax Cuts and Jobs Act of 2017.[16] Entergy New Orleans states that these amounts were reflected in the pro forma financial statements provided with the application, and that they affected Entergy New Orleans' interest coverage calculations. Entergy New Orleans states that "[e]xcluding the return to customers of approximately $13 million in unprotected excess ADIT during the third and fourth quarters of 2018, Entergy New Orleans's pro forma interest coverage would have been 2.0."[17]

16. Second, Entergy New Orleans states that it is planning significant new investments in solar generating resources and undertaking a series of investments in its utility systems to substantially improve electric and gas system reliability.[18]

17. Third, Entergy New Orleans states that on October 23, 2019, the Utility Committee of the Council unanimously approved a resolution recommending that the Council grant Entergy New Orleans authority to issue preferred securities and long-term debt in the same amounts and during the same two-year authorization period as requested in the section 204 application.[19]

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[15] Application at 22-23.

[16] Supplemental Information at 2.

[17] *Id*. at 3.

[18] *Id*. at 4.

[19] *Id*. at 5.

II. Notice of Filing

18. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 19,912 (2019), with interventions and protests due on or before May 21, 2019. None was filed. Notice of the Supplemental Information was issued in a Combined Notice on October 28, 2019, with interventions and protests due on or before October 30, 2019. None was filed.

III. Discussion

19. Section 204(a) of the FPA provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[20]

20. To determine whether the issuances for which authorization are sought "will not impair [a public utility's] ability to perform" service as a public utility, the Commission has used an interest coverage ratio calculation.[21] The Commission typically bases its finding that proposed issuances of securities will not impair an applicant's ability to perform service as a public utility in part upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.[22] In making this finding, the Commission reviews the financial statements submitted with an application filed under FPA section 204 and the applicant's calculation of the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.[23]

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[20] 16 U.S.C. § 824c(a) (2018).

[21] *See, e.g.*, *Old Dominion Elec. Coop.*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, LLC*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*). This interest coverage ratio analysis is not dispositive, but it helps inform the Commission's analysis. *Startrans*, 122 FERC ¶ 61,253 at n.7.

[22] *Startrans*, 122 FERC ¶ 61,253 at P 18 ("this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

[23] *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15 & n.15 (*Westar*).

The interest coverage ratio is used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[24] The Commission has stated, however, that whether or not an applicant has an interest coverage ratio that is 2.0 or higher does not by itself determine whether the Commission will grant or deny its application.[25] The Commission has granted FPA section 204 applications where the applicant did not have an interest coverage ratio that was 2.0 or higher but provided alternative bases to allow the Commission to find the issuance would not impair an applicant's ability to perform public utility service.[26]

21. Exhibit E of the Application demonstrates that Entergy New Orleans has a *pro forma* interest coverage ratio below 2.0. However, Entergy New Orleans argues that it nevertheless will be able to meet its financial obligations and perform its obligations as a public utility following Commission approval of the Application.[27] Specifically, Entergy New Orleans asserts that there are alternative bases upon which the Commission may conclude that the proposed issuances will be consistent with Commission precedent and section 204. Specifically, Entergy New Orleans states that it maintains investment grade credit ratings from independent credit ratings agencies Moody's and Standard & Poor's for its senior secured mortgage bonds. Entergy New Orleans also states, as noted above, that it is undertaking major capital investments to replace aging infrastructure and improve electric facilities that will enlarge its rate base and thereby improve its financial condition.[28]

22. Although the Commission's prior orders have focused more on the impairment component of the statute, the statute also requires that an applicant must demonstrate that the issuance or assumption is for a lawful object within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility. Here, Entergy New Orleans states that it will use the proceeds received from the issuance

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[24] *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans*, 122 FERC ¶ 61,253 at P 18). The Commission has also described the interest coverage ratio as a measure of a public utility's ability to meet future debt and interest payments. *Westar*, 102 FERC ¶ 61,186 at P 15.

[25] *See, e.g.*, *Startrans*, 122 FERC ¶ 61,253 at n.7.

[26] *See, e.g.*, *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014).

[27] Application at 18.

[28] *Id*. at 18-20; Supplemental Information at 2, 5.

of securities and debt to: finance the acquisition, construction, modification, and/or improvement of utility facilities; finance operations and maintenance activities; satisfy working capital needs; meet long-term debt maturities; and refinance or refund existing debt.[29] In its supplemental filing, Entergy New Orleans explains that it will undertake significant construction and capital investment during the Authorization Period, including rebuilding its natural gas distribution system, constructing a new combustion turbine generating facility in New Orleans, investing in solar generating resources, and deploying advanced electric and gas metering infrastructure.[30] Additionally, Entergy New Orleans states that it is undertaking a series of investments in its utility systems to substantially improve electric and gas system reliability. Entergy New Orleans explains that each of these investments in utility facilities and equipment will support and improve its ability to carry out its public utility responsibilities, earn consistent income through rates and rate base earnings, and sustain its financial capabilities.[31]

23. Based on the foregoing, we find that Entergy New Orleans meets the standards under FPA section 204. The Application demonstrates that Entergy New Orleans' proposed issuance of preferred securities, long-term debt, short-term debt, and MISO letters of credit: (1) will be for lawful objects within the corporate purposes of Entergy New Orleans and compatible with the public interest, are necessary or appropriate for or consistent with the proper performances by Entergy New Orleans of service as a public utility, and will not impair Entergy New Orleans' ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

24. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt authorized by the Commission.[32] First, public utilities seeking authorization to issue debt that is secured (i.e., backed) by utility assets must use the proceeds of the debt for utility purposes only. Second, with respect to such utility asset-secured debt issuances, if any utility assets that secure such debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if assets financed with unsecured debt are divested or spun off, the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must follow the non-

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[29] Application at 13.

[30] Supplemental Information at 3-4.

[31] We note that section 34.3 of the Commission's regulations requires all applicants to provide specific information about the purpose for which the subject securities will be used. We expect all applicants to comply with this requirement.

[32] *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

utility assets and if the non-utility assets are divested or spun off then a proportionate share of debt must follow the associated non-utility assets by being divested or "spun off" as well. Finally, with respect to unsecured debt used for utility purposes, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition our authorization on Entergy New Orleans abiding by these restrictions. Entergy New Orleans commits to complying with the four restrictions on secured and unsecured debt specified in *Westar*.[33]

25. Accordingly, we authorize the following for Entergy New Orleans:

a. Entergy New Orleans is authorized to issue preferred securities in an aggregate amount not to exceed $40 million outstanding at any one time.

b. The distribution rate for preferred securities shall be as follows: (i) for preferred securities entitled to distributions at a fixed rate, the rate will not exceed 10 percent per annum; and (ii) for preferred securities entitled to distributions at a variable rate, the rate will not exceed 400 basis points above the 1-month, 2-month, 3-month, 6-month or 12-month LIBOR, or the prime rate or the federal funds rate, as identified in The Wall Street Journal.

c. Entergy New Orleans is authorized to issue long-term debt in an aggregate amount not to exceed $700 million outstanding at any one time.

d. The interest rate for long-term debt shall be as follows: (i) for long-term debt that bears interest at a fixed rate, the rate will not exceed 6 percent per annum; and (ii) for long-term debt that bears interest at a variable rate, the rate will not exceed 400 basis points above the 1-month, 2-month, 3-month, 6-month or 12-month LIBOR or commercial paper rate, or the prime rate or the federal funds rate, as identified in The Wall Street Journal.

e. Entergy New Orleans is authorized to issue short-term debt in an aggregate amount not to exceed $150 million outstanding at any one time.

f. The interest rate for short-term debt shall be as follows: (i) for short-term debt that bears interest at a fixed rate, the rate will not exceed 3.83 percent; and (ii) for short-term debt that bears interest at a variable rate, the rate will not exceed 400 basis points above the 1-week, 1-month, 2-month, 3-month, 6-month or 12-month LIBOR, or the prime rate or the federal funds rate, as identified in The Wall Street Journal.

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[33] Application at 14.

g. Entergy New Orleans is authorized to issue MISO letters of credit in an aggregate amount not to exceed $25 million outstanding at any one time.

h. Entergy New Orleans is authorized to issue notes or other securities, including units of common membership interests, in connection with capital contributions and non-interest bearing open account advances received from its parents that directly or indirectly own Entergy New Orleans or other affiliates, without limitation.

26. Finally, we find good cause to grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements.

<u>The Commission orders</u>:

(A) Entergy New Orleans' requested authorization to issue preferred securities, long-term debt, short-term debt, and MISO letters of credit in the amounts described, and subject to the interest rates established in the Application, is hereby granted, and is based on the terms and conditions and for the purposes specified in the Application.

(B) The authorization is effective November 1, 2019 through October 31, 2021.

(C) The authorization is subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) Entergy New Orleans is granted waiver from compliance with the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a) (2019).

(E) Entergy New Orleans must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2019), no later than 30 days after the sale or placement of long-term debt securities or equity securities, or the entry into guarantees or assumption of liabilities.

(F) The authorization granted is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(G) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.